

United States District Court
DISTRICT OF KANSAS

UNITED STATES OF AMERICA

v.

ORDER OF DETENTION PENDING TRIAL

PETCIO HERNANDEZ

Defendant

Case Number: 10-mj-8077-01-DJW

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- (1) The defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
a crime of violence as defined in 18 U.S.C. § 3156(a)(4).
an offense for which the maximum sentence is life imprisonment or death.
an offense for which a maximum term of imprisonment of ten years or more is prescribed in
a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f) (1)(A)-(C), or comparable state or local offenses.
(2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
(3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
(4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

- (1) There is probable cause to believe that the defendant has committed an offense
for which a maximum term of imprisonment of ten years or more is prescribed in
under 18 U.S.C. § 924(c).
(2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternative Findings (B)

- (1) There is a serious risk that the defendant will not appear.
(2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Four horizontal lines for additional notes or findings.

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

(See attached pages)

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: April 19, 2010

s/ David J. Waxse
Signature of Judicial Officer

DAVID J. WAXSE, U.S. MAGISTRATE JUDGE
Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. § 801 et seq.); (b) Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. § 955a).

Part II - Written Statement of Reasons for Detention

There is a series of factors I have to consider in determining whether there are conditions that will assure your appearance and the safety of the community.

The first factor is the nature and circumstances of the offense charged, including whether it involves a controlled substance. It clearly does, so that is a negative factor.

The next factor is the weight of the evidence. There has been a probable cause determination, so that is negative.

The next factor is the history and characteristics of the person, including your physical and mental condition. There is nothing there that is a problem so that would be positive.

The next factor is family ties, which are positive.

Employment is positive.

The next factor is financial resources. There is no evidence that you have substantial resources that would assist you in fleeing so that is positive.

The next factor is past conduct, which includes history relating to drug or alcohol abuse. That is somewhat negative because of past cocaine use.

The next factor is criminal history and record concerning appearance at court proceedings. That is somewhat problematic because you have several convictions and there have been several instances where you have evaded arrest.

The next factor is whether at the time of the current offense or arrest you were on probation, parole, or other release. It does not appear that you were, so that is positive.

The final factor is the nature and seriousness of the danger to any person in the community that would be posed by your release. The implication from this charge is that you were involved in the distribution of methamphetamine which is a substantial problem to the community.

You will remain detained based on your conduct at the time of arrest, which indicated a possible flight risk, and these other factors.

