



U.S. Department of Justice

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Filed Via ECF

The Honorable Michael A. Hammer
United States Magistrate Judge
Martin Luther King Jr. Federal
Building and U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: *United States v. Melvin Feliz*
Crim. Nos. 14-327 and 15-421

Your Honor:

Defendant Melvin Feliz (“defendant” or “Feliz”) seeks release from federal custody in light of the COVID-19 crisis pending his sentencing. While defendant asks for “compassionate” relief, he fails to state whether he is moving for such relief pursuant to the 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act on December 21, 2018 (the Compassionate Release Statute), 18 U.S.C. § 3142 (the Bail Reform Act), the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), or some other authority. Defendant similarly offers no legal or factually supported evidence either warranting bail or demonstrating that he is a “high-risk” individual.

Defendant does not qualify for compassion release under 18 U.S.C. § 3582(c)(1)(A) because he has not been sentenced and is therefore not in the

custody of the Federal Bureau of Prisons (“BOP”). Moreover, defendant is pending sentencing on, among other convictions, a conviction for narcotics trafficking which is punishable by a maximum sentence of life imprisonment. Thus, there is a heightened standard for release pursuant to Title 18, United States Code, Section 3143, a standard that the defendant cannot meet. Hence, the Court should deny the motion.

I. Background

On March 7, 2014, law enforcement arrested defendant based upon a Criminal Complaint charging him with conspiring to distribute and possess with intent to distribute more than 5 kilograms of cocaine. *United States v. Feliz*, Mag No. 14-8047, Docket #1, 15. Although charged with a serious narcotics offense, defendant was released on bail. Defendant, though, continued to break the law while on release. On December 22, 2014, law enforcement arrested defendant on a separate Criminal Complaint charging him with conspiring to commit a more than \$4,000,000, wire fraud from 2008 through July 2014. *United States v. Feliz*, Mag. No. 14-6800, Docket # 1, 9.

On February 4, 2015, defendant pleaded guilty to the narcotics charges. *United States v. Feliz*, Crim. No. 14-327, Docket #142. Defendant entered his plea pursuant to a Rule 11(c)(1)(c) plea agreement in which the parties agreed that a 10-year prison sentence was appropriate. On August 25, 2015, defendant pleaded guilty to an Information charging him with conspiring to commit wire fraud and conspiring to commit tax evasion. *United States v. Feliz*, Crim. No. 15-421, Docket #62. The Information alleged that the wire

fraud conspiracy continued through in or about July 2014. Crim. No. 15-421, Docket #60. In the Rule 11 (c)(1)(c) plea agreement, defendant stipulated that he defrauded his victims out of close to \$8,000,000. Crim. No. 15-421, Docket #64. In addition, the Government agreed not to charge defendant with any further criminal charges alleging that he conspired to commit wire fraud from 2008 through in or about November 2014. Crim. No. 15-421, Docket #64. The parties also agreed that a four-year sentence, to be served consecutive to the ten-year sentence in the narcotics matter, was appropriate.

The Government filed its sentencing submission in both cases on or about January 16, 2019. Crim. No. 14-327, Docket #155, Crim. No. 15-421, Docket # 75. On or about that same date, defendant sought to withdraw his guilty plea in the narcotics case. Crim. No. 14-327, Docket No. 156.

Defendant later sought to withdraw his plea in the wire fraud and tax evasion case. Crim. No. 15-421, Docket # 79. The Court denied both motions on or about December 3, 2019. Crim. No. 14-327, Docket #156, Crim. No. 15-421, Docket # 97. The Court thereafter offered to hold the sentencing hearings in April 2020. Defendant, though, has requested additional time to prepare for the hearings. As a result, defendant's sentencing has been adjourned.

II. Compassionate Relief

The compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act on December 21, 2018, provides in pertinent part:

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility . . . may reduce the term of imprisonment . . . if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction . . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission

The statute, and the provisions in the recent CARES Act apply to those within the BOP's custody.¹ Moreover, to obtain relief, a prisoner must first seek relief from the Warden. *See 18 U.S.C. § 3582(c)(1)(A)*.

III. The Bail Reform Act

The Bail Reform Act sets forth the conditions under which the Court can release someone on bail pending sentencing. Pursuant to the Act, the Court

shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence . . . be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety or any other person or the community if released under section 3142(b) or (c).

18 U.S.C. § 3143(a)(1). There is a heightened standard for certain specified offenses, like one committed by defendant. Specifically,

the judicial officer shall order that a person who has been found guilty of an offense in a case described in

¹ The CARES Act modestly expands BOP's ability to transfer prisoners that are in BOP custody to home confinement in response to the ongoing COVID-19 pandemic. Defendant, though, is in the custody of the USMS not the BOP.

subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained **unless—(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or a new trial will be granted; or (ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person;** and (B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

18 U.S.C. § 3143(a)(2) (*emphasis added*).

Title 18, United States Code, Section 3142(f)(1)(B) includes “an offense for which the maximum sentence is life imprisonment.” Subsection (f)(1)(C) includes “an offense for which the maximum term of imprisonment of ten years or more is prescribed in the Controlled Substance Act”

IV. Analysis

A. Defendant is Not Entitled to Compassionate Release pursuant to 18 U.S.C. § 3582 or the CARES Act.

Defendant is not entitled to compassionate relief under the 18 U.S.C. § 3582 or the CARES Act. The CARES Act expands the BOP’s ability to transfer prisoners to home confinement. The CARES ACT and § 3582, though, apply to those within the BOP’s custody. Defendant, as he has not been sentenced and transferred to a federal facility, is not within the BOP’s custody. Even if he were, a motion could only be brought “upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days....”

See 18 U.S.C. 3582(c)(1)(A). Here, neither situation applies. Defendant is thus not entitled to the relief he seeks under this ground.

B. Defendant Cannot Meet the Standards of Title 18, United States Code, Section 3143

Defendant's motion also fails under the Bail Reform Act as he cannot meet the heightened requirements of 18 U.S.C. § 3143. As described above, defendant was convicted of conspiring to distribute and possess with intent to distribute more than 5 kilograms of cocaine, contrary to 18 U.S.C. §§ 841(a)(1) and (b)(1)(A), in violation of 18 U.S.C. § 846. *Crim. No. 13-427, Indictment and Plea Agreement*. This conviction carries with it a maximum sentence of life imprisonment. 18 U.S.C. § 841, 846. It is also an offense for which the Controlled Substance Act prescribes a sentence of more than ten years. 18 U.S.C. 801 et seq., 841, 846.

Defendant has not even alleged that there is a substantial likelihood that a motion for acquittal or new trial will be granted. Indeed, Judge McNulty has already denied both of defendant's motions to withdraw his guilty pleas and is in the process of scheduling the sentencing hearings. Moreover, the Government is seeking 14-years of imprisonment, not recommending no sentence of imprisonment. Thus, the Court should deny defendant's motion.

C. Defendant Fails to Even Meet the Standards of Title 18, United States Code, Section 3142

Even if the Court considered the factors of 18 U.S.C. § 3142, defendant's motion should still be denied. Under that section, the Court must consider:

(1) the nature and circumstances of the offense charged, including whether the offense . . . involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person; [and]

(3) the history and characteristics of the person, including—(A) the person's character . . . past conduct . . .

18 U.S.C. § 3142(g).

First, the nature and circumstances of the offense merit detention. Indeed, defendant has been convicted of a large scale controlled substance offense. Second, it is harder to imagine a situation where the weight of the evidence is stronger – the defendant has been convicted of a drug trafficking offense, a nearly \$8,000,000 wire fraud conspiracy, and a multi-million dollar tax evasion conspiracy. There is, indeed, no question concerning his guilt.

Third, defendant's characteristics weigh in favor of detention. Defendant was released from custody after his narcotics arrest. He continued, though, to violate the law. He therefore was arrested and charged with felony conduct up to in or about July 2014 (after his release). Following this arrest, defendant was ordered to be detained. He also has been previously convicted of perjury.

Lastly, defendant is in Essex County Jail because he spent the past year unsuccessfully arguing that he should be allowed to withdraw his guilty plea. Even upon resolution of those motions, defendant has sought an adjournment to prepare for his sentencings.

D. Defendant is not among the categories of detainees indicated for release on COVID-19 grounds.

The Government does not take lightly that the health risks associated with COVID-19 can be exacerbated in detention facilities. “But those risks are not the sole determinant of whether detention is appropriate.” *United States v. Jones*, Crim. No. 17-582, 2020 WL 1323109, at *1 (D. Md. Mar. 20, 2020) (rejecting release requested by incarcerated pregnant detainee on grounds that she is “at increased risk of contracting COVID-19”). Reducing the overall detainee population does not require the abandonment of the standards that apply in detention matters. Rather, the courts thus far have taken and should continue to take a measured approach focused on the individual factors applicable to each detainee. The Government submits that those factors, applied to defendant, do not warrant temporary release.

Defendant is not among the types of detainees that have been designated for release in light of the pandemic. Defendant is not elderly (he is only 54). While defendant has “indicated” that “he has experienced pulmonary issues related to a persistent cough” in recent years, he provides absolutely no support for this claim. Similarly, he provides no medical records concerning his consultation with a doctor concerning a cough in 2014. Thus, he does not present any evidence of health conditions that make him particularly susceptible to COVID-19 complications. In addition, defendant is not a low-level offender, contemnor, or probation violator. To the contrary, defendant has

been convicted of large scale narcotics trafficking and a nearly \$8,000,000 wire fraud conspiracy and is facing a lengthy prison sentence.

E. Conditions at ECCF.

Officials at the Essex County Correctional Facility (“ECCF”), where defendant is lodged, are combatting COVID-19. While the situation is continually evolving, according to an online update:

- Attorneys has non face-to-face visiting hours every day except Sunday. Face-to-face visit requests will be addressed on a case by case basis.
- An officer has been assigned to ensure no unauthorized personnel enter the facility.
- Newly confined inmates detainees are being quarantined for 14 days and will have their temperature checked twice daily.
- Recreation has been modified to reduce risk.
- Plans have been put in place to address individual exposures and an outbreak.

Essexcountynj.org (April 1, 2020).

Consistent with the worldwide experience, however, the Government recognizes these measures may not stop the spread of the virus, including at ECCF. There are detainees in the federal system and elsewhere who have contracted COVID-19. Unfortunately, there will be others. But that inevitability does not justify either the defendant’s or wholesale release.

F. The current conditions have less of an impact on defendant’s Sixth Amendment rights than on those of similarly situated detainees.

The COVID-19 pandemic and the measures instituted in ECCF and other facilities to mitigate its spread undoubtedly will impede the ability of detainees to meet with counsel and participate in their defense. Under the

circumstances, the courts must consider how those unfortunate burdens will affect individual detainees. Here, defendant is comparatively well situated. Defendant is represented by two more than capable criminal counsel. Additionally, the sole remaining step in defendant's cases is sentencing. Thus, the material is limited to Presentence Reports and sentencing memoranda. Further, at his request, the Court has adjourned the sentencing hearings to allow defendant additional time to prepare.

V. Conclusion

For the reasons set forth above, the Government respectfully submits that the Court should deny defendant's motion.

Respectfully submitted,

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