

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No.
) 10-00320-02-CR-W-DGK
DAVID HERNANDEZ-MONTOYA,)
)
 Defendant.)

DETENTION ORDER

On November 19, 2010, the government moved to detain defendant David Hernandez-Montoya pending trial, and on November 23, 2010, I held a detention hearing. I find by a preponderance of the evidence that defendant poses a flight risk and that no single condition or combination of conditions of release will reasonably assure the appearance of defendant as required.

I. BACKGROUND

On November 18, 2010, an indictment was returned charging defendant with one count of conspiracy to distribute cocaine, crack cocaine, and marijuana, in violation of 21 U.S.C. § 846; and one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(I) and (h). Defendant appeared before me for a first appearance on November 19, 2010. During the first appearance proceeding, counsel for the government filed a motion for a detention hearing and a motion to continue the hearing for three days. Those motions were granted,

and defendant was remanded to the custody of the United States Marshal pending the hearing.

A detention hearing was held before me on November 23, 2010. Defendant appeared in person, represented by Stephen Patton. The government was represented by Assistant United States Attorney Bruce Rhoades. The parties stipulated that the court consider the information in the Pretrial Services Report of Pretrial Services Officer Tim Hair as the testimony he would give, under oath, if called as a witness. I took judicial notice of the statutory presumption against release¹. DEA Special Agent Joseph Geraci testified.

II. FINDINGS OF FACT

On the basis of the information contained in the report of Pretrial Services Officer Tim Hair and the evidence presented during the hearing, I find that:

1. Defendant, 31, was born in Mexico. He came to the United States seven years ago and has lived here since that time. Defendant has lived in Edwardsville, Kansas, for the past five months with his wife, her two children (ages 20 and 17), and his

¹18 U.S.C. § 3142(e) states in pertinent part as follows: "Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq)."

own child, age 6. Defendant is an illegal alien, and an immigration detainer has been lodged with the United States Marshal.

2. Defendant maintains regular contact with his parents who live in Mexico and with his five siblings, four of whom live in Mexico and one of whom is an illegal alien in the United States. Defendant has been married for seven years. His wife and their six-year-old child are United States citizens.

3. Defendant has a 9th grade education. He reported earning \$400 weekly working as a self-employed roofer for the past seven years. Defendant has no significant financial assets or liabilities.

4. Defendant is generally in good health. He has been an occasional user of marijuana for the past year, last using it on November 15, 2010.

5. Defendant has no known criminal history. ICE indicated that defendant had a "voluntary departure" to Mexico in 2007.

6. Defendant has three outstanding traffic warrants with a total bond of \$1,695.

7. Defendant faces a minimum ten-year prison sentence and a maximum sentence of life if convicted of conspiracy, and he faces a maximum prison sentence of 20 years on the money laundering count.

III. CONCLUSIONS

I find by a preponderance of the evidence that no single condition of release or combination of conditions of release will reasonably assure the appearance of defendant as required. Defendant is an illegal alien, and an immigration detainer has been lodged with the United States Marshal. Nearly all of his family ties are to Mexico. Defendant is facing a minimum ten-year sentence and a possible life sentence in this case. He has three outstanding warrants with \$1,695 in bonds. I also find that defendant has failed to rebut the presumption provided for in 18 U.S.C. § 3142(e) that there is no condition or combination of conditions of release that will reasonably assure the appearance of defendant as required.

It is, therefore

ORDERED that the defendant be committed to the custody of the Attorney General or his authorized representative for detention pending trial. It is further

ORDERED that defendant be confined in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. It is further

ORDERED that the Attorney General or his authorized representative ensure that the defendant is afforded reasonable opportunity for private consultation with his counsel. It is

further

ORDERED that, on order of a court in the Western District of Missouri, the person in charge of the corrections facility where defendant is confined deliver the defendant to a United States Marshal for his appearance in connection with a court proceeding.

/s/ Robert E. Larsen

ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
November 24, 2010