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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff  
  
v.  
  
ANTHONY PELAYO,  
  
Defendant.

CASE NO. CR18-217RSM  
  
ORDER DENYING MOTION FOR  
REVIEW OF DETENTION ORDER

This matter comes before the Court on the Motion for Review of Detention Order filed by Defendant Anthony Pelayo. Dkt. #359. The Court has determined that oral argument is unnecessary. Mr. Pelayo moves for reconsideration of Magistrate Judge Tsuchida’s June 26, 2019, Order that he be detained pending trial, Dkt #151. Mr. Pelayo’s reasons for bringing this Motion now, after being detained for a year, are 1) that the COVID-19 pandemic is a significant change in circumstances imposing an unreasonable risk of harm from contagious disease while he is held in detention, and 2) the conditions of confinement where he is detained—imposed to prevent the spread of the disease—pose an unreasonable risk of future harm and deprive him of effective assistance of counsel. Dkt. #359 at 6–9. Mr. Pelayo is currently being detained at the Federal Detention Center (“FDC”) in SeaTac, Washington. Mr. Pelayo does not cite to any

1 personal medical issues or COVID-19 risk factors. He does not articulate any issue with his  
2 detention at FDC that could not be said to apply to every other detainee.

3 An appeal of a magistrate’s detention order is governed by 18 U.S.C. § 3145(b), which  
4 provides that “If a person is ordered detained by a magistrate judge... the person may file, with  
5 the court having original jurisdiction over the offense, a motion for revocation or amendment of  
6 the order.” The District Court Judge with original jurisdiction then reviews de novo the  
7 Magistrate Judge’s detention order. See *United States v. Koenig*, 912 F.2d 1990, 1192 (9th Cir.  
8 1990). In ruling on a motion for pretrial detention, the Court must answer the same questions as  
9 the Magistrate Judge; whether any condition or combination of conditions will reasonably assure  
10 the appearance of the defendant as required, and the safety of any other person and the  
11 community. 18 U.S.C. § 3142(f). The United States typically bears the burden of showing that  
12 defendant poses a danger to the community by clear and convincing evidence, and it bears the  
13 burden of showing that a defendant poses a flight risk by a preponderance of the evidence. *United*  
14 *States v. Gebro*, 948 F.2d 1118, 1120 (9th Cir. 1991). However, the Bail Reform Act expressly  
15 provides that:  
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[s]ubject to rebuttal by the person, it shall be presumed that no  
condition or combination of conditions will reasonably assure the  
appearance of the person as required and the safety of the  
community if the judicial officer finds that there is probable cause  
to believe that the person committed an offense for which a  
maximum term of imprisonment of ten years or more is prescribed  
in the Controlled Substances Act (21 U.S.C. 801 et seq.) . . . or an  
offense under section 924(c) . . . of title 18 of the United States Code

...

18 U.S.C. § 3142(e).

18 The Government has accurately recounted the charges facing Defendant Pelayo and the  
19 procedural history of this case, Dkt. #361 at 2–6, and the Court finds it unnecessary to restate all  
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1 of this background information as it is well known to the parties. Defendant is alleged to have  
2 been involved in the distribution of over 400 grams of fentanyl pills, as well as the distribution  
3 of furanyl fentanyl pills. Dkt. #279 at 1-2. These carry a mandatory minimum penalty of ten  
4 years in prison. Defendant is also facing a five-year mandatory minimum consecutive sentence.  
5 The Government notes that Defendant is “an apparently healthy 33-year old.” Dkt. #361 at 9.

6 As an initial matter, the Court finds that generalized concerns over the current COVID-  
7 19 pandemic alone are not a valid basis to reopen the issue of detention. A detention order may  
8 be reopened “at any time before trial if the judicial officer finds that information exists that was  
9 not known to the movant at the time of the hearing and that has a material bearing on the issue  
10 whether there are conditions of release that will reasonably assure the appearance of such person  
11 as required and the safety of any other person and the community.” 18 U.S.C. § 3142(f).  
12 Defendant’s basis to reopen detention relies on speculation as to the risk he faces of contracting  
13 the disease at the FDC, where the new coronavirus has not been detected, without any analysis  
14 of his personal risk factors. The Court finds that Defendants’ information is too speculative and  
15 generalized to have a material bearing.  
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18 There is a presumption of detention in this case because Defendant is facing a ten-year  
19 mandatory minimum term of imprisonment. Even if Defendant’s new COVID-19 information  
20 was not speculative, the Court finds that Defendant’s age and lack of any underlying medical  
21 conditions would not make him particularly vulnerable or otherwise part of a high-risk group.  
22 This is a significant point. Although the parties can debate whether or not the new coronavirus  
23 is or will be spreading at the FDC, the Court is not convinced that this constitutes a significant  
24 enough risk to this Defendant’s health to warrant release given the initial bases for Judge  
25 Tsuchida to order detention. *See* Dkt. #151.  
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1 The parties debate the effectiveness of various procedures at the FDC to combat the  
2 spread of COVID-19. The Court agrees with the Government that “nothing in Pelayo’s motion,  
3 or in the FDC’s current response to COVID-19, supports the conclusion FDC officials have been  
4 deliberately indifferent to the risks posed by COVID-19.” Dkt. #361 at 8.

5 Defendant argues that he is being deprived of his Sixth Amendment right to counsel given  
6 the limitations on attorney visits at the FDC. Dkt. #359 at 9. Defendant is still able to  
7 communicate with counsel via telephone, although his access has apparently been delayed or  
8 disrupted due to the FDC’s efforts at social distancing. The Court finds that, under the  
9 circumstances, this is sufficient to provide Defendant with access to counsel. Future issues with  
10 Mr. Pelayo’s ability to review discovery materials can be addressed in a separate order if  
11 necessary and do not alone warrant release.

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13 Having reviewed the briefing, along with the remainder of the record, the Court hereby  
14 finds and ORDERS that the Motion for Review of Detention Order filed by Defendant Anthony  
15 Pelayo, Dkt. #359, is DENIED.

16 DATED this 26<sup>th</sup> day of June, 2020.

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21 RICARDO S. MARTINEZ  
22 CHIEF UNITED STATES DISTRICT JUDGE  
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