

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

§

Plaintiff,

§

§

v.

§

Cause No. CR 06-3655 M

§

DANUEL D. QUAINANCE,

§

§

Defendant.

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**MR. QUAINANCE'S APPEAL OF DETENTION ORDER AND WITHDRAWAL
OF MOTION FOR RECONSIDERATION OF DETENTION ORDER**

DANUEL D. QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, appeals the detention order entered by the United States Magistrate Judge in this cause, and in support of his position would respectfully show the Court as follows:

1. Mr. Quaintance is the leader of the Church of Cognizance, in which the use of marijuana is a central part of the sacramental practice. He was arrested in this case on February 22, 2006. He is charged with possession with the intent to distribute more than 50 kilograms of marijuana with the intent to distribute it. He remains in custody at the Otero County Prison Facility.

2. When he appeared for his detention hearing on February 28, 2006, United States Magistrate Judge Martinez ordered his detention.

3. On Thursday, March 2, 2006, the Pretrial Services officer indicated that a suitable third party custodian had been found, and that Pretrial Services was recommending

release. On March 2, 2006, Mr. Quaintance, through counsel, filed a motion for reconsideration of the detention order. On March 5, 2006, the government indicated that it did not oppose Mr. Quaintance's release on appropriate conditions. As of this date, the motion has not been set for a hearing, and Mr. Quaintance remains in custody. Mr. Quaintance hereby withdraws his motion for reconsideration of the detention order.

4. Mr. Quaintance is 53 years old. He suffers from chronic pancreatitis.

5. Mr. Quaintance is a citizen of the United States. He has a stable residence history. He has no criminal history in the last 22 years. He is not a flight risk; he is very committed to addressing the issues raised by his arrest. The only way to address those issues is to appear for all his hearings and to maintain contact with counsel. He is not a danger to his or any other community. Conditions can be set which could provide reasonable assurance that Mr. Quaintance will appear for all court appearances and that he will not pose a danger.

6. The government bears the burden of showing that Mr. Quaintance is either a danger to the community or a flight risk. Dangerousness must be established by clear and convincing evidence. 18 U.S.C. § 3142(f)(2); *United States v. Cisneros*, 348 F.3d 610, 612 (10th Cir. 2003). Risk of flight must be established by a preponderance of the evidence. *United States v. Cisneros*, 348 at 612. Mr. Quaintance is not a danger, nor is he a risk of non-appearance. If there exists concern on either of those two issues, there are conditions which the Court can impose which will reasonably assure Mr. Quaintance's appearance and the safety of the communities impacted.

7. Mr. Quaintance is charged with a drug related offense with a maximum potential punishment of 20 years, triggering the presumption pursuant to 18 U.S.C. § 3142(e). That presumption is rebuttable. The presumption shifts the burden of production of some credible evidence showing reasonable assurance of appearance and lack of danger to the community to the defendant. The burden of persuasion remains with the government. *United States v. Stricklin*, 932 F.2d 1353 (10th Cir. 1991).

8. The foregoing matters eliminate or significantly mitigate the risk of Mr. Quaintance' nonappearance for court, and the risk of danger to the community. The foregoing would also constitute credible evidence indicating that Mr. Quaintance will appear for all future court proceedings, and that he will not constitute a danger to the community in the event of his release pending trial, rebutting the presumption under § 3142(e) . Even if the Court determines that such evidence is inadequate to rebut the § 3142(e) presumption, the government still bears the burden of persuasion that Mr. Quaintance is a flight risk and a danger. *United States v. Stricklin*, 932 F.2d at 1354. However, Mr. Quaintance submits that the existence of an appropriate third party custodian, substantial community ties, strong family support and a stable place to live constitute sufficient evidence to rebut the presumption.

9. An accused must be released unless such release will not reasonably assure the presence of the defendant and the safety of the community. 18 U.S.C. § 3142(b). It is clear in this case that there are conditions which can be set which will satisfy those criteria. The conditions imposed should be the least restrictive necessary to ensure appearance and the safety of the community. 18 U.S.C. § 3142(c)(1)(B). Mr. Quaintance submits that a regimen

that includes drug testing; release to the third party custody of the approved custodian; and Pretrial Services supervision would more than ensure Mr. Quaintance' appearance and the safety of the community.

10. The government does not oppose Mr. Quaintance's release on appropriate conditions.

WHEREFORE, for the foregoing reasons, DANUEL D. QUAINANCE, Defendant, respectfully prays that the Court reverse the detention order; enter an order setting reasonable conditions of release; and providing for such other and further relief to which the Court may find Mr. Quaintance to be justly entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Reconsideration of Detention Order was served on Assistant United States Attorney Luis A. Martinez, 555 Telshor, Suite 300, Las Cruces, New Mexico, 88011, by placing it in the box designated for the United States Attorney's Office at the United States District Court Clerk's office; on Sam Romero, Pretrial Services; on Mario Esparza, P.O. Box 2468, Las Cruces, New Mexico 88004-2468; and on Leon Schydlower, 210 N. Campbell, El Paso, Texas 79901-1406; on March 8, 2006.

Filed electronically March 8, 2006

MARC H. ROBERT

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