

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 06-538 JH

JOSEPH ALLEN BUTTS,

Defendant.

MOTION TO RECONSIDER DETENTION
AND SET CONDITIONS OF RELEASE

COMES NOW Joseph Allen Butts, by and through his attorney Bernadette Sedillo, and respectfully moves the Court to reconsider his detention and set conditions of release. As grounds, counsel states as follows:

1. On February 13, 2006 the defendant was arrested in Missouri and charged in Missouri with possession of marijuana with intent to distribute in the Missouri State court. The case was moved to federal court and the defendant was subsequently indicted in the United States District Court, Eastern District of Missouri on March 23, 2006. On May 17, 2006 the defendant was charged with conspiracy in a Superseding Indictment in the United States District Court, District of New Mexico, for the alleged conduct on February 13, 2006.

2. The defendant was arraigned on the Superseding Indictment on June 29, 2006 and a detention hearing was held before the Honorable Lourdes A. Martinez. Prior to his arrest in Missouri on February 13, 2006 the defendant was living with his sister and brother-in-law (the

co-defendant's in this case) in Pima, Arizona. The Court was requested to release the defendant to return to live with his sister and brother in-law. The Court did not release the defendant to return to live with his sister and detained the defendant as a flight risk and danger to the community. Judge Martinez indicated she would consider a bond if an appropriate 3rd part-custodian could be located.

3. Mr. Butts filed a Motion to Suppress Evidence and also joined in a Motion to Dismiss Indictment that had been previously filed by the co-defendants Danuel and Mary Quaintance. Mr. Butts and Danuel and Mary Quaintance are all members of the Church of the Cognizance. The Motion to Dismiss Indictment claimed that application of the Controlled Substance Act to members of the Church of the Cognizance violates the Religious Freedom Restoration Act.

4. An evidentiary hearing on the Motion to Suppress Evidence and the Motion to Dismiss Indictment was held on August 21st through August 23rd, 2007. On November 9, 2006 the Honorable Judge Judith Herrera issued an order denying Mr. Butts' Motion to Suppress Evidence. On December 22, 2006 Judge Herrera issued an order denying the Motion to Dismiss the Indictment and made a finding that the defendants' beliefs were not "religious" within the Religious Freedom Restoration Act.

5. After the orders denying the motions were issued by the Court, a conditional joint plea was negotiated between the defendants and the Government that would preserve the right to appeal the denial of the motions. In contemplating the plea, Mr. Butts' sentence pursuant to the sentencing guidelines was calculated at 24 to 30 months. This calculation starts at offense level 26 and affords Mr. Butts a 2 level reduction for qualifying for safety valve (criminal history category I), a 3 level reduction for acceptance of responsibility, and a 4 level reduction for his role in the offense as a minimal participant. Defense counsel for Mr. Butts was unable to locate

a third party custodian for Mr. Butts, and because Mr. Butts had already been incarcerated for quite some time, he decided to remain in custody and gain credit towards his sentence rather than attempt to be released.

6. Upon preparing to plea, the government withdrew the conditional plea. Mr. Butts then contemplated a non-joint plea, but ultimately decided to gear up for trial. The Government filed a Motion in Limine on April 19, 2007 asking the Court to prohibit the defense from presenting or arguing their religious beliefs as a defense. Additionally, a Motion for Reconsideration of the Motion to Dismiss Indictment to be filed on April 26, 2007. The Court issued a Memorandum Opinion and Order denying the Motion for Reconsideration on May 9th, 2007. On May 11, 2007 the Court issued an order granting the Government's Motion to prohibit the defense from presenting or arguing their religious beliefs as a defense.

7. While awaiting the Court's ruling on the Motion in Limine and the Motion for Reconsideration of the Motion to Dismiss Indictment, counsel for Danuel Quaintance moved to withdraw and subsequently, counsel for Mary Quaintance moved to withdraw. The Court allowed defense counsel for both Danuel and Mary Quaintance to withdraw. New counsel was appointed for Danuel and Mary Quaintance in May 2007.

8. An interlocutory appeal was filed on the Motion in Limine and the Motion for Reconsideration of the Motion to Dismiss Indictment. The interlocutory appeal is currently in the briefing stage before the Tenth Circuit.

9. The interlocutory appeal will likely not be decided until well into 2008. The Tenth Circuit's decision will likely have a bearing on whether Mr. Butts proceeds to trial or not.

10. Regardless of whether Mr. Butts decides to proceed through trial or not, he is already substantially close to completing any likely sentence that he would receive. (The estimation of

Mr. Butts' likely sentence varies depending on acceptance of responsibility points and determination of his role in the offense.)

11. The co-defendant's in this case, Danuel and Mary Quaintance were previously released on a \$5,000.00 secured bond with Laythol Wayne Quaintance co-signing as a third-party custodian for both Danuel and Mary Quaintance. On March 2, 2007 the Court issued an order removing the third party custodian for Danuel and Mary Quaintance because the third party custodian had become ill and wished to move to Montana. The Government did not oppose the removal of a third party custodian for the Quaintances.

12. Because the interlocutory appeal process will proceed well into 2008 and Mr. Butts is substantially close to serving any potential sentence, Mr. Butts' requests to be released to live with his sister and brother-in-law, Mary and Danuel Quaintance in Pima, Arizona. Since Mr. Butts has been incarcerated now for over 21 months, he does not have the funds to post a bond and requests that he be released on an unsecured bond.

13. Under the government's theory of the case, Mr. Butts was simply a courier of marijuana for the Church of the Cognizance. Thus, under the government's theory of the case, Mr. Butts played a lesser role in the conspiracy than the co-defendants. The co-defendants are out on bond and the government did not oppose the removal of a third party custodian for them. It is anticipated that Mr. Butts will qualify for safety valve, having no more than 1 criminal history point.

14. AUSA Luis Martinez opposes Mr. Butts' release.

15. Mr. Butts is being held at the Torrance County Detention Center. The defense requests a telephonic hearing be set in this matter.

WHEREFORE, Joseph Butts respectfully requests that the Court reconsider his detention and set conditions of release.

Respectfully submitted,

Electronically filed 11/19/07
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November 2007, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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