

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAN 13 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KEITH PRESTON GARTENLAUB, AKA
Keith Preson Gartenlaub,

Defendant-Appellant.

No. 16-50339

D.C. No.

8:14-cr-00173-CAS-1

Central District of California,
Santa Ana

ORDER

Before: LEAVY and BEA, Circuit Judges.

In reviewing the district court's denial of release pending appeal, we review factual determinations for clear error and legal determinations de novo. *United States v. Garcia*, 340 F.3d 1013, 1015 (9th Cir. 2003).

The district court did not err in finding that appellant has not shown, by clear and convincing evidence, that appellant is not likely to flee if released. *See* 18 U.S.C. § 3143(b); *United States v. Handy*, 761 F.2d 1279, 1283 (9th Cir. 1985).

Accordingly, appellant's motion for bail pending appeal (Docket Entry No. 7) is denied.

In addition, appellee seeks to seal two documents: the unredacted version of the Harris affidavit (“Exhibit C” to Defendant’s Motion for Bail Pending Appeal) and the unredacted version of the district court’s August 6, 2015 sealed order (“Government’s Sealed Exhibits–Volume II”). Appellee’s motions to seal (Docket Entry Nos. 12 and 15) are granted. Appellee’s motion to seal and the unredacted version of the Harris affidavit (Docket Entry No. 15) shall remain under seal. Appellee’s motion to seal and the unredacted version of the district court’s August 6, 2015 sealed order (Docket Entry No. 12) shall remain under seal.

Within 14 days, appellant shall file the motion for bail pending appeal and exhibits A, B, and D publicly.

In light of the absence of an objection to the November 7, 2016, November 13, 2016 and November 18, 2016 notices to unseal previously sealed material, the clerk shall unseal docket entry numbers 11, 13, and 16. *See* Interim 9th Cir. R. 27-13(f).

The briefing schedule established previously remains in effect.