

United States Court of Appeals For the First Circuit

No. 19-1632

UNITED STATES,

Appellee,

v.

MALCOLM A. FRENCH,

Defendant - Appellant.

Before

Lynch, Kayatta and Barron,
Circuit Judges.

ORDER OF COURT

Entered: March 26, 2020

Defendant-appellant Malcolm French has filed an Emergency Motion for Temporary Bail without first having presented the issues raised therein to the district court. We have reviewed the Motion and deny it without prejudice to re-filing with the sentencing judge. Should defendant re-file his motion in the district court, we ask that the judge conduct any necessary proceedings on an expedited basis.

We observe that defendant has raised a substantial question within the meaning of 18 U.S.C. § 3143(b)(1)(B). Furthermore, we note that, in its Objection to the Motion, the government did not rely on any argument that defendant is a danger or a risk of flight. Because the Motion raises fact-dependent questions, we leave to the district court the task of assessing defendant's risk of flight and whether bail conditions may adequately mitigate any such risk. We further leave to the district court the question of whether defendant can demonstrate the existence of exceptional reasons why his continued detention would not be appropriate. See 18 U.S.C. § 3145(c). In that regard, the district court should make findings that account for defendant's as-yet-undisputed health conditions, relevant guidance from the Centers for Disease Control, and the protocols of the Bureau of Prisons.

By the Court:

Maria R. Hamilton, Clerk

cc:

Thomas F. Hallett
Jamesa J. Drake
Malcolm A. French
Frank Todd Lowell
Joel B. Casey
Donald E. Clark
Julia M. Lipez