

25A171

No. 24-2020

**In the Supreme Court of the United States**

**Robert Monteiro,**  
Petitioner,

v.

**United States of America,**  
Respondent.

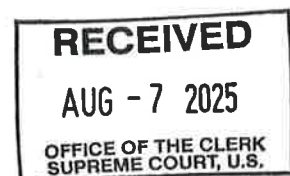
**EMERGENCY APPLICATION FOR RELEASE PENDING  
DISPOSITION OF PETITION FOR CERTIORARI OR APPEAL  
PURSUANT TO RULE 23(b)**

To the Honorable Ketanji Brown Jackson, Associate Justice of the Supreme Court of the United States and Circuit Justice for the First Circuit:

Petitioner respectfully moves, pursuant to Rule 23(b) of the Rules of the Supreme Court of the United States, for an order granting release pending appeal or disposition of a forthcoming petition for writ of certiorari.

**I. BACKGROUND**

Petitioner was convicted in the United States District Court for the District of Massachusetts following a jury trial. A motion for release pending appeal was filed in the District Court and denied. Thereafter, a renewed motion was filed in the First Circuit Court of Appeals, which was summarily denied with a very vague



explanation on July 25, 2025 (Case No. 24-2020) Additionally, for this Honorable Court's convenience a copy of the order is filed herewith.)

Petitioner has now filed a pro se application with the Supreme Court for release under Rule 23, citing substantial legal questions and exceptional reasons justifying release. These include significant procedural and evidentiary errors during trial, including the improper admission of remote, prejudicial prior bad act evidence over objection, and the government's reliance on statements outside the trial record.

## **II. REASONS FOR GRANTING RELIEF**

This is an extraordinary case that meets both prongs of 18 U.S.C. § 3143(b):

1. **\*\*Substantial legal question:\*\***

Petitioner has raised compelling arguments showing that the trial court admitted improper and prejudicial evidence under Fed. R. Evid. 404(b), in violation of First Circuit precedent. The government also relied on facts outside the trial record in opposing release and conviction. These errors raise substantial issues that would, if resolved in Petitioner's favor, likely lead to reversal or a new trial.

2. **\*\*Exceptional reasons warranting release:\*\***

Petitioner presents no flight risk and has already served a significant portion of the sentence. He also faces documented hardship while in custody, including a BOP classification concern and serious family circumstances (including a therapist-supported letter regarding the impact on his family). Continued detention would cause irreparable harm while his appeal remains unresolved.

## **III. RELIEF REQUESTED**

Petitioner respectfully requests that this Court grant this emergency application for release pending the outcome of certiorari or appeal, or alternatively, refer the matter to the full Court for consideration.

A full motion with exhibits (Exhibits A through F) has been filed contemporaneously with this Application.

Respectfully submitted,

**Robert Monteiro**

Petitioner, Pro Se

*/s/ Robert Monteiro*

Federal Prison Camp

Robert Monteiro 47453-509

P.O. BOX 200

Waymart, PA 18472

Dated: August 4<sup>th</sup>, 2025

IN THE SUPREME COURT OF THE UNITED STATES

APPLICATION FOR RELEASE PENDING APPEAL

Robert Monteiro,

Petitioner,

v.

United States of America,

Respondent.

To the Honorable Ketanji Brown Jackson, Associate Justice of the Supreme Court of the United States and Circuit Justice for the First Circuit:

Petitioner, Robert Monteiro, respectfully applies for release pending appeal pursuant to 18 U.S.C. §§ 3143(b), 3145(c), and Rule 23 of the Rules of the Supreme Court. Petitioner seeks relief from the First Circuit's denial of his motion for bail on July 31, 2025, in Case No. 24-2020, following his conviction in the District of Massachusetts.

**I. Procedural Background**

Mr. Monteiro was convicted after trial of a single count of drug conspiracy under 21 U.S.C. § 846. He was sentenced to 69 months' imprisonment. Post-conviction, he moved for a new trial and judgment of acquittal under Rule 29, both

of which were denied. He timely appealed both his conviction and those rulings. His motion for release pending appeal was also denied by the district court, and subsequently by the First Circuit.

## **II. Grounds for Relief**

### **A. The Appeal Raises Substantial Questions of Law Likely to Result in Reversal or a New Trial**

Petitioner's appeal is not brought for delay, but to resolve multiple substantial legal issues likely to result in reversal or a new trial:

#### **1. Insufficiency of Evidence**

The evidence presented at trial, even taken in the light most favorable to the government, failed to establish beyond a reasonable doubt that Mr. Monteiro knowingly and voluntarily joined the drug conspiracy. The government relied on speculation and circumstantial evidence, including unopened packages, unsupported interpretations of coded language, and weak testimony from a cooperating witness with no firsthand knowledge of key events. This issue is directly governed by *United States v. Perez-Melendez*, 599 F.3d 31 (1st Cir. 2010).

Moreover, the government failed to prove that Mr. Monteiro ever exercised actual or constructive possession of the cocaine parcels. At trial, the cooperating

witness (CW) explicitly testified that Monteiro did not open any of the packages. When asked who actually opened the boxes, the CW stated: “P would open the box.” And when asked again for clarity— “So Patrick is the one that actually opened the boxes?”—the CW confirmed: “Yes.” (See Trial Transcript Vol. 2, pg. 129, lines 16–21). This direct testimony undermines the government’s theory that Monteiro knowingly possessed or controlled the drugs. Rather, it demonstrates that someone else handled the contraband, leaving only speculative association. Under *Jackson v. Virginia*, 443 U.S. 307 (1979), such speculation cannot support a conviction beyond a reasonable doubt. This raises a substantial question of fact appropriate for appellate review.

#### A. Inconsistent Parcel Retrieval Undermines Government's Theory

The government’s claim that Mr. Monteiro quickly retrieved packages because he knew they contained narcotics is not supported by the record. In fact, the evidence shows otherwise. For example, during an August 2020 delivery to 91 Highland Street, the parcel was retrieved approximately 37 minutes after delivery, not immediately. In a separate July 2020 incident involving a parcel delivered to 24 Banks Street, Postal Inspector Powers testified that he conducted surveillance but ultimately left after observing no retrieval activity for about an hour. See Trial Transcript Vol. 4, pp. 25–26, lines 12–25.

These delays directly contradict the prosecution's narrative that swift retrievals demonstrated knowledge of a parcel's contents or urgency due to their value. Rather than supporting the inference of knowing participation, these facts weaken it. The inconsistent retrieval times truncate the theory of a consistent, coordinated drug conspiracy and undercut the claim that Mr. Monteiro's behavior reflected criminal intent. They further support the defense's position that the evidence at trial was circumstantial, incomplete, and insufficient to prove guilt beyond a reasonable doubt.

Even under the deferential standard of review for sufficiency claims — where the evidence must be viewed in the light most favorable to the verdict — these factual inconsistencies significantly weaken the government's case. The First Circuit has long held that when the government relies on circumstantial evidence to prove criminal intent, that evidence must still be logically consistent with guilt and not equally explainable by innocent behavior. Here, the delayed or absent parcel retrievals stand in direct tension with the government's theory of coordinated, value-driven actions. Viewed objectively, this evidentiary gap raises serious doubts about whether the government met its burden of proving beyond a reasonable doubt that Mr. Monteiro knowingly and willfully participated in the charged conspiracy.

## *2. Improper Admission of Lay Opinion Testimony*

Law enforcement officers offered inadmissible lay opinions on matters requiring expert qualification—e.g., that unopened parcels contained narcotics and that digital scales necessarily implied drug trafficking. These conclusions were unsupported, conclusory, and improperly vouched for Mr. Monteiro’s guilt, violating Fed. R. Evid. 701 and First Circuit precedent in *United States v. Rodriguez*, 115 F.4th 24 (1st Cir. 2024).

In one particularly troubling example, Trooper Lynch gave highly speculative testimony as follows:

“I believed in my heart that that package was the same size, shape, weight as a package that was seized three or four days later, that it was the exact same postage, that it contained 2 kilograms of cocaine. I know that.” (Trial Transcript Vol. 2, pg. 113, ll. 4–7).

Such a statement is prejudicial and improperly suggests certainty about facts not in evidence. It invites the jury to accept a subjective belief as fact without the benefit of proper foundation or cross-examination.

### *3. Improper Reliance on Evidence Outside the Trial Record*

On May 10, 2021, the Government quotes in their opposition an event that is not part of the court's record. This recorded call is quoted from the District Court's Memorandum and Order denying Mr. Monteiro's Rule 29. (See Doc. No. 703) (“Joseph called Monteiro to notify him that he would go to Monteiro’s home to pick



up his 'product,' and Monteiro responded that he would 'bring [Joseph] the bills tomorrow,' which was coded language for a suspected drug transaction.") That statement did not even come in at trial. Nowhere in the court record will you find this purported call because it was never addressed pre-trial, during trial or in any subsequent motions. Therefore, it is not part of any transcripts in the Court's record.

Here, the government's opposition callously relies on assertions and factual claims (that call) that were neither introduced at trial nor included in the record on appeal. This is improper. It is well-settled that appellate review is confined strictly to the record before the district court. See Fed. R. App. P. 10(a); *United States v. Malkowski*, 945 F.2d 225, 228 (7th Cir. 1991) ("Appellate courts are not the place to introduce new evidence."). Arguments based on materials outside the record are not only procedurally improper but also unfairly prejudicial, as they deprive the defense of an opportunity to confront or rebut those claims at trial.

***B. Exceptional Reasons Justify Release Under § 3145(c)***

Even if detention is otherwise required, exceptional circumstances exist to justify release:

**Family Hardship:** Mr. Monteiro is the primary caregiver for three children, including an infant born shortly before his incarceration. His long-time partner is

struggling with postpartum depression and financial distress in his absence. His older children, whose mother was murdered, rely on him emotionally and financially.

In *United States v. Lippold*, the district court stressed that “‘purely personal’ circumstances—like providing care for young children—do not typically rise to the level of ‘exceptional reasons,’ but clarified that such family needs ‘in combination with other factors’ might qualify.” 175 F. Supp. 2d 537, 540 (S.D.N.Y. 2001). Here, Petitioner’s caregiving role, combined with serious health issues and the strength of his appeal, clearly meet that threshold.

**Serious Health Conditions:** He suffers from Thalassemia, a blood disorder, and has been experiencing worsening hypertension and fatigue in custody.

**Minimal Criminal History:** Mr. Monteiro is a zero-point offender, has no history of violence, and spent over three years on pretrial release without incident.

**Aberrational Conduct:** The district court itself recognized his minor role in the offense. His life is otherwise marked by employment, family support, and community ties.

These conditions are consistent with other cases finding “exceptional reasons” under § 3145(c). See *United States v. DiSomma*, 951 F.2d 494 (2d Cir. 1991); *United States v. Garcia*, 340 F.3d 1013 (9th Cir. 2003).

***C. Petitioner Poses No Flight Risk or Danger***

Mr. Monteiro has strong ties to the Boston area, including his family and a long-term relationship with a Boston Police Department employee. He spent more than three years on pretrial release without incident and was classified by the Bureau of Prisons as MINIMUM security. He is very plainly neither a flight risk nor a danger to the community.

*D. Petitioner Has Made a Comprehensive, Good-Faith Effort to Contest the Conviction*

Before seeking relief from this Court, Mr. Monteiro submitted a comprehensive pro se memorandum to the district court, titled “Final Stand in the Court” (April 7, 2025 filed herewith as a exhibit), in which he directly rebutted, point-by-point, every major piece of the government’s evidence presented at trial. This letter detailed factual inaccuracies, testimonial inconsistencies, improper evidentiary rulings, and constitutionally significant errors — including prejudicial lay opinion testimony and the impermissible admission of *uncharged* prior acts. Far from seeking bail as a delay tactic, Mr. Monteiro has consistently maintained his innocence and articulated the grounds on which he believes the jury’s verdict is legally unsound. His detailed rebuttals, supported by citations to the record, underscore the sincerity and substance of his post-conviction efforts and reinforce why the appeal presents substantial questions likely to result in reversal or a new trial.

### III. Relief Requested

Petitioner respectfully requests that the Court:

1. Grant release pending appeal on personal recognizance or under reasonable conditions;
2. Alternatively, refer this application to the full Court under Rule 22;
3. Grant such other relief as may be just and proper.

Respectfully submitted,

Robert Monteiro

*/s/ Robert Monteiro*

Federal Prison Camp

Robert Monteiro 47453-509

P.O. BOX 200

Waymart, PA 18472

Dated: August 2<sup>nd</sup> , 2025

## **EXHIBITS**

### **Exhibit A – “Final Stand in the Court” Letter by Robert Monteiro**

“In the case at bar, there has been voluminous amounts of inaccurate and inconsistent information that has permeated throughout the entirety of this case. Notwithstanding my diligent attempts to dispel such misinformation, I have been met with roadblocks each time. It has been an arduous journey trying to convince the Court that a miscarriage of justice has transpired before it. Thus, I feel compelled to set the record straight. As the case-in-chief was built on falsehoods, I now seek to reveal the truth of the matter.”

“I have been detained at Wyatt Detention Facility for over 200 days, and I serve time under a sentence I believe to be invalid. As a result of this invalid conviction, I suffer unrecoverable losses and have lost valuable bonding time (eight months) with my infant son.”

(Excerpted from “The Defendant’s Final Letter to the Court,” filed April 7, 2025 in the District Court Doc. No. 700) – Filed Herewith

### **Exhibit B – Trial Transcript Excerpt (Vol. 2, pg. 113)**

#### **Trooper Lynch Testimony:**

“I believed in my heart that that package was the same size, shape, weight as a package that was seized three or four days later, that it was the exact same postage,

(Excerpted from “The Defendant’s Final Letter to the Court,” filed April 7, 2025 in the District Court Doc. No. 700) – Filed Herewith

**Exhibit B – Trial Transcript Excerpt (Vol. 2, pg. 113)**

**Trooper Lynch Testimony:**

“I believed in my heart that that package was the same size, shape, weight as a package that was seized three or four days later, that it was the exact same postage, that it contained 2 kilograms of cocaine. I know that.”

(Trial Transcript Vol. 2, pg. 113, lines 4–7)

Comment: This lay opinion was admitted despite lacking proper foundation under Fed. R. Evid. 701, and prejudicially conveyed certainty about the contents of an unopened package.

**Exhibit C – Government’s Quotation from Doc. No. 703 (Memorandum and Order denying Petitioners Rule 29)**

“Joseph called Monteiro to notify him that he would go to Monteiro’s home to pick up his ‘product,’ and Monteiro responded that he would ‘bring [Joseph] the bills tomorrow,’ which was coded language for a suspected drug transaction.”

(Quoted from the district court’s memorandum denying Rule 29 (Doc. No. 703), not introduced at trial.)

Comment: This call was never presented to the jury, admitted into evidence, or cross-examined. Its later use in opposition briefing is improper and prejudicial.

**Exhibit D – Bureau of Prisons Classification Letter (To Be Filed Herewith)**

This exhibit will include documentation from the Bureau of Prisons reflecting Mr. Monteiro's classification as a minimum-security or low-risk offender. This supports his contention that he poses no flight risk and is not a danger to the community.

**Exhibit E – Affidavit and Letter from Therapist of Raquel Cabrera (To Be Filed Herewith)**

This letter will be submitted by Raquel's licensed therapist to describe the emotional and mental health toll resulting from Mr. Monteiro's incarceration, particularly relating to postpartum depression and her challenges raising their infant child alone. Also filed herewith is the affidavit of Raquel Cabrera as she describes the hardship Mr. Monteiro's incarceration has placed upon their family. This evidence supports the 'exceptional reasons' prong under 18 U.S.C. § 3145(c) and demonstrates the extraordinary family hardship resulting from detention.

**Exhibit F – First Circuit Order Denying Bail (July 31<sup>st</sup>, 2025)**

ORDER entered by Julie Rikelman, Appellate Judge; William J. Kayatta, Jr., Appellate Judge and Seth Robert Aframe, Appellate Judge:

Defendant-Appellant Robert Monteiro has filed a motion for release pending appeal pursuant to 18 U.S.C. § 3145(c) and Federal Rule of Appellate Procedure 9(b). After careful review of the parties' submissions and the relevant portions of the record, we conclude that, with the arguments set out in the bail motion, Monteiro has failed to demonstrate his entitlement to bail pending appeal.

See 18 U.S.C. § 3143(b)(1)(B) (“substantial question of law or fact” standard); 18 U.S.C. § 3145(c) (“A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person’s detention would not be appropriate.”); see also *United States v. Zimny*, 857 F.3d 97, 100 (1st Cir. 2017) (placing burden on the defendant seeking bail).

The motion for bail pending appeal is DENIED.

[24-2020] (ALW)



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application for Release Pending Appeal was served by U.S. Mail, postage prepaid, on this \_\_\_\_ day of \_\_\_\_August 4<sup>th</sup>,2025, upon the following counsel of record:

Clerk of Court  
United States Court of Appeals for the First Circuit  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Office of the Solicitor General  
Room 5616  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Respectfully submitted,

/s/ Robert Monteiro  
Robert Monteiro

Federal Prison Camp

Robert Monteiro 47453-509

P.O. BOX 200

Waymart, PA 18472

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