

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 14-CR-241 CDP/TIA
)	
JAIME DE LA TORRE-DEL REAL,)	
)	
Defendant.)	

**DEFENDANT'S MOTION TO BE RELEASED ON BOND PENDING TRIAL
AND MEMORANDUM IN SUPPORT THEREOF**

Comes now Defendant, by his attorney, John D. Stobbs II, and for his Motion to be Released on Bond Pending Trial states:

I. BACKGROUND

Jaime De La Torre-Del Real, a native of Mexico residing in the United States illegally was arrested by the Bureau of Immigration and Customs Enforcement approximately one month ago. A detention hearing is set for Tuesday August 19, 2014. Due to his immigration status, the undersigned is confident that the probation office will recommend bond. However, there are several factors that need to be highlighted so that this Honorable Court can make an informed decision as to whether or not Jaime should be released on bond pending trial.

II. MOTION

1. With regard to a Defendant being released on bond pending trial, Title 18 United States Code Section 3142 (a)(1)&(2) states:

“(a)In general. — Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that pending trial, the person be—

- (1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;
- (2) released on a condition or combination of conditions under subsection (c) of this section;”

2. Subsection (b) of Title 18 United States Code Section 3142 goes on to state that in certain situations Defendants may be released on their personal recognizance or unsecured appearance bond. It specifically states:

“The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.”

3. On the other end of the spectrum is Title 18 United States Code Section 3142 (e), which states:

“(e) **Detention** — If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—”

4. When considering whether or not to release a Defendant on bond pending trial, Title 18 United States Code Section 3142 (g) dictates that this Honorable Court should take into account:

- “(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including—
 - (A) the person’s character, physical and mental condition,

family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest the person was on probation, on parole or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the persons's release. . . ”

III. MEMORANDUM

There are two real issues before this Honorable Court. The first, and most difficult hurdle for Jaime to clear is the risk of flight presented by his nationality. The second hurdle involves the dastardly rebuttable presumption for pretrial detention as a result of the fact that the applicable sentence would be a mandatory minimum 10 year sentence and a maximum sentence of life. However, when viewing the foregoing statutory sections, it appears that there exists the possibility that Jaime is a candidate to be released on bond pending trial.

Oftentimes, a Mexican national or other foreigner appears before this Honorable Court and said foreigner is *automatically* detained. The reason in those cases is because the foreign national is in the United States illegally and there is some sort of detainer lodged by the Bureau of Immigration and Custom Enforcement (ICE), meaning that the defendant would be turned over to ICE if a bond pending trial were issued.

The undersigned states on information and belief that Jaime is such a Defendant. What is unfair is that oftentimes the fact that a Defendant is an illegal alien takes precedence over the other factors this Honorable Court is directed to consider when deciding whether or not bond is appropriate. *If* this Honorable Court were to grant a bond for Jaime, he would then be turned over to BICE who would then determine whether or not a bond is appropriate for him.

Several years ago, the undersigned was successful in making this argument before United States Magistrate Mary Ann Medler. The undersigned's client, Patrick Beckford

was a Jamaican who was in the United States illegally. Mr. Beckford was stopped with approximately 1,000 pounds of marijuana in his tractor trailer. The undersigned made the argument, and makes the same argument here, that this Honorable Court should look at all factors as if Defendant were *not* residing in the United States illegally. Jaime's illegal status, for purposes of bond, is something that can be determined by a BICE judge, if this Honorable Court is inclined to grant a bond to him.

This fact is bolstered by the facts in the case, because statutorily this Honorable Court must weigh the evidence the Government has against Jaime and determine whether or not a bond would be appropriate.

Generally, the Government touts a strong case against a particular Defendant, and the argument goes that instead of staying in the United States to "face the music" and a possible life sentence, Jaime will flee to Mexico. Here, from what the undersigned has reviewed, the Government's case is *not* exceedingly strong against Jaime. The search of the residence in Chicago is troublesome and will be the basis for a Motion to Suppress.

This ignores the fact that the majority of his family reside legally in the United States, including his common law wife Katie who on Monday August 11, 2014 delivered the couples' third child.

Furthermore, several factors have taken place in the past month which whittle away at the notion that Jaime is facing a long prison sentence. First and foremost is the *Holder Memorandum*. The Holder Memorandum not only allows this U.S. Attorney's Office more latitude, but it seems to require that some thought go into whether or not Defendants like Jaime should be charged with a mandatory minimum sentence.

In a speech to the American Bar Association, General Holder stated:

"In some cases, mandatory minimum and recidivist enhancement statutes have resulted in unduly harsh sentences and perceived or actual disparities that do not reflect our Principles of Federal prosecution. Long sentences for low-level, non-violent drug offenses do not promote public safety, deterrence, and rehabilitation."

Holder was even more direct in his ABA speech, calling mandatory minimums "draconian" and asking Congress to reform a system which can "breed disrespect" for itself. "When applied indiscriminately, they do not

serve public safety.” See http://www.huffingtonpost.com/2013/08/12/eric-holder-mandatory-minimum_n_3744575.html”

General Holder discussed how, over time, charging decisions made by U.S. Attorneys’ offices throughout the country became overly-focused on punishment. General Holder mentioned that rehabilitation should be an aspect of charging decisions and the ultimate sentence a particular Defendant receives. Pre-Holder Memorandum, Defendants like Jaime would generally be sentenced to a 10 year sentence, with a hope of some reduction, unless there was some overriding 3553(a) factor that was apparent. Under the new scheme of things, the Government has to consider what General Holder said. In essence this gives even more meaning to the factors set out in 3553.

Secondly, in November of 2014 new drug Guidelines will be implemented which will reduce not only what constitutes a mandatory minimum sentence, but also what weights constitute a particular sentence. Ultimately, Defendants like Jaime will benefit from these Guideline changes, and when combined with the impact of the *Holder Memorandum*, his “ultimate” sentence might not be 10 years to life. As such her reason to abscond is dramatically reduced.

As far as the undersigned is aware, Jaime has no criminal history. The undersigned states on information and belief that he has no arrests and if so they are for traffic offenses at most. Arrests do not rise to automatic detention, although that is something which this Honorable Court could, and should, take into consideration. The *danger to the community* prong is something that inures to Jaime’s benefit. Jaime is someone who has no history of past violent behavior.

Which brings us to *risk of flight*. Specifically, how can it be proved that if this Honorable Court gives Jaime some sort of a bond, that he will immediately abscond to Mexico? Jaime came to the United States to work and help support his family members in Mexico. There is **nothing** for him in Mexico but poverty. A callous person would say that Jaime would prefer the poverty and depression Mexico offers compared to a stint in the Bureau of Prisons. Hopefully, this Honorable Court will not be swayed by that type of

logic. Realistically, if Jaime is “safety valve” eligible, and the Government follows the *Holder Memorandum*, his *true* sentence would be minimal.

The undersigned believes that Jaime has resided in Wisconsin for a considerable period of time and has strong roots there.

This Honorable Court can impose a combination of conditions to ensure that Jaime appear for his trial, such as an ankle bracelet or community confinement in some facility in Wisconsin.

WHEREFORE, Defendant Jaime De La Torre-Del Real requests that this Honorable Court *grant* his Motion to be Released on Bond Pending Trial, that he be allowed to post property or cash to satisfy said bond, that strict conditions be imposed to ensure that he not abscond, and that he be turned over to the Bureau of Immigration and Customs Enforcement so that a bond may be set in that venue.

JAIME DE LA TORRE-DEL REAL

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2014, a copy of the attached *Motion for Bond* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mr. John Davis
Assistant U.S. Attorney
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