

ENTERED

December 21, 2015

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA §
 §
V. § CRIMINAL NO. H-15-654
 §
ROBERTO RINCON-FERNANDEZ §

ORDER OF DETENTION PENDING TRIAL

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 are established by a preponderance of the evidence and require the detention of the above-named defendant pending trial in this case.

Findings of Fact

[] A. Findings of Fact [18 U.S.C. §§ 3142(e), (f)(1)].

[] (1) The defendant 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 21 U.S.C. () § 801 et seq. () § 951 et seq. () § 955(a).

[] 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 any other person and the community. I further find that the defendant has not rebutted this presumption.
- ☐ B. Findings of Fact [18 U.S.C. § 3142(e)]
- ☐ (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 21 U.S.C.
☐ § 801 et seq. ☐ § 951 et seq.
☐ § 955(a).
- ☐ under 18 U.S.C. § 924(c).
- ☐ an offense listed in section 2332b(g)(5)(B) of title 18 for which a maximum term of imprisonment of ten years or more is prescribed;
- ☐ an offense under chapter 77 [Peonage, Slavery, and Trafficking in Persons] of this title for which a maximum term of imprisonment of twenty years is prescribed;
- ☐ an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.
- ☐ (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.
- ☒ C. Findings of Fact [18 U.S.C. § 3142(f)(2)]
- ☒ (1) Defendant has tourist-visa status in the United States.
- ☒ (2) There is a serious risk that the defendant will flee.
- ☒ (3) Defendant has significant assets which could fund a fugitive life-style.
- ☐ (4) There is a serious risk that the defendant will (obstruct or attempt to obstruct justice) (threaten, injure, or intimidate a prospective witness or juror,

or attempt to do so).

Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required.

I conclude that the following factors specified in 18 U.S.C. § 3142(g) are present and are to be taken into account:

1. Defendant Rincon-Fernandez ("Rincon") is a Venezuelan national charged with violating the Foreign Corrupt Practices Act and conspiring to launder money. He has lived in the Houston area for approximately ten years and owns a residence worth \$5,000,000. However, for the reasons stated below, the value of that residence pales in comparison with other assets held world-wide, therefore the court discounts it as a tie to the community.

2. The indictment charges that Rincon and his co-Defendant set up several schemes to obtain contracts with Petroleos de Venezuela S.A. ("PDVSA"). In all schemes, bribes were paid to PDVSA officials to get Rincon-affiliated companies on the short list of companies which were entitled to bid for PDVSA contracts. On some occasions, only Rincon-affiliated companies made the short list. Rincon concealed his control of his companies so that PDVSA officials were not aware that all bidders to a contract were under Rincon's control. Rincon also bribed individuals to put non-competitors on the short list of bidders, in other words, Rincon's company would be the only company on the list which could supply a particular product.

3. The investigation covered 730 bank accounts; of those, 108 were related to Rincon, his family and his companies. The indictment seeks forfeiture of three Swiss bank accounts. While the government has traced \$100,000,000 from the scheme into those Swiss accounts, it cannot trace outgoing funds due to Swiss banking law secrecy. Therefore, it is possible that there may be other bank accounts controlled by Rincon other than those of which the government is aware.

4. From 2009 through 2014, over one billion dollars was traced to this conspiracy. Of that amount, \$750,000,000 was traced to Rincon between 2010 and 2013. Rincon paid bribes in the amount of \$2,500,000 to one official alone.

5. Rincon has a close personal friendship with Hugo Carvajal, a retired Venezuelan general who is wanted in the United States District Court for the Southern District of New York for drug

trafficking. Carvajal was arrested in Aruba on Rincon's privately-owned plane. The Government of Aruba declined to extradite Carvajal to the United States citing Carvajal's diplomatic status.

5. Rincon has residences in Spain and Aruba.

6. Rincon revoked his legal permanent residence status in August 2014 and may only stay six months in any year period on his present B1B2 visa. In 2014, Rincon was in the United States between 130-140 days. In the past four months, Rincon has been in the United States 41 days.

7. Rincon's wife is a citizen of Venezuela, as are his children and his mother. Three of his children are legal permanent residents of the United States, a fourth has a tourist visa. Rincon's mother is currently in Venezuela.

8. The Pretrial Services officer initially recommended a \$10,000,000 bond secured by \$5,000,000 cash, co-signatures by all Defendant's family members and surrender of all passports. After hearing the testimony in court, the officer changed her recommendation to detention.

9. Key in the court's decision to detain is the list of assets appended to the Pretrial Services report. That list, along with the testimony of the numerous bank accounts controlled by Rincon leads the court to conclude that five or ten million dollars cannot assure Defendant's appearance in court when there are hundreds of millions in liquid assets elsewhere and available to fund a fugitive lifestyle. The court's taking the Venezuelan passports of Rincon's family members would not stop them from requesting and obtaining new passports from Venezuela.

10. It is also significant to the court that Defendant relinquished his legal status in the U.S. Venezuela has no extradition treaty with the U.S., so if Defendant fled there, the U.S. could not obtain his return. Even if Rincon did not return to Venezuela, he has the means to flee anywhere and support himself for the rest of his life.


11. Based on the foregoing, the court finds that Defendant presents a serious risk of flight that cannot be addressed by any condition or combination of conditions of release. Detention is ordered.

Directions Regarding Detention

It is therefore ORDERED that 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 all court proceedings.

Signed in Houston, Texas, this 19th day of December, 2015.



NANCY K. JOHNSON
UNITED STATES MAGISTRATE JUDGE