

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES : 15-Cr-189 (RJL)  
v. :  
GILBERTO RIVERA AMARILLAS :  
Defendant. :

**DEFENDANT’S MOTION FOR CONDITIONS OF RELEASE**

**INTRODUCTION**

Defendant Gilberto Rivera Amarillas respectfully moves this Court for pretrial release pursuant to the provisions of 18 United States Code Section 3142. The defendant is a fifty-nine year-old Mexican national who was extradited to the United States from Guatemala on February 4, 2017. Although the charges against him are very serious, the defendant is in what can only be described as exceedingly poor health. He suffers from stage four colorectal cancer, which has metastasized to his liver. The doctors who have examined him in the last few weeks believe that his life expectancy is only several months, even with chemotherapy. Despite arriving in the United States four months ago, however, the defendant has only recently received a complete diagnosis, but has not yet received any cancer treatment. Because of his weakened state, the defendant has fallen twice in the last few weeks and because of the resulting injury to his spine – and the enormous amount of pain killers that he has been prescribed – Mr. Rivera Amarillas is confined to a wheelchair and is barely able to speak.

This situation has gone from bad to intolerable and under the circumstances, if the Government is unwilling to dismiss the charges, the only recourse left to the defense is to ask for conditions of release. As set forth herein, the defense is prepared to offer the following package of conditions to ensure the safety of the community and the defendant’s return to court:

1. The defense will rent an apartment in suburban Maryland, where the defendant can live under “house arrest.”
2. The apartment and the defendant will be monitored in person 24 hours a day by a group of private security guards (paid for by the defendant’s family), who will each agree (in writing and/or appear before this Court) not to assist the defendant in any effort to flee the jurisdiction and to report and violation of conditions of release immediately to the prosecutors and/or agents assigned to this case.
3. The defendant will not have access to telephone or other electronic devices.
4. The defendants’ twenty-four year old daughter (who is a United States’ citizen) will live with him at the apartment and also act as a third party custodian to ensure that the conditions of release are followed.
5. The defendant will be allowed to leave the apartment only to attend court hearings and/or medical treatment. The defense has located an oncology practice in suburban Maryland that has agreed to treat him (with all medical costs paid for by the defendant’s family). On any such trips, he will be accompanied by his daughter and a member of the private security team. The prosecution and Pretrial Services will be notified before any such trip out of the apartment. The Government can dispatch a law enforcement agent to accompany the defendant if it so chooses.
6. Upon his release from custody, the defendant will be fitted with an electronic GPS monitor.
7. The defendant’s family in Arizona will post a house as collateral to ensure his return to Court.

The defense believes that these conditions (and any other ones suggested by the Court) are more than adequate to “reasonably assure” his appearance in this case. See United States v. Xulam, 84 F.3d 441 (D.C. Cir. 1996)(bail statute requires only conditions that reasonably assure defendant’s appearance, not “guarantee” it). The defendant’s proposal would allow him to live whatever time he has remaining with some semblance of human dignity. It will also shift the cost of maintaining the defendant and/ or providing him with medical treatment to his family

## LEGAL ANALYSIS

### 1. The Bond Statute Factors

The criminal justice system in the United States operates in favor of the release of persons charged with criminal offenses. “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” United States v. Gloster, 969 F.Supp. 92, 96–97 (D.D.C. 1997). The federal bail statute grants this Court the authority to

release the defendant upon the “least restrictive” combination of conditions necessary to assure his appearance and the safety of the community. 18 U.S.C. Section 3141(c). In reaching this decision, the Court should consider: (1) the nature and circumstances of the offense; (2) the weight of the evidence; (3) the defendant’s personal characteristics; and (4) whether release would pose a danger to the community or risk of flight. The Government may establish danger to the community by clear and convincing evidence and the risk of flight component by a preponderance of the evidence. United States v. Karni, 298 F.Supp.2d 129, 131 (D.D.C. 2004).

***Nature of the Offense/Strength of the Government’s Case***

The Government has brought very serious charges against the defendant. They include a Continuing Criminal Enterprise count, as well as numerous drug counts and Possession of a Firearm During A Crime of Violence. The Government alleges that it has numerous witnesses in the case and conducted a long-term wiretap investigation against the defendant. For purposes of this bond motion, the defense assumes that the Government has a strong case against Mr. Rivera Amarillas.

If not for the defendant’s medical condition, undersigned counsel would never have asked for a bond in this case. Indeed, counsel has waited this long to file a bond motion only because it has taken an inordinate amount of time for the defendant to be examined. Mr. Rivera Amarillas has been housed at four different jails since his arrival in the United States and despite this Court’s April 13, 2017 Order that the defendant be examined by an oncologist and a report of his diagnosis and a prognosis be completed forthwith, it has taken an additional three months to receive this information.

***The Defendant's Personal Circumstances***

The defendant is a fifty-nine year -old Mexican national. He was arrested in Guatemala on or about June 9, 2016 and then extradited to the United States. He has no status in the United States and was paroled into this country only for the purpose of this criminal case. Mr. Rivera Amarillas, however, does have two children living in the United States. Both are citizens and fluent English speakers. They have both traveled to the Washington, D.C. area and visited their father in jail. They are aware of his grave medical condition and his daughter is ready, willing, and able to assist her father and agree to any conditions of home arrest that the court deems appropriate. Undersigned has met with both of the children and has received a copy of a letter from the daughter. That letter will be sent to the prosecution when this bond motion is filed. The defendant's daughter is also prepared to return to Washington, D.C., personally address this Court, and provide personal assurances that she will act as custodian and guarantee that all conditions of release are complied with.

***Risk of Flight/Danger To The Community***

The Court is expressly authorized to release the defendant upon conditions which will assure his return to court, including:

release to the custody of a designated person who agrees to assume supervision and to report any violation of a release condition; maintaining employment; abiding by restrictions on place of abode or travel; reporting on a regular basis to a designated law enforcement agency; complying with a curfew; executing a bail bond; or any other such conditions that the court deems "reasonably necessary to assure the defendant's appearance.

18 U.S.C. § 3142(c).

Moreover, while there is a presumption in favor of the defendant's detention because of the serious nature of the charges against him, the presumption is of course rebuttable. Thus, for example, in United States v. Hudspeth, 143 F.Supp.2d 42 (D.D.C. 2001), the defendant was

charged with being a member of a drug trafficking group transporting large quantities of cocaine from California (stored in the defendant's home) to the District of Columbia. The police recovered money, scales, and other drug paraphernalia during a search of Hudspeth's dwelling. 143 F.3d at 33-34. The defendant had no prior convictions and while the court found the evidence "substantial," it was not sufficiently "compelling" to warrant pretrial detention. *Id.* at 37. Based upon the totality of circumstances, the court found that "[s]imply put, when all pertinent matters are put on the scale, there is no clear and convincing showing that there is no condition or combination of conditions of release that would reasonably assure the safety of the community." *Id.* See also United States v. Karni, 298 F.Supp.2d 129 (D.D.C. 2004)(defendant charged with exporting triggering devices for nuclear weapons to Pakistan without a license released to home detention and electronic monitoring).

In this case, the defense has attempted to craft detailed, specific conditions of release that will ensure the defendant's return to court. Given his weakened physical condition and all of the safeguards that the defense would put in place, the proposed conditions would also ensure the safety of the community. The defendant would have no access to telephone or other electronic devices and no way to communicate with anyone outside of his family members, the treating physicians, and the security guards.

***Immigration Status/Detainer***

The only last remaining issue with respect to pre-trial release is the defendant's legal status in the United States. The defendant is a Mexican national who was extradited to the United States. The undersigned have confirmed with the United States Marshals that there is an immigration detainer lodged against him. The existence of the detainer, however, is not a relevant legal factor under the detention statute.

In United States v. Adomako, 150 F.Supp.2d 1302 (M.D. Fla. 2001), for example, the defendant was a foreign national arrested on charges of making false statements in a passport application. Although an immigration detainer had been lodged against him, in its analysis of whether he should be granted pretrial release the district court found that “Congress expressly instructs this Court to disregard the laws governing release in INS deportation proceedings when it determines the propriety of release or detention of a deportable alien pending trial.” 150 F.Supp.2d at 1302. Similarly, in United States v. Marinez-Patino, 2011 WL 902466 (N.D. Ill), the court rejected the Government’s argument that the existence of an immigration detainer was an automatic bar to pretrial release. “Thus, it is the risk that a defendant will flee, and not just his immigration status, that a court must consider under Section 3142(d).” Accord United States v. Montoya-Vasquez, 2009 WL 103596 (D. Neb).

Finally, in similar circumstances, the Court of Appeals for the District of Columbia Circuit in United States v. Xulam, 84 F.3d 441 (D.C. Cir. 1996) reversed an order of detention of a foreign national without legal status in the United States. The defendant in Xulam was a Turkish national, who was charged with making false statements in a passport application. The district court denied his request for pre-trial release upon the possibility that he might be facing deportation in the event of conviction. The Court of Appeals noted that the defendant was involved in international humanitarian work and not only appeared unlikely to flee, but also lacked the capacity to run because the Government had seized his travel and identification documents. Finally, the Court of Appeals rejected as a sufficient basis to hold the defendant the remote possibility that he might decide to flee:

The magistrate judge and district court referred several times to the notion that if the defendant were to flee, his supervisors could not stop him. That, of course, is true of every defendant released on conditions; it is also not the standard authorized by law for

determining whether pretrial detention is appropriate. Section 3152 speaks of conditions that will “reasonably” assure appearance, not guarantee it.

84 F.3d at 4.

In this case, if the Court orders the defendants’ release and the Government does not take steps to remove the immigration detainer, then Rivera Amarillas will be taken into custody by Immigration Customs Enforcement (ICE) and deported back to Mexico. The Government has the power to lift the immigration detainer and keep the defendant in this country under the conditions of release set by the Court. If it chooses not to do so and the defendant is deported back to Mexico, that will be the result of the Government’s own decision making. In either case, the existence of the detainer is not relevant to the bond determination.

#### CONCLUSION

For all the foregoing reasons, the defendant requests that this motion for pretrial release be granted upon the conditions set forth in this motion or any other conditions deemed necessary and appropriate by the Court.

Respectfully submitted,

*Robert Feitel*

---

Robert Feitel, Esquire  
Law Office of Robert Feitel  
3509 Connecticut Avenue, N.W.  
Washington, D.C. 20008  
D.C. Bar No. 366673  
202-255-6637 (cellular)  
[RF@RFeitelLaw.com](mailto:RF@RFeitelLaw.com)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's ECF system and email to Adrienne Rose and Emily Cohen, Narcotic and Dangerous Drug Section, 2 Constitution Square, N.W. Washington, D.C. 20005 this day 4<sup>th</sup> day of July 2017.

*Robert Feitel*

---

Robert Feitel