

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Crim. No. 17-47-LPS-2
	)	Unsealed 1/5/2021
ROQUE VALDEZ,	)	
	)	
Defendants.	)	

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**MEMORANDUM ORDER**

At Wilmington this **30th** day of **December, 2020**, having reviewed Defendant’s Second Petition for Release Pending Sentencing (D.I. 324) and the Government’s Response to Defendant’s Petition (D.I. 326), **IT IS HEREBY ORDERED** that Defendant’s motion (D.I. 324) is DENIED.

The Defendant, Roque Valdez (“Valdez” or “Defendant”), has pled guilty to conspiracy to distribute 5 kilograms or more of cocaine, a violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. (*See* D.I. 38 ¶¶ 1, 5) He has been detained since his arrest on May 6, 2017, nearly 44 months ago. (*See* D.I. 239 ¶ 4) He faces a mandatory minimum sentence of five or ten years of incarceration. (*See id.* ¶ 3) Valdez is currently detained at the Federal Detention Center in Philadelphia (“FDC”). (*See* D.I. 247 at 1)

Pursuant to 18 U.S.C. § 3145, Defendant (i) has failed to meet his burden of establishing by clear and convincing evidence that he is not likely to flee or pose a danger to the safety of any

other person or the community, and (ii) has also failed to show that exceptional reasons would justify his requested release.

As to the first prong, the severity of Defendant's offense is such that the Court is not persuaded by clear and convincing evidence that he is not likely to flee or pose a danger to others. The government's explanation is supported in the record:

Although Valdez was not the architect of the cross-country drug distribution [involving distribution of at least 77 kilograms of cocaine], neither was he a mere "mule" as his memorandum claims. Valdez was a repeat, trusted associate on the trips transporting cocaine to the East and then hundreds of thousands of dollars back West, and he performed many supporting functions in between.

(D.I. 326 at 3) Based on the serious drug felony to which Valdez pled guilty, there is a presumption that he should be detained pending resolution of his case. *See* 18 U.S.C. § 3143(a)(2).

As to the second prong, and as the Court has previously expressed (D.I. 256), the Court is sympathetic to Defendant's general concerns related to COVID-19 and hopes that Defendant, who tested negative in November (*see* D.I. 326 Ex. A at 1), will remain healthy during the remainder of his detention. But the impact of the pandemic on the FDC, in combination with Defendant's specific health situation, does not constitute exceptional reasons justifying his release.


Defendant argues that circumstances have changed since his last petition for release, alleging that (i) "at least 9 inmates" at the FDC have contracted COVID; and (ii) he has asthma, which had not been previously disclosed. (D.I. 324 at 3) The Court finds from the record that, as was also true when the Court denied an earlier motion from Defendant in May, the Bureau of Prisons ("BOP") has continued to take necessary and reasonable measures to mitigate the risk of

COVID-19 infections within the FDC. For example, BOP has repeatedly reevaluated and revised its COVID-19 action plan, incorporated guidelines from the Centers for Disease Control into its plans, maximized social distancing within its facilities, limited visitation, and implemented testing and quarantining protocols. (D.I. 326 at 4-6) As the Third Circuit has stated, “the existence of some health risk to every federal prisoner as the result of this global pandemic does not, without more, provide the sole basis for granting release to each and every prisoner within our Circuit.” *United States v. Roeder*, 807 F. App’x 157, 161 n.16 (3d Cir. 2020).

Defendant’s new assertion relating to his asthma appears to be unsupported by the record. The government provided Defendant’s medical records in connection with its responsive brief, which the Court has reviewed. The Court has found nothing therein to support Defendant’s claim of asthma, and, as no reply brief was filed, Defendant has pointed to none. (*See generally* D.I. 326 Ex. A; *see, e.g., id.* at 5 (documenting “history of” two conditions, neither of which is asthma, and noting that Defendant “denies any . . . difficulty breathing))

In sum, Defendant has failed to meet his burden. Accordingly, his motion is denied.

**IT IS FURTHER ORDERED** that the parties shall meet and confer and, no later than January 5, 2021, advise the Court of whether they request any redactions to this sealed order. The parties must also, no later than that same date, file redacted versions of their motion and briefs (D.I. 324, 326).

  
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HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE