

United States Court of Appeals For the First Circuit

No. 21-1800

UNITED STATES,

Appellee,

v.

ANTHONY STEVEN LOBOS-RUIZ,

Defendant - Appellant.

Before

Thompson, Kayatta and Barron,
Circuit Judges.

JUDGMENT

Entered: November 15, 2021

Defendant-appellant Anthony Steven Lobos-Ruiz, who faces three federal charges in the United States District Court for the District of Puerto Rico, was ordered detained pending trial in the district court. A magistrate judge ordered appellant detained, and the district court subsequently denied a motion to revoke the magistrate judge's detention order. On appeal, appellant challenges the district court's bail ruling(s) on multiple grounds. With its brief, the government has conceded that the district court based its conclusion that Lobos was a flight risk on a mistaken factual premise, specifically that "[a]t the time of his arrest, defendant was at the airport leaving for Florida." D. Ct. Dkt. 69 (electronic order). Given the parties' agreement that error occurred, we **VACATE** the district court's order(s) denying release on conditions and **REMAND** so that the district court may conduct further proceedings consistent with 18 U.S.C. § 3142(f) and other applicable bail statutes. See Local Rule 27.0(c) (court may summarily dispose of appeal under appropriate circumstances).

The district court must determine in the first instance whether § 3142(f)(1) or § 3142(f)(2) applies in this case, a determination that will dictate which specific issues should guide the bail determination. Compare 18 U.S.C. § 3142(f)(1) (relevant query is "whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community"), with 18 U.S.C. § 3142(f)(2) (relevant queries are whether there is "a serious risk that such person

will flee" and/or whether there is "a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror"). While it is not entirely clear, it appears that the district court ultimately concluded that § 3142(f)(1) applied because the 18 U.S.C. § 249(a)(2) offense charged constituted a "crime of violence," as defined at 18 U.S.C. § 3156(a)(4). See 18 U.S.C. § 3142(f)(1) (applicable when, inter alia, a "crime of violence" is charged); see also D.Ct. Dkt. 69 ("Moreover, the Court adopts its earlier order finding that all defendants engaged in a crime of violence."). However, the district court's rulings do not reflect application of the categorical approach to the question whether the charged § 249(a)(2) offense constitutes a "crime of violence." See United States v. Ingle, 454 F.3d 1082, 1084-85 (10th Cir. 2005) (applying categorical approach to "crime of violence" language at 18 U.S.C. § 3142(f)(1)(A) in a case involving bail pending sentencing under 18 U.S.C. § 3143); see also United States v. Garcia-Catagena, 953 F.3d 14, 17-18 (1st Cir. 2020) (explaining that categorical approach is "intended" where "'elements'-focused language" -- i.e., the phrase "has as an element" -- is used to define "crime of violence" and similar terms). This matter should be appropriately addressed on remand.¹

In his briefs filed in this court, appellant asks that the court place several limitations on the scope and specifics of bail proceedings on remand. Those requests are **DENIED**, and the district court should consider the matter of bail anew. Appellant also requests that the court direct the district court to grant a previously filed "Motion to Clarify/Amend Pre-Trial Services Report." It does not appear that the district court expressly addressed said request prior to appeal; the request was lodged in the same filing as the request that the magistrate judge's detention order be revoked, and the district court made no reference to the request to "clarify/amend" when denying the motion to revoke. On remand, the district court should consider the request to "clarify/amend," and we express no opinion as to the appropriate ruling.

Mandate shall enter forthwith, and further bail proceedings should be conducted promptly. Any party intending to appeal any new bail ruling(s) should file a new notice of appeal.

By the Court:

Maria R. Hamilton, Clerk

cc:

Hon. Aida M. Delgado-Colon, Maria Antongiorgi Jordan, Clerk, United States District Court for the District of Puerto Rico, Eric A. Vos, Eleonora Concepcion Marranzini, Franco L. Perez-Redondo, Ivan Santos-Castaldo, Hector Sueiro-Alvarez, Anthony Steven Lobos-Ruiz, Max J. Perez-Bouret, Mariana E. Bauza Almonte, Jose A. Contreras, Nicolas Y. Riley, Katherine Elmlinger Lamm, Robert Paul Coleman III

¹ The court expresses no opinion at this time as to the continuing validity of the residual clause at 18 U.S.C. § 3156(a)(4)(B).