

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

-----X **Docket # 13-50226**
THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,
-against-

**MOTION FOR RELEASE
PENDING APPEAL**

ELISEO MONTES, JR.,

Defendant-Appellant

Court Below:
U.S. District Court
Western District of Texas
Waco Division
-----X Hon. Walter S. Smith, Jr., DCJ

PATRICK MICHAEL MEGARO, ESQ., an attorney duly admitted to
practice in the United States Court of Appeals for the Fifth Circuit, hereby affirms
and declares as follows:

1. I am associated with The Brownstone Law Firm, attorneys for
Defendant-Appellant, and am designated as lead appellate counsel. As such, I am
fully familiar with the facts and circumstances of this case and this application.

2. This motion is made pursuant to Rule 9 of the Federal Rules of Appellate
Procedure, Fifth Circuit Rule 9.2, and 18 U.S.C. § 3143. By this motion,
Defendant-Appellant seeks to be released on his own recognizance, or in the
alternative, upon reasonable bail, pending this Court's determination of his direct
appeal from a Judgment of Conviction entered in the United States District Court
for the Western District of Texas, Waco Division, the Honorable Walter S. Smith,
Jr., entered on March 6, 2013.

3. In the court below, Defendant-Appellant was convicted upon a jury verdict of 21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) & 841(b)(1)(A)(vii), Conspiracy with Intent to Distribute at Least 1000 Kilograms of Marijuana, and 18 U.S.C. § 1956(h), Conspiracy to Commit Money Laundering, and sentenced thereon to concurrent terms of imprisonment of 240 months imprisonment to be followed by 5 years of supervised release, plus a \$1000.00 fine, and 240 months imprisonment to be followed by 3 years of supervised release, plus a \$1000.00 fine, respectively.

4. Defendant-Appellant timely filed a notice of appeal on March 11, 2013, and remains incarcerated pursuant to the aforementioned Judgment of Conviction.

5. On June 5, 2013, Defendant-Appellant filed his Brief with this Court. The following questions are raised in this appeal:

(a) Did Defendant-Appellant Receive Effective Assistance of Counsel Where Trial Counsel Completely Failed to Prepare Him to Testify in His Own Defense, Failed to Object to Damaging Hearsay Testimony, Affirmatively Elicited Damaging Hearsay Testimony, and Failed to Object to Lay Expert Testimony Based Upon Hearsay in Violation of Defendant-Appellant's Sixth Amendment Rights?

(b) Did the District Court Abuse its Discretion in Imposing a Sentence of Double the Statutory Minimum for a Defendant Who Had No Prior Criminal Record, Was a Former Police Officer and Husband and Father, and Based Upon

Sentence Enhancements that Were Not Submitted to a Jury, Proven Beyond a Reasonable Doubt, or Proven by Clear and Convincing Evidence?

6. Defendant-Appellant relies upon the attached brief in support of this motion, the Brief filed with this Court on June 5, 2013, and the prior proceedings in the District Court.

WHEREFORE, the Defendant-Appellant respectfully requests this Court grant the instant motion, and release Defendant-Appellant upon his own recognizance pending this Court's determination of his appeal, or in the alternative, fix bail in a reasonable amount, and impose any necessary, appropriate, and reasonable conditions upon his release, and grant such other and further relief as this Court may deem just and proper.

Dated: Winter Park, Florida
July 9, 2013

Respectfully Submitted,

Patrick Michael Megaro, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 2013, I served a copy of the foregoing upon the parties listed below via ECF and the United States Postal Service to:

Joseph H. Gay, Jr.
United States Attorney's Office
Western District of Texas
601 NW Loop 410, Suite 600
San Antonio, TX 78216

Clerk of the Court
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Patrick Michael Megaro, Esq.

CERTIFICATION PURSUANT TO LOCAL RULE 27.4

On July 8, 2013, the undersigned spoke with Assistant United States Diane Kirstein, Esq., counsel for Plaintiff-Appellee, via email regarding the instant motion, and was advised that Plaintiff-Appellee opposes the instant motion.

Patrick Michael Megaro, Esq.