

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
- against -	:	<b>ORDER</b>
	:	19-CR-286 (AMD)
	:	
ROBERT SYLVESTER KELLY,	:	
	:	
	:	
Defendant.	:	
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ANN M. DONNELLY, United States District Judge:

The defendant is awaiting trial on charges of racketeering in violation of 18 U.S.C. §§ 1962(c) and 1963, three counts of Mann Act transportation to engage in illegal sexual activity in violation of 18 U.S.C. § 2421(a), three counts of Mann Act coercion and enticement to engage in illegal sexual activity in violation of 18 U.S.C. § 2422(a), one count of Mann Act coercion of a minor to engage in illegal sexual activity in violation of 18 U.S.C. § 2422(b) and one count of Mann Act transportation of a minor with intent to engage in illegal sexual activity in violation of 18 U.S.C. § 2423(a). (ECF No. 43.) On August 2, 2019, the Honorable Steven Tiscione ordered that the defendant be detained pending his trial (ECF Nos. 18 and 19), which I affirmed on October 2, 2019. The defendant also faces multiple charges in the Northern District of Illinois; the Honorable Harry D. Leinenweber has ordered that the defendant be detained pending trial in that case. *See United States v. Robert Sylvester Kelly, et al.*, No. 19-CR-567 (N.D. Ill.). The defendant is currently detained at the Metropolitan Correctional Center in Chicago, Illinois.

On March 26, 2020, the defendant moved for an emergency bail hearing and an order granting his release due to the COVID-19 pandemic. (ECF No. 48.) The government opposes the motion. (ECF No. 51.) For the reasons that follow, the motion is denied.

## DISCUSSION

The Bail Reform Act provides that a “judicial officer may, by subsequent order, permit the temporary release of [a] person . . . to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or another compelling reason.” 18 U.S.C. § 3142(i). This provision “has been used sparingly to permit a defendant’s release where, for example, he is suffering from a terminal illness or serious injuries.” *United States v. Hamilton*, No. 19-CR-54-01, 2020 WL 1323036, at \*2 (E.D.N.Y. Mar. 20, 2020) (citing *United States v. Scarpa*, 815 F. Supp. 88 (E.D.N.Y. 1993) (citation omitted)).

The defendant argues that the ongoing COVID-19 pandemic constitutes a compelling reason for his release because he is at risk of contracting the virus and because the BOP’s efforts to prevent an outbreak frustrate his ability to meet freely with his attorneys. (ECF No. 48.) While I am sympathetic to the defendant’s understandable anxiety about COVID-19, he has not established compelling reasons warranting his release. At present, there are no confirmed cases of COVID-19 at the MCC in Chicago. (ECF No. 51.) The Bureau of Prisons has announced emergency measures to protect inmates and staff, including suspending all legal and social visits, suspending inmate facility transfers, making soap available to inmates, screening and testing inmates and staff, and modifying operations at detention facilities like the MCC to maximize social distancing.<sup>1</sup>

Moreover, despite his contentions, the defendant has not demonstrated that he is “within the group of people the Centers for Disease Control and Prevention [] has categorized as most-at-risk for contracting COVID-19 . . . .” (ECF No. 48 at 1.) The defendant is fifty-three years old, twelve years younger than the cohort of “older adults” defined by the CDC as at high risk for

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<sup>1</sup> See “Federal Bureau of Prisons COVID-19 Action Plan,” *available at* [https://www.bop.gov/resources/news/20200313\\_covid-19.jsp](https://www.bop.gov/resources/news/20200313_covid-19.jsp).

severe illness from COVID-19.<sup>2</sup> Although the defendant has had a surgery during his incarceration, he does not explain how his surgical history places him at a higher risk of severe illness. Moreover, officials in Chicago have advised the government that doctors have completed all treatment for the defendant's recent operation. (ECF No. 51 at 2.)

The essence of the defendant's motion is that the BOP's protective measures interfere with his ability to prepare for his defense with counsel. (ECF No. 52 at 2-6.) First, as the defendant points out, it appears unlikely that the trial will proceed as scheduled on July 7, 2020; as conditions return to normal, the defendant and his lawyers will have additional time to prepare for trial. In any event, the defendant can continue to contact his attorneys by phone and email during this crisis, and the government informs me that the defendant has continued to meet with his attorneys, including as recently as March 18, 2020, pursuant to a case-by-case approval process at the MCC. (ECF No. 51 at 4.)

Finally, release is appropriate only if a defendant can also demonstrate that he is not a flight risk or a danger to the community. The defendant is currently in custody because of the risks that he will flee or attempt to obstruct, threaten or intimidate prospective witnesses. The defendant has not explained how those risks have changed. In fact, in *United States v. Stephens*, the case upon which the defendant relies in arguing for his release due to the COVID-19 pandemic (*see* ECF No. 52 at 3-5), the court granted release in equal part due to the pandemic *and* new evidence undermining the danger the defendant posed to the community. No. 15-CR-95, 2020 WL 1295155, at \*1 (S.D.N.Y. Mar. 19, 2020) (“[T]he Court has since learned that the arresting officer . . . initially identified a *different* individual as holding the bag that contained the firearm.”). The defendant here has not demonstrated an analogous change in circumstances that

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<sup>2</sup> See “Coronavirus Disease 2019 People Who Are At Higher Risk,” *available at* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

would alter the Court's conclusion that he is a flight risk and that he poses danger to the community, particularly to prospective witnesses.

Accordingly, the defendant's motion for a bail hearing and an order granting his temporary release is denied.

**SO ORDERED.**

s/Hon. Ann M. Donnelly

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Ann M. Donnelly  
United States District Judge

Dated: Brooklyn, New York  
April 7, 2020