

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 04-M-247-DDN
)	
JESUS ALEJANDRO CASAVANTES,)	
)	
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. 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. . .”

II. MEMORANDUM

There are two real issues before this Honorable Court. The first, and most difficult hurdle to clear is the risk of flight presented by Alejandro’s 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 5 year sentence and a maximum

sentence of 40 years. However, when viewing the foregoing statutory sections, it appears that there exists the possibility that Alejandro 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.

Alejandro 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 Alejandro, he would then be turned over to BICE who would then determine whether or not a bond is appropriate for Defendant.

Several years ago, the undersigned was successful in making this argument before Magistrate 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. His 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 Alejandro.

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

Alejandro has no criminal history. 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 Alejandro's benefit. Alejandro is someone who has no history of past violent behavior.

Which brings us to *risk of flight*. Specifically, how can it be proved that Alejandro will not be given a bond, and immediately abscond to Mexico? Alejandro 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 Alejandro would prefer the poverty and depression Mexico offers compared to a five year stint in the Bureau of Prisons. Hopefully, this Honorable Court will not be swayed by that type of logic. Realistically, if Alejandro is "safety valve" eligible, his *true* sentence would be about three years.

The undersigned has been informed by Alejandro that he resided in Colorado for approximately 10 years. He fully intends to return to Colorado and work to support his family.

This Honorable Court can impose a combination of conditions to ensure that Alejandro appear for his trial, such as an ankle bracelet or community confinement in some facility in Colorado. Alejandro has advised the undersigned that he has family and loved ones in Colorado who would be able to post as bond a residence valued at approximately \$200,000.00.

WHEREFORE, Defendant Alejandro Jesus Casavantes requests that this Honorable Court *grant* his Motion to be Released on Bond Pending Trial, that he be allowed to post property 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.

ALEJANDRO JESUS CASAVANTES

STOBBS LAW OFFICES

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2004, a copy of the attached ***DEFENDANT'S MOTION TO BE RELEASED ON BOND PENDING TRIAL AND MEMORANDUM IN SUPPORT THEREOF*** 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. Ken Tihen
Assistant U.S. Attorney
111 South 10th Street
St. Louis, Missouri 63102

STOBBS LAW OFFICES

/s/ John D. Stobbs II
Attorney for Defendant