

United States District Court
DISTRICT OF KANSAS

UNITED STATES OF AMERICA

v.

ORDER OF DETENTION PENDING TRIAL

ROSALIA PIZA

Defendant

Case Number: 12-20112-07-CM-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.

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: July 5, 2013

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

The law requires that I look at a set of factors set out in 18 U.S.C. §3142(g) to determine whether or not there are conditions that will assure your appearance and protect the safety of the community.

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

The next factor is the weight of the evidence. There is a Grand Jury Indictment which is a negative factor.

The next factor is the history and characteristics of the person, including your physical and mental condition. Nothing has been presented that indicates a problem in this area.

Your employment was positive in the past; if released, however, one of the conditions of release would be that you not further violate the law. It would be a violation of the law to work if you are in an illegal status without proper documentation, so that is a big problem.

The next factor is family ties. There appear to be no ties here; most of your ties are to Mexico, other than the 13 year-old daughter, so that is problem

The next factor is financial resources. There is no indication that you have substantial resources that would enable you to flee.

Length of residence in the community is positive.

Community ties are positive.

The next factor is past conduct, which includes drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings. There appear to be no real problems with your past conduct.

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.

The final factor is the nature and seriousness of the danger to any person in the community that would be posed by your release. I do not find that is a serious problem in your case since there is no allegation that you, by yourself, could carry out these drug transactions.

The issue that has to be resolved is employment. If you are unable to legally obtain employment, how would you be able to support both yourself and your daughter? It appears to me the law sets up almost an untenable situation because we are supposed to consider whether you can take care of yourself and yet the law says you cannot legally work.

Taking all of these factors into consideration, it appears to me that you need to stay detained to ensure your appearance. If you are released and unable to work and support yourself, the chance of flight to try and correct that problem is too great, so you will remain detained.