

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
El Paso Division**

UNITED STATES OF AMERICA)	
)	Case No. EP-07-CR-87
v.)	
)	The Honorable Kathleen Cardone
LUIS POSADA CARRILES)	

**GOVERNMENT'S MOTION TO REINSTATE BOND
AND OTHER CONDITIONS OF PRE-TRIAL RELEASE**

The United States of America, by and through Michael J. Mullaney, Acting U.S. Attorney, and John W. Van Lonkhuyzen and Rebekah L. Sittner, Trial Attorneys, respectfully moves this Court to reinstate its Order of April 6, 2007 (D.E. # 44) (hereinafter "Order"), releasing defendant on bond with certain other conditions pending trial. As grounds for this motion, the United States states as follows:

1. On January 11, 2007, a federal grand jury returned an indictment charging the defendant with one count of naturalization fraud, in violation of 18 U.S.C. § 1425, and six counts of making false statements in immigration proceedings, in violation of 18 U.S.C. § 1015. The government moved for his detention and, on January 22, 2007, the defendant waived his right to a detention hearing and conceded detention.

2. The defendant subsequently filed a motion to reopen the detention hearing, which was denied by the U.S. magistrate judge. He then filed a pleading styled as an appeal of the magistrate judge's denial of his motion to reopen the hearing. Pre-Trial Services interviewed the defendant and his son, found that no combination of conditions would reasonably assure his appearance, and recommended that he be detained pending trial.

3. On April 3, 2007, this Court heard argument on the defendant's motion, and on April

6, 2007, issued its Order allowing the release of defendant pending trial subject to the following conditions:

- (1) That Defendant post a \$250,000 cash or corporate surety bond;
- (2) That Defendant post a \$100,000 appearance and compliance signature bond to be cosigned by his wife, son, and daughter;
- (3) That Defendant's wife, son, and daughter sign as third party custodians of Defendant;
- (4) That Defendant reside with his wife at their residence in Miami under twenty-four (24) hour home confinement, leaving only to meet with his attorney and attend appointments with his doctor that are necessary to preserve his health, and then only after providing notice to and receiving permission from his pretrial services officer;
- (5) That Defendant submit to electronic monitoring;
- (6) That Defendant remain within his county of residence except when he is required to travel to court or unless he obtains express permission of this Court;
- (7) That he have no contact with any co-defendants or witnesses involved in this matter; and
- (8) That he report to his designated pretrial services officer as directed.

Order at 8-9.

4. On May 8, 2007, this Court granted defendant's motion to suppress statements and dismissed the indictment. The Government appealed, and on August 14, 2008, the United States Court of Appeals for the Fifth Circuit reversed, reinstated the indictment, and remanded for further proceedings. Defendant petitioned for rehearing, which was denied. Defendant then filed a petition for certiorari in the United States Supreme Court, after having obtained an extension, on February 23, 2009. The Supreme Court denied certiorari on March 23, 2009.

5. The conditions necessitating the imposition of bond and certain other conditions of

release to reasonably assure defendant's appearance at trial, as enumerated in this Court's Order of April 6, 2007, have not changed from that date in such a way as to merit anything but minor amendment of the conditions of release. In particular, while the defendant has been on release pursuant to an Order of Supervision from Immigrations and Customs Enforcement during the period the indictment was dismissed, that fact provides no reason for this Court to refrain from imposing bond and conditions of release. The defendant is not, at present, under the supervision of this Court with any conditions set which would reasonably assure his appearance at trial, or the violation of which would give this Court enforcement power over the defendant. Defendant's charges arise from his attempts to illegally obtain status in the United States. After the dismissal of the indictment in this case, he no longer facing the prospect of conviction and incarceration – and defendant had effectively obtained what he had sought illegally, safe haven in the United States. Thus, he had no incentive not to comply with the ICE Order of Supervision. However, now that the Court of Appeals has spoken, the defendant once again faces criminal charges and the prospect of a period of incarceration upon conviction. Therefore, he once again has motive to flee. The conditions of release under the ICE Order of Supervision, while sufficient to keep defendant in the country when not facing the prospect of criminal charges (and no other country would take him), are not sufficient to ensure against flight to evade the possibility of incarceration now that charges have been reinstated.

6. Therefore, the bond and conditions as set out in this Court's previous Order should be reinstated in full, with two minor changes. First, as to condition (4), the Government understands that the defendant has recently changed his residential address with the consent, obtained in advance, of the ICE supervisory authorities. The Government suggests that defendant

be permitted to reside at that new address, or such other specific address in greater Miami that is acceptable to Pre-Trial Services, provided that the consent of Pre-Trial Services is obtained in advance. Second as to condition (7), as the Court is aware, Santiago Alvarez, Osvaldo Mitat, Ruben Lopez-Castro, Jose Pujol and Ernesto Abreu, presumably who the Court was referring to by the term “co-defendants,” have all now pled guilty to obstruction of justice, arising out of their refusal to testify, notwithstanding grants of immunity and compulsion orders, in the grand jury investigation which resulted in the indictment in this case. The Government suggests that the defendant be prohibited from having any contact, direct or indirect, with those five named individuals as well as any witness involved in this matter.

7. The Government respectfully requests that the Court reinstate its Order of April 6, 2007, pursuant to its authority to set conditions of pre-trial release under 18 U.S.C. § 3142(c)(1)(B), and amend the fourth and seventh conditions of release as suggested herein.

WHEREFORE, the United States requests that the Court reinstate its Order of April 6, 2007, imposing bond and certain other conditions of release (as amended) pending trial.

Respectfully submitted,

MICHAEL J. MULLANEY
ACTING UNITED STATES ATTORNEY

/s/ John W. Van Lonkhuyzen

/s/ Rebekah L. Sittner

By:

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Certificate of Service

I hereby certify that, on April 6, 2009, I caused a copy of the foregoing pleading to be served upon Arturo V. Hernandez and Filipe D.J. Millan, counsel for Luis Posada Carriles, by electronic mail by the Court's CM/ECF system.

/s/ John W. Van Lonkhuyzen

John W. VanLonkhuyzen

