

**STATE OF NEW MEXICO  
COUNTY OF DO\_A ANA  
THIRD JUDICIAL DISTRICT**

STATE OF NEW MEXICO

Plaintiff,

vs.

Number: CR-2012-424

Case

Fernando Macias

Judge:

JORGE I. ANGULO

Defendant.

MOTION TO REVIEW CONDITIONS OF RELEASE

Now comes Defendant, Jorge Angulo, by and through his attorney, Kenneth del Valle, and pursuant to NMSA 1978, Crim. P. Rule 5-401 G and moves for review of conditions of release.

In support thereof Defendant states as follows:

1. The United States Constitution, Amendment VIII states in part that:  
“Excessive bail shall not be required...”

2. The United States Constitution, Amendment XIV states in part that:  
**“NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.”**

3. The Constitution of the State of New Mexico, Article II, Section 13 states in part that: “All persons shall, before conviction be bailable by sufficient sureties...” and “ Excessive bail shall not be required...”

Article II, Section 13 outlines several situations where reasonable bail may be denied. As will be shown below, Mr. Angulo’s case does not come within the ambit of any of the several situations where reasonable bail may be denied.

4. NMSA 1978, Crim. P. Rule 5-401 A states in part that:

**“PENDING TRIAL, ANY PERSON BAILABLE UNDER ARTICLE 2, SECTION 13 OF THE NEW MEXICO CONSTITUTION, SHALL BE ORDERED RELEASED PENDING TRIAL ON THE PERSON’S PERSONAL RECOGNIZANCE OR UPON THE EXECUTION OF AN UNSECURED APPEARANCE BOND IN AN AMOUNT SET BY THE COURT, SUBJECT TO ANY RELEASE CONDITIONS IMPOSED PURSUANT TO PARAGRAPH C OF THIS RULE, UNLESS THE COURT MAKES A WRITTEN FINDING THAT SUCH RELEASE WILL NOT REASONABLY ASSURE THE APPEARANCE OF THE PERSON AS REQUIRED.”**

## HISTORY

1. Mr Angulo was arrested at his home in El Paso, Texas in early April 2012 on the basis of an Affidavit For Arrest Warrant and the attached Warrant For Arrest both filed in the Third Judicial District Court of New Mexico on April 6, 2012.

2. The Criminal Complaint alleged eight counts in connection with State’s various allegations of fraud as follows:

**Count 1:** A second degree felony – Fraud over \$20,000 for promotional video production.

**Count 2:** A third degree felony – Conspiracy to commit fraud over \$20,000 for the

same promotional video production charged in Count 1.

**Count 3:** A third degree felony – Intent to deceive for travel expense vouchers for \$2,500 on 11/14/2011

**Count 4:** A third degree felony – Fraud for \$2,500 on 11/14/2011 for the same travel expense vouchers charged in Count 3.

**Count 5:** A fourth degree felony – False statement on a travel expense voucher on 11/14/2011 for the same travel expense vouchers charged in Counts 3 and 4.

**Count 6:** A fourth degree felony – False statements on an expense voucher for promotional video production for the same video alleged in Counts 1 and 2.

**Count 7:** A fourth degree felony – False statement on public voucher for the same promotional videos production charged in Counts 1, 2 and 6.

**Count 8.** A fourth degree felony – False statement on public voucher for the same promotional videos production charged in Counts 1, 2, 6 and 7.

3. The Warrant for arrest set the bond at \$1,000,000.00 with 75% cash to court.

4. Soon after his arrest in El Paso Mr. Angulo waived extradition to New Mexico and he appeared before the Honorable Jacinto Palomino on April 17, 2012.

5. On said date Judge Palomino heard an oral motion to reduce bail and set bail in the amount of \$250,000.00 / Surety.

6. As of April 26, 2012 Mr. Angulo can not make said bail and seeks review of the conditions of release.

7. In setting the current bond the Court did not comply with the requirements of NMSA 1978, Crim. P. Rule 5-401 A and the Court did not properly consider the factors outlined in 5-401 C in setting a high secured bond.

8. The conditions of release imposed by the Court are excessive and

oppressive and in violation of Mr. Angulo's rights to be free from oppressive and excessive bail pursuant to the Constitution of the State of New Mexico, Article II, Section 13 and NMSA 1978, Crim. P. Rule 5-401 A and C as well as pursuant to the United States Constitution, Amendment VIII and XIV.

#### RULE 5-401 C FACTORS

**1. The nature and the circumstances of the offense charged... crime of violence or involves narcotics:**

There are no crimes of violence charged here.

There are no illegal drug crimes charged here.

The nature of the crimes charged is financial.

The most serious offense charged is a second degree felony.

All offenses are probationable.

Many of the eight Counts charged seem to be duplicative of each other and based on two allegations – the unauthorized expenditure of funds for a campaign video and the submission of a travel expense voucher for unauthorized expenses.

**2. The weight of the evidence against the person:**

The weight of the evidence against Mr. Angulo is weak:

Based on the Affidavit for Arrest Warrant most of the evidence seems to be

uncorroborated third hand information.

The alleged monetary loss, if any, was not to the City of Sunlandpark or the citizens of New Mexico but rather to Mr. Stan Fulton – a private individual that entrusted the City of Sunlandpark with \$12, 000,000.00 to oversee and administer a project to build a Mexico/US border crossing and manned port of entry at Sunlandpark, New Mexico. The project was referred to as the Fulton Project.

Mr. Fulton owns the Sunlandpark Race Track and Casino. He recently donated 3.2 million dollars to New Mexico State University in Las Cruces to construct an academic support and sports medicine complex. He is known for his charitable donations and projects.

It is from that \$12, 000,000.00 Fulton Project fund that, pursuant to a rigorous bidding process, Sunlandpark hired Enviro Systems Management Consultants (EMC) to do the following in connection with the Fulton Project:

- A. A National Environmental Protection Agency (NEPA) study.
- B. Traffic flow modeling study.
- C. Conceptual design of a Port of Entry (POE) and access roads.
- D. Public opinion survey.
- E. Coordination with Mexican government officials.
- F. Preliminary conceptual designed study of a possible extension of NM

Highway 9 from Columbus to the Santa Theresa POE and continuing to the proposed Sunlandpark POE.

EMC was to be payed 2.8 million dollars for its part of the work on the Fulton Project.

The State's theory of criminal liability is premised in great part on the allegation that Mr. Angulo is the owner or has equity in EMC and that is plain

wrong. A simple web search of EMC will show that EMC is owned by Mr. Joe Gonzalez and that EMC has four employees. At all relevant times Mr. Angulo was a subcontractor of EMC.

The State's theory of criminal liability also ignores the fact the contract between the City of Sunlandpark and Fulton required the placement of a Fulton associate named Mr. Javier Ortiz in an administrative role with oversight over the expenditure of the \$12,000,000.00 and the subsidiary contracts such as the one with EMC on behalf of the Fulton Project.

The charges that Mr. Angulo paid a Mr. Juan Carlos Dominguez-Arzaga for a political campaign video for Mr. Daniel Salinas is untrue. And it makes no sense.

The contract between EMC and the City of Sunlandpark for EMC's part of the Fulton Project was in place long before Mr. Salinas was in a position to influence any possible contractual obligations between the City of Sunlandpark and EMC – so there was no motive for EMC to court Salinas. Simply put Salinas had no say in anything pertaining to the already approved contract. By the time Salinas decided to run for Mayor of Sunlandpark, the contract had already been awarded to EMC. Besides it was Javier Ortiz, that had real control of how the \$12,000.000.00 and the subsidiary contracts would be administered.

The contract came to be awarded to EMC thus: At the initial bidding for the 2.8 million sub contract EMC won the contract. However, the then City Manager, Mr. \_\_\_\_\_ Morales, reopened the bidding to more contractors.

During the second round of bidding there were approximately ten bidders. The contract went to IDEA, a Santa Fe ad hoc group that had come together for the sole purpose of bidding on the Fulton Project. EMC came in second and thereafter

abandoned its attempt to participate in the Fulton Project.

However, sometime later ,when it came time to perform its part of the Fulton Project, IDEA announced that it could not do so. IDEA defaulted. The new City Manager, Mr. Jaime Aguilera, then called upon the second place winner, Joe Gonzalez owner of EMC, and asked EMC to step into the breach. Gonzalez agreed.

And so by the time that Salinas became Mayor pro-temp of Sunlandpark and contemplated a run for mayor, the contract between Sunlandpark and EMC to manage that specific portion of the Fulton project was a done deal – twice.

Similarly, the charge of wrongful billing for travel expenses stems from an uncorroborated allegation about a two and a half day trip that was taken by Mr. Angulo with several Sunlandpark official to Saltillo, Mexico. The trip was made in connection with obtaining approval and coordination of the Fulton Project for a border crossing bridge and manned port of entry from officials on the Mexican side.

The itinerary was to meet in Juarez, Mexico and then fly to Monterey and then drive to Saltillo for a meeting with Mexican officials that had to approve the Mexican side of the Fulton Project. We must keep in mind that both the US and Mexico were about to get a free border crossing and bridge compliments of Mr. Fulton. The obvious return to Mr Fulton would be an international bridge right next to his racetrack and casino.

At the beginning leg of the trip in Juarez, Mexico while awaiting a flight to Monterey, Mr. Angulo was approached by the City Manager, Mr. Aguilar, and advised that the four Sunlandpark officials had a per diem of \$79.00 per day. Mr. Aguilar added that the city officials had not been advanced travel money and that the four officials were concerned that they could not meet their trip expenses.

And so, while still in Juarez awaiting the flight to Monterey, Mr. Angulo gave Mr. Aguilar approximately \$2,800.00 USC and Mr. Aguilar divided it among the four officials. Mr. Angulo asked for and received a receipt from Mr. Aguilar. Mr. Angulo was advised at the time that he would be reimbursed for the loan.

The State has made much of this incident claiming that some of those Sunlandpark officials used the money for prostitutes. However, there is no proof that any of the city officials used official funds or the funds loaned to them by Mr. Angulo to patronize prostitutes. And even if it were so there is no evidence whatsoever that Mr. Angulo could have anticipated or foreseen the alleged misuse of those funds two days later after having made a good faith loan while still in Juarez awaiting the first flight of the trip. The loan was an act of kindness not some sort of scheme. It is the same principle we see when we might lend a friend money for living expenses and then the friend buys alcohol with the money.

Further, when Mr. Angulo billed for the trip he did so against the Fulton Project fund not against the City of Sunlandpark treasury. It was a legitimate expense billed to a legitimate account – and it was approved by Mr. Aguilera.

In summary, the evidence against Mr. Angulo is not strong. It is based on gossip and an investigation of complex financial matters by investigators that may be well meaning but are not well versed in such matters. The name of Javier Ortiz does not even appear in the Affidavit For Arrest Warrant.

It is apparent that this was a perfunctory investigation without delving behind the gossip and without examination of relevant documents. Ie. Where is the documentation in connection with the outsourcing the Fulton Project by Mr. Fulton to the City of Sunlandpark?

The affidavit completely ignores the fact that none of this is in connection



with the misuse of public funds – that the legal issue of public administration of the very private and for profit Fulton Project is the legal elephant in the room.

Most of the allegations in the Affidavit for Warrant seem to be uncorroborated and taken at face value – thrice removed.

**3. As to the history and characteristics of Mr. Angulo.**

a) Character and physical and mental condition:

Mr. Angulo is a 70 year old man with no criminal history.

He is 5'7", thin and suffers from high blood pressure and severe skin allergies.

Two years ago Mr. Angulo was diagnosed with severe osteoporosis that require daily self administered subcutaneous injections of Forteo (teriparatide r DNA). One of the side effects of a Forteo regimen is an increased risk of bone cancer and Mr. Angulo has to be checked on a regular basis. He recently suffered a broken toe from a slight bump he received while playing with one of his grandchildren. He is in danger of being irreparably injured in a jail environment.

Mr. Angulo's mental condition is normal.

b) The person's family ties:

Mr. Angulo has the following family ties to El Paso:

Mr. Angulo has been married to his wife Rosita for 42 years.

Mrs. Rosita Angulo has been a school teacher with the EPISD for the past twenty years.

Both of Mr. Angulo's adult children and his five grandchildren live in El Paso. His daughter, Roxane (41), is also a school teacher with the EPISD and is married to an El Paso Police Officer. His son, Rodrigo (39), is an El Paso City bus driver. They are all United States citizens.

Mr. Angulo also has numerous in laws, cousins, nieces and nephews in the El Paso area.

c) The person's employment status, employment history and financial resources:

Mr. Angulo has been a self employed civil engineer since his graduation from UTEP in 1964.

From 1964 to 1980 he worked for various engineering firms on a contractual basis.

In 1980 Mr. Angulo opened up his own civil engineering consulting firm as a sole practitioner specializing in ALTA surveys under the name "Jorge Angulo PE".

Mr. Angulo has continued as a sole practitioner occasionally partnering with others for specific projects. He has been working in that capacity for the past 32 years.

Some of his work has involved consulting for American businesses doing construction in Mexico and, more specifically, assuring that American businesses complied with Mexican technical construction requirements and Mexican legal requirements.

In order to be able to work in Mexico when he had to, Mr. Angulo rented space as needed from an established engineering firm in Juarez, Mexico. For a fee that firm provided him with an answering service and a place to meet clients in Juarez, Mexico. Mr. Angulo has never had a permanent presence in Juarez, Mexico.

Mr. Angulo's financial resources are those are those of a moderately well to do middle class person.

d) The person's past and present residences:

Mr. Angulo has lived in El Paso, Texas for the past 57 years and he has lived at his current address for the past 20 years.

e) The length of residence in the community:

Mr. Angulo has lived in El Paso, Texas since 1955, that is 57 years.

f) Any facts tending to indicate that the person has strong ties to the community:

Mr. Angulo has lived in El Paso since 1955 when he began attending Cathedral High School. Although he has always had derivative citizenship through his mother he became an LPR in 1980 and a United States citizen in 2002.

He has lived at his current address in El Paso for the past 20 years.

He and his wife own their own home and continue to pay a mortgage at this time.

He graduated from Cathedral High School in El Paso in 1959.

He graduated from the University of Texas El Paso with a B.S. in civil engineering in 1964.

He is a member of the board of Cathedral High School Association.

He is the director of Catholicism Program for the Cathedral Alumni Association.

He is a member of several Catholic charitable organizations.

His children and grandchildren as well as many relatives live in El Paso.

Mr. Angulo's presence in the community since 1955 attest to his strong ties to the community. He has lived in El Paso for 57 years.

g) Any indication that the person will commit new crimes if released:

There are no indications that Mr. Angulo will commit any new crimes if released. He is a seventy year old man with severe osteoporosis.

h) The person's past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearances at court proceedings:

Mr. Angulo past conduct has been exemplary.

He has no history of alcohol abuse.

He has no history of illegal drug abuse.

He has no criminal record.

He has never had to appear in court before.

i) Whether at the time of his arrest the person was involved in any other criminal law proceeding:

At the time of his arrest Mr. Angulo had no other criminal matter pending.

**4. The nature and seriousness of the danger to any person or the community that would be posed by the person's release:**

Mr. Angulo's release would pose no danger to any person in any community – he is a seventy year old man with severe osteoporosis.

**5. Any other facts tending to indicate the person is likely to appear:**

Mr. Angulo has already signed a waiver of extradition to the State of New Mexico. There is no reason to believe that Mr. Angulo will flee or not appear.

Any ties that he may have to Mexico are the same ties that any other law abiding citizen living on the border may have. It is unreasonable to assume that every person living within proximity of the border is a flight risk – such an assumption would result in everyone in our community being categorized as a flight risk.

The fact is that Mexico is now more dangerous than it has ever been since the 1910 revolution and no sane person would run there. The idea that Mexico may be a haven from prosecution is to ignore the grim reality of life in Mexico. And...

nobody can reasonably argue that running away to Mexico is a possible option for someone situated like Mr. Angulo. He has no reason to flee – he is innocent and his whole life and everything of value to him is in the El Paso community. If Mr. Angulo ran away to Mexico he would lose everything he has worked for his whole life. Even if he were to be convicted here he would not lose any of those things. All of these factors indicate that Mr. Angulo will appear!

### ARGUMENT

Article II, Section 13 of the New Mexico State Constitution protects persons such as Mr. Angulo from an unreasonably high bail. The current bail amount effectively places Mr. Angulo in otherwise inapplicable category and effectively denies him the benefit of pre-trial liberty to consult with counsel and aid in the preparation of a defense – of particular importance in a convoluted and paper heavy case such as this. As previously stated, the most serious charge against Mr. Angulo is a second degree felony, the current bail amount is more typical of much

more serious charges. The current bail amount clearly violates Mr. Angulo's rights to be free from excessive bail pursuant to Article II, Section 13 of the New Mexico State Constitution.

Crim. P. Rule 5-401 A clearly mandates that in cases such as this Mr. Angulo should be released under his own recognizance or upon the execution of an unsecured appearance bond. This implies the weighing of the presumption of innocence and the right of the accused to be at liberty to aid in his own defense against the risk of letting a dangerous person or a person that poses a demonstrable risk of flight to avoid prosecution for a serious crime, usually a crime that may shock the conscience. Here the weighing of those factors clearly mandate that Mr. Angulo be granted a reasonable bond. The right to reasonable bond is implicit in any fair system of justice. Mr. Angulo's health mitigates for release. He is in a physically dangerous environment where any slight injury can result in a bone fracture. The current bail amount clearly violates Mr. Angulo's rights to be free from excessive bail pursuant to Crim. P. Rule 5-401 A.

The review above of the elements mandated to be considered by the Court in Crim. P. Rule 5-401 B and how Mr. Angulo fits into that mandated framework clearly show that the current bail amount required is excessive and oppressive.

And let us not forget. Even if, for the sake of argument, Mr. Angulo were to be found guilty of all of the charges against him, the most serious being a second degree felony, the likelihood of him, a seventy year old man with no criminal record and ill with severe osteoporosis, going to jail is very slim. He has no reason to run. He is not a risk of flight and he is not a danger to the community.

In view of the foregoing we respectfully submit that the previous bond requiring the posting of \$250,000.00 / surety in bail was: 1) Arbitrary and capricious. 2) Not supported by substantial evidence. 3) Not otherwise in accordance with the law.

**Wherefore** Defendant, Jorge Angulo, prays this Honorable Court grant him a bond in compliance with NMSA 1978, Crim. P. Rule 5-401 A and set reasonable in compliance therewith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kenneth del Valle, an attorney, do hereby certify that I served upon the Doña Ana District Attorney with a copy of the forgoing document on April 26, 2012 by personal delivery.

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Kenneth del Valle