

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
State of South Carolina,)
)
 vs.)
)
 [REDACTED],)
)
 Defendant.)
)
 _____)

**IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT**

WARRANT NUMBERS: [REDACTED]

**MOTION FOR BOND SETTING IN
CONSIDERATION OF COVID-19 PANDEMIC**

COMES NOW [REDACTED], Defendant in the above-entitled and numbered case, by and through undersigned counsel respectfully moves this Court to release Defendant, [REDACTED] to house arrest from the Sheriff Al Cannon Detention Center in Charleston County. [REDACTED] has been charged with Felony DUI and is awaiting trial. Initially, he was released on a \$150,000.00 surety bond. He was subsequently charged with another DUI resulting in his bond being revoked. He has been incarcerated since December of 2019. He is a resident of Charleston County. Per Your Honor's previous order, [REDACTED] is to be incarcerated without bond until bed space becomes available at Miracle Hill Ministries. However, because of the COVID-19 pandemic Miracle Hill is no longer accepting new patients.

[REDACTED] resides at [REDACTED]. There are currently four reported and confirmed cases of COVID-19 in Charleston County. However, additional cases are expected to surface. Social distance is the best way to prevent the spread of the disease.

However, [REDACTED] is unable to put this health safety advice into practice since he is incarcerated in close quarters with other detainees. Among the group of people that the Centers for Disease Control and Prevention ("CDC") has categorized as most-at-risk for contracting COVID-19, a dangerous illness spreading rapidly across the world and through Charleston County, are persons detained in prison, jail, and detention facilities.

The Bail Reform Act provides for the “temporary release” of a person in pretrial custody “to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or for another compelling reason.” 18 U.S.C. § 3142(i). The health risk to [REDACTED] is heightened because of the conditions at the Sheriff Al Cannon Detention Center since detainees are kept in close quarters with other persons. This is not the best practice to avoid the spread of this disease and weighs in favor of [REDACTED] temporary release on bail until this pandemic has ended.

During the period of release [REDACTED] will reside and remain on house arrest at [REDACTED]
[REDACTED].

Factual Background

Changed Circumstances: COVID-19 Outbreak

As of March 19, 2020, the new strain of coronavirus which causes COVID-19, has infected over 227,310 people, leading to at least 9,115 deaths worldwide.¹ On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.² President Trump, Governor McMaster, and Charleston County Council declared a State of Emergency on March 13, 2020; March 13, 2020; and March 17, 2020 respectively concerning the Coronavirus. Additional protective measures have been taken including a restriction on group gatherings of 10 or more persons; school, nursing home, and church closures; and social distancing measures. The state and federal courts have substantially curtailed court operations and the Bureau of Prisons and South Carolina Department of Corrections have suspended family visitation. There were 60 positive cases of COVID-19 in South Carolina as of Thursday, March 19, 2020. However, this is before testing for the virus was widely available. Drive by testing for first responders and those with a doctor’s order has recently been made available in several locations. With the better availability of testing, more cases will be discovered.

¹ *Johns Hopkins University of Medicine, Coronavirus Resource Center at <https://coronavirus.jhu.edu/map.html> (updating regularly).*

² *WHO Characterizes COVID-19 as a Pandemic, World Health Organization (March 11, 2020) at <https://bit.ly/2W8dwpS>.*

Persons have been asked to take immediate preventative actions, including avoiding crowded areas and staying home as much as possible.³ With confirmed cases in South Carolina that indicate community spread, we must take every necessary action to protect vulnerable populations and the community at large.

The Volvo Car Open, Highwater Festival, Charleston Bluegrass Festival along with many other major events in the low country have been cancelled, as well as almost every other event in the State of South Carolina and the entire United States.

On March 16, 2020 the mayor of Charleston issued a public safety emergency order calling for restrictions on restaurant operations and further restrictions on public gatherings, including limiting restaurants to curb-side pick-up orders only. The Governor of South Carolina announced that with more widespread testing, a lot more cases will be identified. He also announced that South Carolina is experiencing community spread. On March 16, the President of the United States has recommended that public gatherings not exceed ten persons in number.

Finally, as of today, Chief Justice Beatty has cancelled all terms of General Sessions in South Carolina until at least May 1, 2020.

Conditions of Confinement and Spread of Coronavirus

Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease.⁴ Inmates cycle in and out of detention facilities from all over the world and country, and people who work in the facilities including correctional officers, and care and service providers leave and return daily, without screening. Incarcerated people have poorer health than

³ *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at <https://bit.ly/2vgUt1P>.

⁴ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

the general population, and even at the best of times, medical care is limited.⁵ Many people who are incarcerated also have chronic conditions, like diabetes or HIV, which makes them vulnerable to severe forms of COVID-19. According to public health experts, incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe;” “infection control is challenging in these settings.”⁶ Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases.⁷ In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.⁸ Secretary of State Mike Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human decency.”⁹ Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.¹⁰ In the U.S. steps are already being taken in some jurisdictions to facilitate the release of elderly and sick prisoners and to reduce jail populations by discouraging the admission of individuals arrested on non-violent

⁵ Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfjji1112.pdf>

⁶ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

⁷ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at <https://bit.ly/2TNcNZY>.

⁸ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (Feb. 21, 2020) at <https://bit.ly/2vSzSRT>.

⁹ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020) at <https://cnn.it/2W4OpV7>.

¹⁰ Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press (Mar. 7, 2020) at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

misdemeanor charges.¹¹

Shared phones and tablets, limited laundry and clothing in the facility also prevent individuals from taking recommended precautions to minimize the spread of the virus.

Defense lawyers, many of whom are older, may also suffer from underlying vulnerabilities and/or chronic health conditions, or who live with or care for high-risk individuals.

As additional people are arrested who have been out in the community as the coronavirus spreads, if they are not symptomatic, they will be brought into the Sheriff Al Cannon Detention Center and held with the existing population, potentially bringing COVID-19 into this population held in large numbers, close quarters, in communal living conditions and low sanitary conditions

A “judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.” 18 U.S.C. § 3142(i).

The circumstances that existed when ██████ was ordered detained have now changed. There is a pandemic that poses a direct risk that is far greater if ██████ continues to be detained during this public health crisis.

Liberty is the norm and “detention prior to trial or without trials is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). One charged with a crime is, after all, presumed innocent. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). A single individual unnecessarily detained

¹¹ In New York Brooklyn District Attorney Eric Gonzalez, joined by public health experts, has asked Governor Cuomo to grant emergency clemencies to elderly and sick prisoners (Sarah Lustbader, *Coronavirus: Sentenced to COVID-19*, *The Daily Appeal* (Mar. 12, 2020) at <https://theappeal.org/sentenced-to-covid-19/>); Cuyahoga County (Ohio) is holding mass pleas and bail hearings to reduce the current jail population (<https://www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html>); Mahoning County (Ohio) jail is refusing all non-violent misdemeanor arrestees (<https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>); see also Collin County (TX) (<https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>);

before trial is one individual too many, and the increasing use of the practice places tremendous wear on our constitutional system. *United States v. Montalvo-Murillo*, 495 U.S. 711, 723–24 (1990) (Stevens, J., dissenting, joined by Brennan and Marshall, JJ.). Due to the crucial interests involved, it follows that a “case-by-case” approach is required at any stage of the case in assessing the propriety of pretrial detention. See *United States v. Gonzales Claudio*, 806 F.2d 334, 340 (2d Cir. 1986) (discussing due process analysis for evaluating propriety of prolonged pretrial detention, and the interests at stake) (citations omitted), cert. dismissed sub nom., *Melendez-Carrion v. United States*, 479 U.S. 978 (1986).

The courts have long recognized that there is no greater necessity than keeping a defendant alive, no matter the charge. As Judge Weinstein held, “We do not punish those who have not been proven guilty. When we do punish, we do not act cruelly. Continued incarceration of this terminally ill defendant threatens both of these fundamental characteristics of our democracy.” *United States v. Scarpa*, 815 F.Supp.88 (E.D.N.Y. 1993) (pretrial defendant with AIDS facing murder charges released on bail because of the “unacceptably high risk of infection and death on a daily basis inside the MCC”).

This Court should consider the “total harm and benefits to prisoner and society” that continued pretrial imprisonment of ██████ will yield, relative to the heightened health risks posed to him during this rapidly encroaching pandemic. See *Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (calling for heightened judicial scrutiny of the projected impact of jail and prison conditions on a defendant); *United States v. Mateo*, 299 F. Supp. 2d 201, 212 (S.D.N.Y. 2004) (reducing sentence where defendant’s pretrial conditions were “qualitatively more severe in kind and degree than the prospect of such experiences reasonably foreseeable in the ordinary case”).

Conditions of Release Are Available That Allow ██████ To Be Treated Humanely While Also Ameliorating Any Danger To The Community

From ██████ perspective his life—not only his liberty—is on the line, creating a powerful incentive to abide by any release conditions the Court may impose and changing the calculus that

initially led to his detention in this case. The global pandemic has caused all restaurants and clubs to be closed and has caused social gatherings to be cancelled. This fact substantially lowers the risk of [REDACTED] violating the terms of his supervision. [REDACTED] risk of violation could be further reduced by electronic monitoring, house arrest, and frequent drug and alcohol screening.

Conclusion

By his detention, [REDACTED] is among the vulnerable population at heightened risk of getting very sick from this illness. For all of the above reasons, [REDACTED] should be granted release on bond.

Respectfully submitted,

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