

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

APPEAL NO. 07-13163-B

**UNITED STATES OF AMERICA,
Plaintiff-Appellee,**

v.

**DON EUGENE SIEGELMAN, et al.,
Defendant-Appellant**

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**SIEGELMAN'S SUPPLEMENTAL MOTION IN SUPPORT OF RELEASE PENDING
APPEAL AND RESPONSE TO DISTRICT COURTS DENIAL OF RELEASE PENDING
APPEAL UPON RECENT REMAND BY THIS COURT**

**HIRAM C. EASTLAND, JR.
EASTLAND LAW OFFICES, PLLC
107 Grand Boulevard
Greenwood, MS 38930
Telephone: 662-453-1227
Facsimile: 662-453-2808
Email: eastlandlaw@bellsouth.net
ATTORNEY FOR DEFENDANT/APPELLANT**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. Don Eugene Siegelman, Defendant-Appellant.	* * * * * * * *	APPEAL NO. 07-13163-B
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**SIEGELMAN’S SUPPLEMENTAL MOTION IN SUPPORT OF RELEASE
PENDING APPEAL AND RESPONSE TO DISTRICT COURTS DENIAL OF
RELEASE PENDING APPEAL UPON RECENT REMAND BY THIS COURT**

COMES NOW Defendant/Appellant, Governor Don Eugene Siegelman, by and through the undersigned counsel, and files this Supplemental Motion For Release Pending Appeal pursuant to 18 U.S.C. § 3143(b)(1), Fed. R. App. P. 9(b)-(c) and Circuit Rule 9 and respectfully moves this Court for release pending resolution of appeal.

On September 27, 2007, this Court remanded Governor Siegelman’s “motion for release pending appeal, the Government’s response to the motion, and Siegelman’s reply to the Government’s response...for expeditious consideration and disposition by the district court.” This Court

instructed that “[t]he district court’s order should explain the reasons for the court’s ruling. See In re Smith, 823 F.2d 401 (11th Cir. 1987).”

On October 4, 2007, the district court rendered a Memorandum Opinion And Order denying Governor Siegelman’s motion for release pending appeal, but the court failed to do what this Court instructed. The district court’s response included only boilerplate discussion of the standard for release, a recognition that the Government stipulated that two of the conditions for release were met, and a completely conclusory assertion that the remaining two conditions for release were not met. Contrary to this Court’s instructions, the district court did not include *any* explanation of “the reasons for the court’s ruling”—not a single word as to why, in its view, the issues raised by Governor Siegelman fall short of constituting substantial questions that would (if accepted on appeal) result in reversal. See EXHIBIT 1, District Court Memorandum And Order.

Beyond the district court’s conclusory assertion that Governor Siegelman’s Motion For Release Pending Appeal “is due to be DENIED” for the so-called “reasons set forth below”,¹ the court’s summary denial without explanation is a clear indication that the ruling denying release pending appeal is unsupportable. By ignoring this Court’s instructions to

¹ *Id.* at 1.

“explain the reasons for the court’s ruling”, the district Court has in effect admitted that any real discussion of the issues would compel the release of Governor Siegelman.

Indeed, the Courts have recognized that “[w]here no reasons are given for the denial of bail, the action cannot be accorded the weight it would otherwise merit.” *Rhodes v. United States*, 275 F. 2d 78, 82 (4th Cir. 1960). Furthermore, this Court may now decide Governor Siegelman’s motion for release pending appeal even though the district court failed to give reasons for its ruling after being instructed to do so. *See United States v. Stanley*, 469 F. 2d 576, 585 n. 44 (D.C. Cir. 1972) (citing cases in which the Court of Appeals went ahead and decided bail pending appeal even though the district courts provided no reasons for their rulings); *United States v. Alston*, 420 F.2d 176, 178 n.2 (D.C. Cir. 1970) (“Because of the length of time that appellant has already spent in jail, and because the District Court has already once had the opportunity to consider the factors which we discuss in this opinion but has failed to do so...other than the memorandum’s bare statement...,we think it would be unfair and of little use to require appellant to remain jailed through a second remand.” *id.*).

CONCLUSION

For these reasons, as well as the reasons submitted in Siegelman's Motion For Release Pending Appeal and Siegelman's Reply In Support Of His Release Pending Appeal,² Section 3143(b)(1) *mandates* that Governor Siegelman be released immediately pending this Honorable Court's resolution of the profound and substantial questions involved in his appeal.

Respectfully submitted,

Hiram C. Eastland, Jr.
MS. Bar # 5294
Hiram C. Eastland III
Jacob K. Eastland
Eastland Law Offices, PLLC
107 Grand Boulevard
Greenwood, MS 38930
Phone: 662-453-1227
Fax: 662-453-2808
Email: eastlandlaw@bellsouth.net

G. Robert Blakey

² Governor Siegelman hereby incorporates by reference herein these previous filings with the Court. This Court's September 27, 2007 remand order also granted Governor Siegelman's motion for leave to file his seventy-eight page motion for release pending appeal and denied the Government's motion to strike Governor Siegelman's reply memorandum.

D.C. Bar # 424844
Notre Dame Law School*
Kresge Law Library
P.O. Box R
Notre Dame, IN 46556
Phone: 574-631-5717
Fax: 574-631-4197
Email: blakey.1@nd.edu

David A. McDonald
Kilborn, Roebuck & McDonald
P.O. Box 832
Mobile, Alabama 36602
Phone: 251-434-0045
Fax: 251-434-0047
Email: dam@krmlaw.com

Vince F. Kilborn, III
Kilborn, Roebuck & McDonald
P.O. Box 66710
Mobile, Alabama 36606
Phone: 251-479-9010
Fax: 251-479-6747
Email: vfk@krmlaw.com

Redding Pitt
John D. Saxon, PC
2119 Third Avenue, North
Birmingham, AL 35203

Phone: 205-324-0233
Fax: 205-324-1583
Email: rpitt@saxonattorneys.com

ATTORNEYS FOR APPELLANT
DON EUGENE SIEGELMAN

CERTIFICATE OF SERVICE

I certify that on October 6, 2007, I served by mail the foregoing Supplemental Motion for Release Pending Appeal upon Louis V. Franklin, Sr., Acting United States Attorney, One Court Square, Suite 201, Montgomery, Alabama 36104, by First Class Mail, postage pre-paid.

Hiram Eastland
EASTLAND LAW OFFICES
MS. BAR # 5294
107 Grand Boulevard
Greenwood, Mississippi 38930
Phone: 662-453-1227
Fax: 662-453-2808
Email: eastlandlaw@bellsouth.net