

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-3097

September Term, 2022

1:03-cr-00331-CKK-13

Filed On: March 16, 2023

United States of America,

Appellee

v.

Eliu Elixander Lorenzana-Cordon,

Appellant

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Pillard, Childs, and Pan, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the memoranda of law and fact filed by the parties. The court has determined that the issues presented occasion no need for an opinion. See D.C. Cir. Rule 36. Upon consideration of the foregoing and the motion to proceed on appeal in forma pauperis, it is

ORDERED that the motion to proceed on appeal in forma pauperis be dismissed as moot. See Fed. R. App. P. 24(a)(3). It is

FURTHER ORDERED AND ADJUDGED that the district court's November 17, 2022 order be affirmed. The district court did not clearly err in concluding that appellant failed to show exceptional circumstances warranting his release pending the resolution of his proceedings under 28 U.S.C. § 2255. See United States v. Kelly, 790 F.2d 130, 139 (D.C. Cir. 1986).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the

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resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

ELIU ELIXANDER LORENZANA-
CORDON,

Defendant.

Criminal No. 03cr331-13 (CKK)

MEMORANDUM OPINION
(November 17, 2022)

Presently before the Court is Defendant Eliu Elixander Lorenzana-Cordon's [1207] *pro se* Motion for and or Request for Bail in Relation to Pending Motion Under Title 28 U.S.C. §2255, pursuant to Title 18 U.S.C. §3143. Defendant requests that he be released on bail during the pendency of his ongoing proceedings under 28 U.S.C. §2255. After a jury trial, Defendant was convicted of Conspiracy to Import Five Kilograms or More of Cocaine into the United States and to Manufacture and Distribute Five Kilograms or More of Cocaine, Intending and Knowing that the Cocaine will be Unlawfully Imported into the United States, and Aiding and Abetting. *See* Verdict Form, ECF No. 800. Defendant was sentenced, on February 22, 2018, to a life term less six months with credit for time served in Guatemala and the United States. *See* Judgment, ECF No. 998. Defendant's judgment of conviction was affirmed by the United States Court of Appeals for the District of Columbia ("D.C. Circuit") on January 31, 2020. *See* Judgment, ECF No. 1147-1.

Defendant has moved for bail during the pendency of this Court's consideration of his motion brought pursuant to 22 U.S.C. §2255, wherein Defendant alleges that he received ineffective assistance of appellate counsel and further, that his constitutional rights were violated

through prosecutorial misconduct and false imprisonment. In support of his request for bail, Defendant relies upon 18 U.S.C. §3143 and *Cherek v. United States*, 767 F.2d 335 (7th Cir. 1985). The Court notes preliminarily that Section 3143, which provides for release of defendants pending sentence or appeal, is not applicable to defendant engaged in federal habeas corpus proceedings, whether made under Section 2254 or 2255. *See e.g., Chernek*, 767 F.2d at 337; *United States v. Dansker*, 561 F.2d 485, 486-87 (3d Cir. 1977); *Ballou v. Massachusetts*, 382 F.2d 292, 293 (1st Cir. 1967). Accordingly, Defendant in the instant case is not entitled to relief on the basis upon which he has sought it. However, the Court does have inherent authority to grant release to a habeas petitioner during the pendency of a proceeding, although this power to grant bail in habeas cases should be used sparingly. *See Cherek*, 767 F.2d at 337 (“A defendant whose conviction has been affirmed on appeal . . . is unlikely to have been convicted unjustly; hence the case for bail pending resolution of his postconviction proceeding is even weaker than the case for bail pending appeal.”) In *United States v. Kelly*, 790 F.2d 130, 139 (D.C. Cir. 1986), the D.C. Circuit noted that “[i]n a § 2255 proceeding, the court’s jurisdiction to order release . . . includes an inherent power to grant bail or release, pending determination of the merits[.]” But a “release request in such proceedings” requires a “heightened standard requiring a showing of exceptional circumstances.” *Kelly*, *id.* (citing *Baker v. Sard*, 420 F.2d 1342, 1343 (D.C. Cir. 1969)).

In order to prevail on a motion for release on bail in a habeas case, the habeas petitioner must make a “greater showing of special reasons for admission to bail pending review” when the applicant is “incarcerated because he has been tried, convicted, and sentenced by a court of law.” *Aronson v. May*, 85 S. Ct. 3, 5 (1964). In this case, after a five-week jury trial, on March 22, 2016, Defendant was found guilty of one count of conspiracy to manufacture and distribute five

kilograms or more of cocaine with the intent to unlawfully import it into the United States. Thereafter, prior to sentencing, Defendant filed two rounds of post-conviction motions for acquittal and a new trial, as well as a motion to dismiss. On June 2, 2017, this Court issued an order and opinion denying all of Defendant's motions. *See* ECF Nos. 928, 929. On December 1, 2017, Defendant filed another motion for a new trial, which was subsequently denied by this Court. *See* Order, ECF No. 991. Defendant was sentenced on February 22, 2018 to life imprisonment, and he timely filed a Notice of Appeal. The D.C. Circuit affirmed Defendant's conviction in *United States v. Lorenzana-Cordon*, 949 F.3d 1 (D.C. Cir. 2020), *rehearing en banc denied* (2020), and Defendant's petition for a writ of certiorari was denied in *United States v. Lorenzana-Cordon*, 141 S. Ct. 2688 (2021). Subsequently, Defendant filed his motion pursuant to 28 U.S.C. § 2255. Without opinion as to the merits of Defendant's arguments therein, the Court finds that Defendant's chance of success is not readily apparent. Furthermore, Defendant – who is serving a life sentence for a charge involving an international drug trafficking conspiracy – is not a good candidate for release on bail.

Accordingly, this Court shall DENY Defendant Eliu Elixander Lorenzana-Cordon's [1207] *pro se* Motion for and or Request for Bail in Relation to Pending Motion Under Title 28 U.S.C. §2255. A separate Order accompanies this Opinion. This Court notes that an order denying bail pending the resolution of Defendant's Section 2255 motion has been treated as appealable as a collateral order. *See, e.g. Grune v. Coughlin*, 913 F.2d 41, 42 (2d Cir. 1990); *United States v. Smith*, 835 F.2d 1048, 1049-50 (3d Cir. 1987); *Cherek*, 767 F.2d at 337.

/s/

COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**