

SO ORDERED 3/27/20



Alison J. Nathan, U.S.D.J.

March 27, 2020

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By ECF AND EMAIL

Hon. Alison J. Nathan
 United States District Judge
 Thurgood Marshall U.S. Courthouse
 40 Foley Square
 New York, NY 10007

Mr. Otero and Mr. Miranda shall be released on the parties' agreed-upon conditions. Mr. Morocho Sumba and Mr. Madrid shall be released on the parties' agreed upon conditions as well as electronic monitoring, so long as electronic monitoring does not delay release by 5 p.m. SO ORDERED.

RE: *Coronel et al. v. Decker*, No. 20-cv-2472 (AJN)

Dear Judge Nathan:

We write jointly pursuant to the Court's Order (ECF No. 26) that the parties confer and propose reasonable bond conditions today. The parties have conferred and agree about the terms of release for two of the four petitioners, Jose Otero and Miguel Miranda. The parties do not agree about the terms of release for the remaining two petitioners, Juan Morocho Sumba and Jose Madrid. Further, the government has committed to releasing all four individuals by no later than 5pm today on conditions that it deems appropriate.

- As to Mr. Otero and Mr. Miranda, the parties propose that they be released on their own recognizance and enrolled in the Intensive Supervision Appearance Program (ISAP) subject to the following conditions: that they not violate any laws or ordinances; that they surrender for removal, if so ordered, and that they keep ICE and EOIR advised of any changes in address.
- As to Mr. Morocho Sumba and Mr. Madrid, the petitioners propose that they be released on the same conditions. The government proposes that they be released on these conditions as well as electronic monitors. The parties' positions are as follow:

Petitioners' position:

The government has not identified any flight risk concerns for Mr. Morocho or Mr. Madrid that would necessitate the severe deprivation of liberty that an ankle monitor would represent. In addition, other clients of The Legal Aid Society and Bronx Defenders who have been fitted with ankle bracelets uniformly report such monitoring is painful, and cumbersome in terms of daily living (including maintaining hygiene). Further, having an ankle bracelet can interfere with the ability to seek medical treatment and can prevent certain medical procedures such as MRIs, x-rays, and CT scans from being completed if necessary. The petitioners would be amenable to other reasonable conditions for Mr. Morocho and Mr. Madrid's such as telephonic check-ins.

Mr. Morocho, who will live with his sister in Ossining, New York if released, is a loving father of two United States citizen children, who has no criminal convictions and only a single open charge that he is vigorously contesting. To provide the Court with additional information regarding the circumstances of his ongoing criminal case, the petitioners attach as **Exhibit A** a letter from his criminal defense counsel.

Mr. Madrid has lived in the United States for over 20 years and has United States citizen and lawful permanent resident family members who will support him upon release when he will return to his community in Peekskill, New York. He has a U.S. citizen sister who also resides in Westchester County and he will be living near his cousin in Peekskill. He has worked at the same company, Manzer's Landscaping, for two decades, and will return to working there once released as his health permits. His entire criminal record consists of two non-criminal convictions for disorderly conduct.

Respondents' position:

The government's position with respect to Mr. Morocho Sumba and Mr. Madrid is that ankle monitoring is appropriate in light of the crimes for which they were each arrested. Although the government understands that petitioners have made representations about the subsequent developments in Mr. Morocho Sumba's case and the ultimate non-criminal disposition of Mr. Madrid's case, the government respectfully submits that the exercise of its discretion to require monitoring of Mr. Morocho Sumba and Mr. Madrid is appropriate in light of their histories. In addition, the government does not understand ankle monitoring to increase any risk of infection with COVID-19. If circumstances arise where Mr. Morocho Sumba or Mr. Madrid determine removal of their ankle monitoring is necessary for medical reasons, they may present such circumstances to the Department of Homeland Security.

The government also wishes to note that it interpreted the Court's Order of this morning to require immediate release on reasonable conditions, and the parties to meet and confer and propose conditions to each other by 12:00 pm today. To the extent this was a misinterpretation, the government apologizes for any delay this may have caused in presenting the current issue to the Court. As noted above, the government has agreed to release all the petitioners by 5:00 pm today on what it considers to be reasonable conditions.

Respectfully submitted,

/s/ Suchita Mathur

Suchita Mathur

Zoe Levine

THE BRONX DEFENDERS

/s/ Aadhithi Padmanabhan

Aadhithi Padmanabhan

Julie Dona

Lilia Toson

THE LEGAL AID SOCIETY

Counsel for Petitioner

GEOFFREY S. BERMAN

United States Attorney

By:

/s/ Steven J. Kochevar

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EXHIBIT A

THE LEGAL AID SOCIETY OF WESTCHESTER COUNTY

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CLARE J. DEGNAN
EXECUTIVE DIRECTOR

SHERRY L. WALLACH
DEPUTY EXECUTIVE DIRECTOR

March 24, 2020

Executive Office for Immigration Review
Immigration Judge Mulligan
201 Varick Street, 5th Fl
New York, NY 10014

RE: Juan Morocho-Sumba, DOB 5/11/74

Dear Judge Mulligan,

I am writing in reference to the above-named client with respect to his open criminal matter pending in the Town of Ossining Town Court in Westchester County. I hereby affirm that the following statements are true, except as to those statements made upon information and belief:

1. I am Senior Associate Counsel at the Legal Aid Society of Westchester County and I represent the defendant on an un-indicted criminal matter pending in Ossining Town Court.

2. Juan Morocho-Sumba was arraigned on October 27, 2019 on a Felony Complaint charging him with one count of Rape in the First Degree.
3. Defense counsel was served notice on October 31, 2019 that Mr. Morocho-Sumba's case was being presented to the Grand Jury for indictment on November 8, 2019.
4. On November 12, 2019, defense counsel was advised that the case had *not* been presented to the Grand Jury on November 8, 2019 and that the District Attorney's Office instead intended to file a "superseding misdemeanor information" charging the defendant with Menacing in the Second Degree. On the record, in Ossining Court, the District Attorney made an offer of six months in the Westchester County Jail on a plea to one count of PL §120.14, Menacing in the Second Degree, a Class A Misdemeanor.
5. Upon being informed that the case had not been presented to the Grand Jury, defense counsel immediately inquired of the prosecution whether or not *Brady* material existed as it is highly unusual for Grand Jury notice to be served and then for a case to ultimately not be presented to the Grand Jury. The very fact that it had not been presented was an indication that there were potential defects in the case. In over eight years of practice in Westchester County, defense counsel has never encountered a situation in which Grand Jury notice had been served but no Grand Jury presentation was made.
6. On December 3, 2020, Mr. Morocho-Sumba was released on his own recognizance based on the representation that the District Attorney's Office was intending on filing a superseding misdemeanor information on a future date.
7. On December 23, 2019, defense counsel had a phone conversation with Assistant District Attorney Karen Herbert in which ADA Herbert advised defense counsel of the existence of

Brady material relating to the instant matter. Specifically, conversations between ADA Herbert and the complainant regarding the facts of the case caused ADA Herbert to question the motives and credibility of the complainant.

8. Based on the above information, the District Attorney's Office believed that the witness's credibility was impaired to the extent that they could not sustain an indictment based on her anticipated testimony and the surrounding facts and circumstances of the complaint and subsequent arrest of Mr. Morocho-Sumba.
9. On February 5, 2020, ADA Herbert modified the offer in the instant matter and will now offer Mr. Morocho-Sumba the opportunity to plead to one count of Assault in the Third Degree (Reckless) under PL §120.00(2) with a promised sentence of six months in the Westchester County Jail.
10. Mr. Morocho-Sumba has been in Immigration and Customs Enforcement custody since late December of 2019 and the People have failed to produce him at any court proceeding since then. Due to their failure to produce him from Federal custody, no superseding misdemeanor information has officially been filed and Mr. Morocho-Sumba has not been arraigned on the same. Mr. Morocho-Sumba must be present to be arraigned on the new accusatory instrument.
11. Due to the fact that Mr. Morocho-Sumba has never been produced from Federal custody, he has not had the above offer conveyed to him nor the opportunity to avail himself of the offer.

If there is any other information that I can provide with respect to this case, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a smaller 'W'. The 'K' has a vertical stem and two diagonal strokes, while the 'W' is formed by two 'u'-like shapes joined together.

Katie D. Wasserman
Senior Associate Counsel