

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA)	
)	
v.)	No. 4:15CR00001-1 BSM
)	
MICHAEL A. MAGGIO)	

**MOTION FOR RELEASE PENDING HABEAS CORPUS PROCEEDING AND
BRIEF IN SUPPORT**

Michael A. Maggio, by attorney, James E. Hensley, Jr., for the *Motion for Release Pending Habeas Corpus Proceeding*, states:

1. On October 29, 2018, the Defendant/Petitioner, *pro se*, and under the authority of 28 USCA § 2255 and Fed. R. Civ. Pro., 81(a)(2), filed a *Petition for a Writ of Habeas Corpus*.

2. In his Petition, Maggio claims that he is unlawfully imprisoned and restrained of his liberty and in the unlawful custody of F. Garza, Acting Warden, in that Petitioner's Fifth Amendment right to Due Process of Law was violated when he was charged with a federal statutory offense, in the absence of any federal interest under the Spending Clause, United States Constitution, Art. I § 8. Petitioner also claims he is imprisoned in violation of the Sixth Amendment right to the effective assistance of counsel, where counsel failed to research facts and law, misled Petitioner with respect to facts, and coerced an unknowing and involuntary plea of guilty. In the WHEREFORE statement, Maggio requests release pending a decision.

3. For reasons stated, Michael A. Maggio requests the Court grant his motion to be released pending resolution of his petition for Habeas relief:

a. Maggio is a model inmate having no violations since entry into the

Bureau of Prisons in the summer of 2016.

b. Maggio has always followed the orders of this and every Court.

Should he be granted release, he will continue to do so.

c. Maggio is willing to post a bond in sufficient amount to ensure his appearance.

d. Maggio has a large family including his wife, Dawn, who are able and willing to assist Mr. Maggio pending resolution of the *Petition for a Writ of Habeas Corpus*.

e. No harm will come to any party with Michael A. Maggio being released pending review of the *Petition for a Writ of Habeas Corpus*. His case does not involve any act of danger to any party.

BRIEF IN SUPPORT

4. To receive bond pending a decision on the merits of a habeas petition, a petitioner must show a substantial claim of law based on the facts surrounding the petition and the existence of “some circumstance making the [motion for bail] exceptional and deserving of special treatment in the interests of justice.” *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990) (citing *Aronson v. May*, 85 S.Ct. 3, 5 (1964)).

5. In *Hilton v. Braunskill*, 481 U.S. 770 (1987), the Supreme Court held that when a writ has issued, the court has discretion to release the prisoner using “the traditional standards governing stays of civil judgments,” *id.* at 774, such as likelihood of success on the merits, irreparable injury, injury to other parties, and the public interest. *Id.* at 776. See also, *David Hardy v. Thomas Birkett*, Civil Action No. 2:10-cv-14310, Eastern District of Michigan, Southern Division.

6. Pursuant to the Federal Rules of Appellate Procedure, Rule 23:

(a) **Transfer of Custody Pending Review.** Pending review of a

decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule.

When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) Detention or Release Pending Review of Decision Not to Release. While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

- (1) detained in the custody from which release is sought;
- (2) detained in other appropriate custody; or
- (3) released on personal recognizance, with or without surety.

© Release Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise — be released on personal recognizance, with or without surety.

(d) Modification of the Initial Order on Custody. An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court,

or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued

7. Specifically, Maggio requests the Court allow his release under (b) . .

While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

- (1) detained in the custody from which release is sought;
- (2) detained in other appropriate custody; or
- (3) released on personal recognizance, with or without surety.

8. In addition, Maggio requests the Court allow his release under:

© Release Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise — be released on personal recognizance, with or without surety.

9. This matter offers a complex legal question as seen in the Petition.

Several issues arose during the plea that made it likely, notwithstanding the guilty plea, Mr. Maggio could have been exonerated. See, Generally, *Petition for a Writ of Habeas Corpus*.

10. There is a likelihood that Mr. Maggio's Petition will be successful considering his plea was taken before any charges were filed, offers were not followed, and the plea was entered without little review of the law and facts as it relates to this case and other issues clarified in the *Petition for a Writ of Habeas Corpus* including the fact this matter proceeds as a civil rather than criminal standard.

11 There is no other remedy by which Mr. Maggio may seek relief.

WHEREFORE, Petitioner, Michael A. Maggio, prayerfully requests the Court enter an Order to Release for reasons mentioned herein and for all other proper relief.

Respectfully submitted,

/s/ James E. Hensley, Jr. 99069
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CERTIFICATE OF SERVICE

I, James E. Hensley, Jr., certify that the forgoing instrument was filed with the Clerk of the Court using the CM/ECF system, which should send notification of all parties of record this **November 19, 2018**

/s/ James E. Hensley, Jr.