

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

UNITED STATES OF AMERICA

v.

Cr. 16-098 (CKK)

IVAN ROBINSON

**Defendant's Reply to the Government's Response to Defendant's
Motion for Release Pending Resolution of Motion for New Trial**

Defendant, by and through undersigned counsel, does hereby reply to the Government's opposition to defendant's Motion for Release Pending resolution of Motion for New Trial.

1. Defendant's medical history:

This Court granted defendant's request for an emergency Order requiring the Central Virginia Regional Jail to provide defendant's counsel with his medical records. Because of the rapid granting of defendant's request, undersigned counsel has now received defendant's medical records from his current place of confinement. Defendant does not desire to have his medical records made a part of the record of this case. Accordingly, copies of defendant's records will be e-mailed to the Court and

counsel.

Defendant has also been seen by a private orthopedic clinic in Lynchburg, Virginia. Those records are on order and will be provided to the Court and counsel as soon as they are received by undersigned counsel.

Defendant's attached medical records reveal and corroborate a number of significant issues relevant to this motion:

1. Defendant is wheelchair bound;
2. Defendant has been prescribed Lyrica;
3. Defendant has been prescribed Azithromycin

Wheelchair bound: Defendant sits in a wheelchair all day and every day. He cannot do any meaningful exercise. In addition, he is locked down 23 hours a day in his cell because of a policy at the Central Virginia Regional Jail.

Defendant attaches part of an article from the Cleveland Clinic dated June 23, 2015 entitled "Rheumatology and Immunology." In relevant part the article states as follows:

Your immune system could pay for your leisure. Studies have shown that exercise boosts your immune system by strengthening the cells in your body that are assigned to attack bacteria. Your body also produces antibodies during exercise that react to antigens such as bacteria or viruses by hunting

them down and destroying them.

“ Immune function is influenced by an individual’s...lack of exercise...These factors can suppress the immune system, making a person more vulnerable to infection.”

www.mysportsceince.com, 9/25/16.

Lyrica: The Pfizer website for Lyrica indicates that it is used for the management of pain, arthritis and fibromyalgia. In the Warnings and Precautions section of the website, it is urged that this medication may cause “Life-threatening Respiratory Depression.”

Defendant notes that COVID-19 attacks respiratory systems and individuals who suffer from respiratory compromise are particularly vulnerable to the virus.

In page 3 of a Cleveland Clinic attachment (Defendant’s Exhibit #1), in a section entitled “Who Qualifies as Immunocompromised”, the article states “common autoimmune inflammatory diseases can leave your immune system weakened...These include rheumatoid arthritis.”

Rheumatoid arthritis is an autoimmune disease that occurs when the body’s immune system attacks the body’s own healthy tissue. People who are experiencing an autoimmune disease are at higher risk of developing

infections. www.simplyhealth.io/learnmore

Azithromycin: “Azithromycin is used to treat different types of infections caused by bacteria, such as respiratory infections....”

www.drugs.com//arithromycin. “Macrolide antibiotics, including azithromycin, have been implicated in the modulation of host immune responses. Independently of their antimicrobial properties. The results demonstrate that azithromycin can be inhibitory with regard to protective immune responsiveness.” Academic.oup.com.jid.

Defendant has identified three conditions, corroborated by his medical records that demonstrate he is immunocompromised.

II. Inaccuracies in the government’s opposition.

The government argues as follows: “The defendant’s Motion for Release and his Supplement appear to be based solely on the current COVID-19 pandemic and a request for the Court to ignore the statute and release him...Even if there were some mechanism by which the defendant could seek release due to COVID-19, he has not shown that he is at higher risk to be severely affected by it.” Gov’t reply, page 4, PACER 367.

Defendant recognizes that the government’s reply was filed before production of the medical records. That being said, the argument is simply

wrong. As evidenced above, defendant has cited three independent and collective reasons demonstrating that he is in fact immunocompromised.

Defendant has clearly established a nexus between the virus and his continued detention in a State of Virginia correctional facility over which this Court has no control. The government argues that “the Orange facility appears dedicated and willing to address the public health crisis.” *Id.*, page 7. That argument is not sensible. The entire country is in a public health crisis and no person or governmental entity has yet devised a plan to effectively combat this virus. To be sure, this is a disease process that has been proven to be deadly when it is contracted by an immunocompromised person such as Ivan Robinson.

It is absolutely error to presume, as the government suggests, that the Orange County Regional Jail will be immune from the virus. “Given the plans in place at the Orange facility, the lack of any confirmed cases....”*Id.* This is a worldwide epidemic that has affected and is killing significant percentages of people who are contracting the virus. This is particularly true with respect to immunocompromised people. It makes no logic, and is contradicted by worldwide reports of infections and extensive reporting from other penal institutions, that somehow a small county jail in Virginia

will be immune from the crisis.

The government's reliance on Chief Judge Howell's opinion in *United States v. Smith*, 19-cr-324 (BAH) (March 23, 2020) is misplaced. At the time of Chief Judge Howell's opinion there were no known reported cases of the virus at D.C. correctional facilities. Since March 23, 2020 that status has changed and there is now at least one reported diagnosis of the virus. <https://www.washingtonpost.com/local/public-safety>. In addition, the defendant in *Smith* did not demonstrate the level of immunocompromise that defendant has demonstrated.

III. Other Jurisdictions: In an opinion issued March 24, 2020, The Alaska Court of Appeals noted that due to the pandemic the "trial court's analysis of the risk to public safety and the risk of flight posed by releasing a defendant into the community is necessarily different now than it was several weeks ago." *Karr, et al v. State of Alaska*, No. A-13630, 4.

The Southern District of New York has recognized that more liberal standards for release are necessary to sufficiently reduce and protect the jail population, *See, e.g. United States v. Stephens*, 1:15-cr-00095 (AJN) Doc. No. 2798 (S.D.N.Y. March 19, 2020) (acknowledging the changed circumstance from defendant's initial detention based upon the dangerous

nature of the COVID-19 pandemic.

IV. Orange County Regional Jail

The Center for Disease Control has issued guidelines for detention facilities to combat the virus. The guidelines include:

1. Sufficient stocks of hygiene supplies, cleaning supplies, PPE's with a plan to restock as need in the event of COVID-19 transmission;
2. Recommendation that staff and incarcerated individuals are trained to correctly identify and dispose of PPE gear;
3. Stagger meals and rearrange seating to enforce social distancing;
4. Establish a respiratory protection program so that individuals are fit tested for any respiratory protection they will need.

CDC, Interim Guidance on Management of COVID-19, last updated March 23, 2020.

We have no idea, and no evidence has been presented, that the Orange County Regional Jail has implemented the guidelines of the CDC. We have no idea if a committee has been established by the facility to manage or control the deadly virus. What we do know is that a jail is a confined area with many inmates residing in close housing and Ivan Robinson is an immobile immunocompromised detainee who is particularly

vulnerable to infection from the virus.

V. CONSTITUTIONAL CONSIDERATIONS:

The [Eighth] amendment embodies broad and Idealistic concepts of dignity, civilized standards humanity, and decency...against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with the evolving standards of decency that mark the progress of a maturing society.

Estelle v. Gamble, 97 S.Ct. 285, 290 (1976)

With particular relevance to the situation herein, the *Estelle* Court held, “We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain,’ *Gregg v. Georgia*... proscribed by the Eighth Amendment.” Id. 291.

CONCLUSION

We know beyond dispute that there is a serious and life-threatening pandemic plaguing our society. We also know that there is no conclusive way of stopping the spread of this highly contagious virus. We know that individuals, such as Ivan Robinson, who are residing in close confinement with other inmates, are at a high risk for contracting the COVID-19 virus.

The specific reasons that Ivan Robinson is a particularly vulnerable

inmate are well documented in his medical records establishing that he is immunocompromised.

The information related to Ivan Robinson, and the documented trajectory of the virus, must be addressed or a deliberate indifference will occur that can have dire consequences. The only effective means to address the crisis is to release defendant from confinement and allow him to remain on home confinement pending resolution of the Motion for New Trail.

Defendant reiterates he is a 49 year old first time, non-violent offender. He has a verified address in Mt. Rainier, Maryland and he is without the means to commit the types of crimes for which he currently stands convicted. He simply is not a danger to the community and certainly not a danger of flight.

Respectfully submitted,

_____/s/_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served, via ECF, upon all counsel of record on this the 26th day of March, 2020.

_____/s/_____
Steven R. Kiersh

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

UNITED STATES OF AMERICA

v.

19-CR-98 (CKK)

IVAN ROBINSON

DEFENDANT'S EXHIBIT #1

Article from Cleveland Clinic



June 23, 2015 / Rheumatology & Immunology

If Your Immune System Is Compromised, Can You Get Vaccinated?

Weigh the risks and benefits with your doctor

For patients with compromised immune systems, getting vaccinated often involves making complex decisions. The protection a vaccine provides is especially important to prevent illness, but do vaccines come with added risks?

Whether your system is weakened by conditions such as rheumatoid arthritis or HIV or compromised by medications such as biologics, check with your healthcare provider before receiving a vaccine.

Elizabeth Kirchner, CNP, who specializes in rheumatologic and immunologic disease, explains what risks and options patients should consider. She adds that research is underway to evaluate the safety of certain types of vaccines.

