

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES : Cr. No. 10-018 (JDB)
V. :
RAMIRO ANTURI LARRAHONDO :
Defendant. :

DEFENDANT ANTURI'S MOTION FOR PRETRIAL RELEASE

INTRODUCTION

Defendant Ramiro Anturi has been continuously incarcerated since his arrest in Colombia, South America on February 9, 2010; the last twenty months of which he has been held without bond at the D.C. jail. He now respectfully moves this Court pursuant to 18 United States Code Section 1342 for release pending trial under conditions which will guarantee the safety of the community and eliminate the risk of flight. As set forth herein, all the factors identified in the federal detention statute support the defendant's release.

Ramiro Anturi was a respected Colombian prosecutor for more than twenty years and poses absolutely no danger if released into the community in the United States. Indeed, if he were not a foreign national he would likely have been granted a bond at his initial appearance in this case. Moreover, in order to ensure that there is no risk of flight, the undersigned counsel have verified that Anturi can reside in Toms River, New Jersey with a long standing family friend, who is willing to act as third party custodian, subject to electronic GPS monitoring. As discussed more fully herein, the fact that there is an immigration detainer lodged against the defendant does not create a risk of flight and is not a relevant factor under the bond statute. See, e.g., United States v. Marinez-Patino, 2011 WL 902466 (N.D. Ill.).

Most importantly, the bail statute specifically states that the strength of the Government's case is a relevant factor in the Court's decision to grant pre-trial release. 18 U.S. Code Section 3142(g)(2). It is now clear (after the filing of motions and the oral argument before this Court) that the Government's case against defendant Ramiro Anturi is profoundly weak. The Government evidence does not connect him to the charged drug trafficking conspiracies and moreover, not a single gram of cocaine is properly attributed to Anturi under the federal sentencing guidelines and relevant caselaw. This defendant has been incarcerated for almost thirty months and the trial of this case is not currently scheduled to commence for at least three more months. Recent events in the case also suggest that the prosecution's case will be further weakened and that additional time will be needed to prepare this case for trial.

The defense respectfully requests that this Court conduct a hearing on the motion for release at which time the defense will be prepared to present testimony in support of its request for pre-trial release.

BACKGROUND

Defendant Ramiro Anturi is charged in the first two counts of the Superseding Indictment with being a member of the Marlon-Valencia/Silvio Montano Drug Trafficking Organization ("Valencia/Montano DTO"). The Government's evidence in this case focuses on the seizure of drugs and money between December 1, 2008 until April 23, 2009. The Government's case consists of intercepted telephone calls, video of drug seizures in the waters near Costa Rica and Panama, as well as the seizure of approximately \$1 million dollars in U.S. currency and 2700 kilograms of cocaine in Cartagena, Colombia. None of these matters involve defendant Ramiro Anturi. His voice is not heard on a single phone call concerning these events and there is not a single direct connection between Anturi and these seizures.

LEGAL ANALYSIS

A. All Factors In The Bond Statute Support Anturi's Release

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. At the time of his initial appearance in this case, the defendant (through prior counsel) simply waived his right to a bond determination and accepted preventive detention. Thus, to date, there has been no judicial review of the factors relevant to pre-trial release.

The Government must establish danger to the community by “clear and convincing” evidence; the risk of flight component may be established by a preponderance. United States v. Karni, 298 F.Supp.2d 129, 131 (D.D.C. 2004). In this case, there is a rebuttable presumption in favor of detention because the defendant is charged with a drug trafficking offense which carries with it a penalty of more than ten years in jail. 18 U.S.C. Section 3142(e)(3)(A).

1. The Nature and Circumstances of the Offense

The defendant is charged with being a member of a drug trafficking conspiracy operating in Central and South America. The charges are serious in nature, but the defendant’s involvement in the case – even under the Government’s theory – did not include any personal

involvement in the drug trafficking activities. There is likewise no evidence that the defendant knew the details of any of the drug trafficking ventures – which were planned and executed by the other co-defendants. Similarly, the Government speculates that defendant Anturi somehow must have known of the objectives of the Valencia/Montano Drug Trafficking Organization and had the specific intent to further those goals because of his prior experience as a Colombian prosecutor. See DE 181 – Gov. Opp. To Defendant Anturi Motion To Exclude Evidence at p. 7. Such speculation is of course no substitute for actual evidence.

2. Weight of the Evidence

The Government drags with both hands an empty bucket of evidence to this Court in support of its claim that Ramiro Anturi was a member of the Valencia/Montano DTO. The Government's theory of conspiratorial liability appears to be that while Ramiro Anturi was employed as a Colombian anti-terrorism prosecutor, he somehow "protected" the drug trafficking co-defendants from prosecution by the United States Government. This novel theory finds no support in the discovery begrudgingly provided to the defense and the representations made before the Court. The Government has not – and cannot - alleged that Anturi took a single act to influence the United States investigation of these defendants. Rather, the Government contends that documents provided to the co-defendants gave them the security to continue their drug trafficking activities. This theory, however, is directly contradicted by statements made by defendant Marlon Valencia during his debriefings with the prosecutors and agents in this case.

Moreover, even assuming *arguendo* that the Government could connect this defendant to the alleged conspiracies, under the federal sentencing guidelines, there are no drugs properly attributable to Anturi. As the defense has previously noted, as a matter of law, drug transactions which took place before Anturi joined a conspiracy are not relevant for purposes of computing

his sentencing guideline. There were no drug seizures made after Anturi allegedly joined the conspiracy and although the Government alleged for the first time at the recent oral argument that the conspiracy continued after April of 2009, they have not provided any details of these alleged activities to the Court. Thus, despite the seizure of seven thousand kilograms of cocaine and more than a million dollars from the Valencia/Montano DTO, the Government has a flawed theory of criminal liability and a drug quantity of zero against Ramiro Anturi.

3. Ramiro Anturi's Personal Characteristics

Ramiro Anturi is fifty-three years old. Born and raised in Colombian, South America he rose from impoverished circumstances to attend law school and ultimately become a respected Colombian national prosecutor. He is also a loving father and husband and brother to his sister Martha, an abyss who runs a series of hospices in Central and South America. Before these United States criminal charges, Ramiro Anturi had never been arrested, never been accused of a crime, never spent a day in jail in his life. As the result of the provisional arrest warrant issued by the United States, Anturi was arrested and detained – without the possibility of a bond – in Colombia's infamous Combita prison and later in the extradition jail in Bogota known as Picota prison.

Anturi is a person without any personal wealth. Indeed, while awaiting extradition in Combita prison he washed clothes and cleaned the cells of other detainees in order to make money to help provide for his family. As the result of his arrest, he has lost his livelihood, along with his good name and reputation. Even after his eventual acquittal of these charges, he will never be able to return to the life he worked so hard to achieve.

4. Risk of Flight

The final factor under the Bail Reform Act is the risk of flight if a defendant is released into 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).

In this case, the undersigned have personally spoken with a childhood friend of the defendant, who currently resides in Toms River, New Jersey. The friend, Orlando Padilla, is legally present in the United States, gainfully employed, and is willing to permit defendant Anturi to live in his home and to report any violation of a condition of release imposed by the Court. In anticipation of filing the instant motion, the undersigned have also spoken with Pretrial Services officer Saul Atencio, who has spoken with Mr. Padilla and conducted a preliminary assessment, which indicated that he would be a suitable custodian for third party release.

The defense requests that this Court release defendant Ramiro Anturi to the custody of his friend, subject to GPS electronic monitoring, curfew, regular reporting to pretrial services in New Jersey, and any other conditions that this Court deems necessary under the circumstances.

B. The Defendant Poses No Danger To The Community If Released

Any analysis of the factor of “danger to the community” must address the likelihood that the defendant will pose a **future danger** if released. If the past is any indication of future dangerousness, it is clear that defendant Ramiro Anturi poses no risk – none whatsoever – of danger to the community. The defendant was a career prosecutor, a family man, and a law-

abiding citizen. His alleged involvement in this case did not involve any direct contact with drugs, with the collection of drug proceeds, and there is no allegation that he was involved in any type of violence. There could be no credible argument that the defendant himself is a dangerous individual.

Likewise, the defendant would not pose a danger because of his association with others. The defendant has no contacts in the United States – or elsewhere - that he could use to further any criminal goals. Moreover, since his name and photograph were published in newspapers and magazines all over the world, it seems impossible that he would be able to establish contacts with anyone for an improper purpose.

While there is a presumption in favor of the defendant's detention, 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 "compelling" because of the lack of evidence directly connecting Hudspeth to the drugs. 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 same circumstances are present. Ramiro Anturi has no prior convictions or other circumstances which would make him in any way a danger to the community. In the defense view, the evidence against him is weak – but even if this Court concluded that it was somewhat stronger – it would still be insufficient to establish by “clear and convincing” evidence that Anturi posed a danger to the community.

C. The Defendant Is Not A Flight Risk

Finally, the defendant does not pose any risk of flight if released upon the conditions requested by the defense. The conditions proposed by the defense would guarantee that the defendant would have a stable living environment pending the trial of this matter. Moreover, the defendant has no desire, no intention, and no ability to flee the United States.

Ramiro Anturi is a Colombian citizen. He has no passport in his possession and under the conditions of release proposed by the defense, no means to obtain one. The defendant has no funds in the United States, no money hidden elsewhere, and no means to obtain even a dollar in his own name. He speaks virtually no English. Moreover, Anturi has no desire to flee. He has indicated from the outset of this case that he intends to fight the pending charges and is anxiously awaiting his day in Court.

More importantly, the conditions proposed by the defense would ensure that he would not be able to flee. Under GPS monitoring, if he removed his bracelet, the authorities would immediately be notified and alerts would be sent to all immigration officials with a “red notice” for his capture. The defendant would also subject himself to additional criminal charges for absconding. Under the circumstances of this case, there is no credible reason to believe that Anturi would flee if released.

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 Colombian 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 is not a relevant legal factor in assessing risk of flight 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.

Under the circumstances presented in this case, the same result is warranted. Defendant Ramiro Anturi is not a flight risk and should be released into the community.

CONCLUSION

For all of the foregoing reasons, the defense requests that this Court conduct a hearing at which time it can verify the representations made concerning the defendant’s living conditions if released to the community and thereafter grant this motion.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent, via the Electronic Filing System to Mark Maldonado, Trial Attorney, United States Department of Justice Narcotic and Dangerous Drug Section, 1400 New York Avenue, N.W. Washington, D.C., and all defense counsel, this 27th day of July, 2012.

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