

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

United States of America,)	
)	Civil Action No. 1:18-cr-01065-JMC
)	
)	ORDER AND OPINION
v.)	
)	
Anna Mason,)	
)	
Defendant.)	
)	
_____)	

This matter is before the court on Defendant Anna Mason’s (“Defendant” or “Defendant Mason”) Motion for Release from Custody Pending Sentencing (ECF No. 452), filed on March 25, 2020. For the reasons set forth below, the court finds that Defendant’s medical condition, the circumstances of the COVID-19 pandemic, and a mandate of home incarceration subject to stringent conditions monitored by the United States Probation Office present compelling reasons for her release. Accordingly, the court **GRANTS** Defendant’s Motion (ECF No. 452).

I. PROCEDURAL AND FACTUAL BACKGROUND

On November 20, 2018, Defendant was charged in an Indictment with a violation of 21 U.S.C. § 846, conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine and a quantity of heroin in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A) and 841(b)(1)(C). (ECF No. 3). Defendant was arrested on December 12, 2019. (ECF No. 57). At her arraignment on December 12, 2019, the Government moved for detention based on the dangerous nature of the charges in the indictment, Defendant’s flight risk, and other rebuttable presumptions under 18 U.S.C. § 3142(e). (ECF No. 61). On December 21, 2019, the Magistrate Judge held Defendant’s detention hearing. (ECF No. 160). Following the

detention hearing, the Magistrate Judge found, by clear and convincing evidence, that detention was appropriate and found that Defendant failed to rebut the presumption that she is a danger to society and is a flight risk. (ECF No. 161.)

During the time that Defendant was awaiting sentencing, the World Health Organization characterized COVID-19, also known as the novel coronavirus, as a pandemic. On March 13, 2020, the President of the United States officially declared a national emergency due to the virus. In her Motion, Defendant requests that the court release her from detention due to the seriousness of COVID-19 and because she “suffers from asthma and has to use an inhaler.” (ECF No. 452 at 4.)¹ Defendant argues that she is a non-violent offender, has taken advantage of rehabilitative opportunities while incarcerated, may live with her mother upon release, and has an underlying health condition that causes her to face more serious risks due to COVID-19 that necessitate a release before she is sentenced.² (*Id.* at 7-8). On March 27, 2020, the Government filed a Response to Defendant’s Motion (ECF No. 454), opposing Defendant’s release. Defendant then filed a Reply to the Government’s Response on March 30, 2020. (ECF No. 455.) On April 13, 2020, Defendant filed a Supplemental Memorandum in Support of her Motion (ECF No. 462).

¹ According to the CDC, people with asthma may be at higher risk of getting very ill from COVID-19. COVID-19 can affect asthma sufferers’ respiratory tract, cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease. The CDC advises asthma sufferers to take precautions such as cleaning and disinfecting frequently touched surfaces like tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, and avoiding disinfectants that can cause an asthma attack, steps which, Defendant argues, because of her confinement, she cannot undertake. (ECF No. 452 at 5.)

² By order entered March 16, 2020, the Honorable R. Bryan Harwell, Chief Judge for the District of South Carolina, directed, among other matters, that all criminal jury selections, jury trials, roster meetings, and grand jury proceedings be continued until May 8, 2020, and, unless ordered by the presiding District Judge, all other civil and criminal matters scheduled for in-court appearances through May 8, 2020, also be continued, unless the presiding District Judge and all parties agree to resolve those pending matters with appearances arranged by means other than in-court hearings.

Defendant's Motion (ECF No. 452) is ripe for review.

II. LEGAL STANDARD

Prior to 1990, a defendant could be released pending sentencing if a judicial officer found by clear and convincing evidence that the defendant was "not likely to flee or pose a danger to the safety of any other person or the community." *See* 18 U.S.C. § 3143(a) (1988)(amended 1990). If the judicial officer did not make such a finding, the defendant was detained. Against this backdrop, Congress adopted the Mandatory Detention Act of 1990. That Act made detention for specified categories of offenses mandatory with three exceptions. Two of the exceptions are based on the presence of specified conditions: (1) if the judicial officer finds a substantial likelihood that a motion for acquittal or new trial will be granted, or (2) if an attorney for the government recommends no sentence of imprisonment be imposed. 18 U.S.C. § 3143(a)(2)(A). But, the court must also find by clear and convincing evidence that defendant "is not likely to flee or pose a danger to any other person or the community." 18 U.S.C. § 3143(a)(2)(B). In this case, Defendant has not met any of these exceptions.

Defendant thus requests that the court consider releasing her pursuant to 18 U.S.C. § 3145, a more general exception to mandatory detention. Section 3145(c) provides:

(c) Appeal from a release or detention order.

An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. 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.** (Emphasis added).

As an alternative statutory basis for release, Defendant asserts that 18 U.S.C. § 3142 (i) is applicable. Section 3142(i) states:

The 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.

III. DISCUSSION

The Parties' Arguments

In her Motion, Defendant argues that she qualifies for release under § 3145(c) due to “exceptional reasons” related to her asthmatic condition during the COVID-19 pandemic, but the Government argues that Defendant “has [not] shown any evidence that she is at an increased risk for contracting COVID-19.” (ECF Nos. 452, 454.) Furthermore, the Government argues that it “contacted the United States Marshals Service who advised that the USMS is in daily contact with the local detention centers, including the Alvin S. Glenn Detention Center where [Defendant] Mason is currently housed, and there [are] no suspected or confirmed cases of COVID-19.” (ECF No. 454 at 3.) Defendant, in her Supplemental Memorandum (ECF No. 462), also argues that she should be released under 18 U.S.C. 3142(i) for “compelling reasons” related to her asthmatic condition during the COVID-19 pandemic.

The Court's Review

The first issue is whether Defendant has established that she should be released under 18 U.S.C. § 3145(c), which requires Defendant to show (1) by clear and convincing evidence that she “is not likely to flee or pose a danger to any other person or the community”, 18 U.S.C. § 3143(a)(2)(B), and (2) “exceptional reasons” exist under § 3145(c) that warrant the court to release her pending sentencing. In this case, Defendant has not met all requirements under 3145(c) because she has not shown that she is “not likely to flee or pose a danger to any other person or to the community.” As the Government correctly points out, “following the detention hearing, the Magistrate Judge found, by clear and convincing evidence, that detention was appropriate because:

1. Mason failed to rebut the rebuttal presumption; 2. Mason was a danger to the community; 3. Mason was a flight risk; 4. The weight of the evidence was strong; 5. Mason was subject to a lengthy period of incarceration; 6. Mason participated in criminal activity while on probation, parole or supervision; 7. Mason had a history of violence, or use of a weapon; 8. Mason's history of alcohol or substance abuse; 9. Mason[‘s] lack of stable employment; 10. Mason[‘s] lack of stable residence; and, 11. Mason[‘s] lack of financial responsible sureties.

ECF No. 454 (citing ECF No. 161.)

The court agrees with the Magistrate Judge that Defendant has not met her burden to establish by clear and convincing evidence that she is not a danger to the community or that she is not a flight risk. In the face of this, Defendant has not endeavored to rebut these presumptions in her Motion beyond noting that her “criminal history is not extensive” and that her “one 3-point criminal history conviction was for offenses she committed when she was 16 [years old].” (ECF No; 452 at 7.) Therefore, Defendant has not met her burden for release under 18 U.S.C. 3145(c). Nonetheless, the court also considers Defendant’s second basis for release under 18 U.S.C. 3142(i), which only takes into account whether Defendant has a “compelling reason” for release. Specifically, § 3142(i) provides that, where a detention order has been issued, “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.”

The court must decide whether a widespread threat, like COIVD-19, along with all of the other relevant circumstances presented in this particular case, satisfies the “compelling reasons” standard under 3142(i). In *United States v. Clark*, No. 19-40068-01-HLT, 2020 WL 1446895 (D. Kan. Mar. 25, 2020), the district court provided an instructive analysis of recent cases around the country where courts are addressing whether defendants should be released from custody or allowed bond conditions based solely on the present health crisis. There, the *Clark* Court

conducted an in-depth study of cases dealing with the pandemic, and the myriad of ways courts favor addressing the matter. The *Clark* Court concluded that the inquiry into whether a defendant's particular circumstances warrant release in light of the COVID-19 pandemic is appropriately considered on a case-by-case basis under the "another compelling reason" prong of § 3142(i). In making that determination, the *Clark* Court noted:

Whether a defendant's particular circumstances warrant release in light of the COVID-19 pandemic is appropriately considered on a case-by-case basis under the "another compelling reason" prong of § 3142(i), as the district court did in *United States v. Hamilton*, No. 19-CR-54-01, 2020 WL 1323036, at *2 (E.D.N.Y. Mar. 20, 2020). There, the court denied temporary release based on the COVID-19 pandemic where the defendant was of advanced age and suffered from dementia and a history of stroke and heart attack because, among other things, there had been no reported incidents of COVID-19 within the facility where he was being housed, and the Bureau of Prisons "is taking system-wide precautions to mitigate the possibility of an infection within its facilities." *Id.* The mere possibility of an outbreak at the facility was not a compelling reason to justify his release. *Id.*

Here, Defendant's emergency Motion for Release from Custody Pending Sentencing is based on the grounds that medical conditions place her at risk for complications arising from her potential infection with COVID-19 while incarcerated (ECF No. 452 at 1). When Defendant was arrested, she reported to the court's Probation Department that she has asthma. (ECF No. 94 at 4.) Since then, Defendant has proffered medical record evidence establishing that she does, in fact, suffer from asthma and is treating it with a prescribed albuterol inhaler. (ECF No. 466.) (under seal). The Center for Disease Control ("CDC") currently represents that individuals with moderate to severe asthma "may be at higher risk of getting very sick from COVID-19" and that individuals with underlying medical conditions such as asthma are at an increased risk from the virus. *See* CDC at <https://www.cdc.gov/coronavirus/2019-ncov/specificgroups/asthma.html> (last visited

April 15, 2020).³ Additionally, according to the CDC, the best way to prevent illness in these individuals is to avoid being exposed to the virus.

Defendant contends, and the court agrees, that incarceration increases her risk of exposure to the virus. While the court is certain that the United States Marshal Service (USM) has taken significant steps to protect staff, inmates, and the general public in response to the COVID-19 pandemic, it is not possible for a medically vulnerable inmate such as Defendant to isolate herself in this institutional setting as recommended by the CDC when guards and newly arrested individuals must enter the facility on a daily basis. Further, detaining Defendant in an institutional setting in close quarters with others poses a very serious risk to her health and the court should, and is, taking that risk into consideration. The Government argues that there are no suspected or confirmed cases in the specific facility in which Defendant is currently housed. (ECF No. 454.) However, Defendant asserts otherwise and cites the “State Newspaper” as reporting that two Alvin Glenn Detention Center employees recently contracted the virus. (ECF No. 462 citing www.thestate.com/news/coronavirus/article241840821.html).

The facts on which the Magistrate Judge’s December 21, 2019 detention order was based have not otherwise changed absent introduction of the COVID-19 pandemic, and but for COVID-19, there would be no basis for reconsideration of the court’s order to detain Defendant pending sentencing. In the court’s view, the pandemic pointedly changes the calculus when analyzed under 3142(i). At this time, Defendant cannot travel without a significant risk of exposure to the virus

³ Under the Federal Rules of Evidence, the court is permitted to “take judicial notice on its own.” Fed. R. Evid. 201(c). Moreover, the court may take judicial notice of a fact “that is not subject to reasonable dispute” because it is either “generally known within the trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)–(2). Based upon the motions and arguments therein, there is no dispute concerning whether contents of the CDC website are reliable.

due to the potentially severe health consequences that would follow and, therefore, her risk of flight is significantly reduced. Further, under these circumstances, there are conditions of supervised release that can reasonably assure Defendant's future appearances in court and that also balance community safety with the safety of Defendant. In the court's view, Defendant has established that her unique health concerns amid the COVID-19 pandemic is a "compelling reason" that necessitates her temporary release and is not the type of general fear for the disease that courts have ruled as unconvincing. 18 U.S.C. § 3142(i). For example, and in contrast to the instant matter, the Court, in *United States v. Lee*, No. 19-CR-298 (KBJ), 2020 WL 1541049, (D.D.C. Mar. 30, 2020), denied a defendant's motion for release where the defendant had no documented illness or pre-existing condition. The court reasoned,

And it might well be the case that *certain* defendants—and here the Court is thinking primarily of those who have underlying medical conditions that make them especially vulnerable to the virus—could become eligible for temporary release under the “another compelling reason” prong of section 3142(i) in light of the threat that the COVID-19 pandemic poses to them in particular. *See, e.g., United States v. Michaels*, No. 16-cr-76, 2020 WL 1482553 (C.D. Cal. Mar. 26, 2020). But, in *Lee*'s case, this Court agrees with those recent precedents that have rejected emergency motions for release of otherwise healthy and potentially violent defendants based solely on the generalized risks that COVID-19 admittedly creates for all members of our society.

Lee, 2020 WL 1541049, at *6.

This court determines that this is one of those situations. The court finds that Defendant has articulated compelling reasons that necessitate Defendant's temporary release under 18 U.S.C. § 3142(i). Defendant has established that (1) her specific illness (asthma) has been determined by the CDC as an illness with a higher than normal susceptibility to infection from COVID-19, (2) two Alvin Glenn Detention Center employees have tested positive for COVID-19, thus putting her at even greater risk of contracting the virus, and (3) her release plan includes an appropriate person within the meaning of the provision. *See United States v. Cordero Caraballo*, 185 F. Supp. 2d 143,

145 (D.P.R. 2002)(releasing the defendant, who the court would have detained on dangerousness grounds, to the custody of his mother and grandmother on 24-hour house arrest due to his severe injuries).

Finally, the court stresses that each case must be evaluated on its own terms, and each case requires consideration of all relevant circumstances. The “compelling reasons” analysis is flexible and permits courts to respond to real-world circumstances in a pragmatic and common-sense manner. The presence of COVID-19, combined with Defendant’s medically documented pre-existing condition, is one such circumstance. *See e.g., United States v. Robert B. Mahan, Jr.*, No. 1:19-CR-00233-DCN, 2020 WL 1846789, at *1 (D. Idaho Apr. 10, 2020) (release of pre-sentenced defendant due to asthma during COVID-19 pandemic); *United States v. McLean*, No. 19-cr-380 (D.D.C. Mar. 28, 2020) (“As counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to the community have not changed—with one exception. That one exception - COVID-19 - however, not only rebuts the statutory presumption of dangerousness, *see* 18 U.S.C. § 3142(e), but tilts the balance in favor of release.”); *United States v. Stephens*, No. 15-cr-0095 (S.D.N.Y. Mar. 19, 2020) (releasing pre-sentenced defendant in light of the “unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic...”).

Accordingly, the court orders Defendant to be released to the custody of her mother in Augusta, Georgia, with whom she will live under supervised release of 24-hour home incarceration, electronic GPS location monitoring as directed by the Probation Department, and subject to the additional conditions, which are enumerated below.

IV. CONCLUSION

Pursuant to 18 U.S.C. § 3142(i), the court concludes that compelling reasons exist for the temporary release of Defendant from custody during the current public health crisis. The court's decision in this case is based on the unique convergence of serious health issues and other risk factors facing this particular Defendant, including but not limited to Defendant's serious asthma condition, confirmed cases within Defendant's facility, and other aforementioned considerations, which place her at a substantially heightened risk of dangerous complications should she contract COVID-19 as compared to most other individuals. Accordingly, this Order should not be construed as a determination by this court that pretrial detention is unsafe or otherwise inappropriate as a general matter or in any other specific case. Accordingly, Defendant's Motion (ECF No. 452) is **GRANTED** pursuant to the following conditions of release:

1. Before release from the Alvin S. Glenn Detention Center, Defendant is to have her temperature taken or otherwise tested for COVID-19 to ensure that she does not present symptoms for the virus and does not present any threat of spreading the virus to others. In the event that Defendant has a high fever or tests positive, she shall be referred to a medical facility as directed by a United States Marshal or the United States Probation Office for appropriate treatment or immediately quarantined at the residence indicated in paragraph three (3) below. In the event Defendant is tested positive for COVID-19 and is unable to be quarantined at the residence below or treated in a medical facility, then the matter will be further reviewed by this court.
2. Upon release from detention, Defendant Mason submits to supervision by, and reports for supervision to, the United States Probation Office in the Southern District of Georgia—Augusta Division.
3. Defendant Mason shall be placed in the third-party custody of her mother, Theresa Mason, to reside with her at 263 Goshen Street in Lincolnton, Georgia. Theresa Mason agrees to (a) supervise Defendant Mason, (b) use every effort to assure Defendant Mason appears at all court proceedings, and (c) notify the court immediately if Defendant Mason violates a condition of release or is no longer in her custody.

4. Defendant Mason shall maintain her residence at the address above and may not change her residence without prior notification to, and approval of, the court or the Probation Office.

5. Defendant Mason shall participate in a Location Monitoring program with Home Incarceration, which will subject her to 24-hours-a-day lock-down at her residence with the exception of emergency medical necessities, court appearances, and legal meetings or other activities specifically permitted and approved by the court or her probation officer. In other words, Defendant Mason is not to leave her mother's home. The form of location monitoring technology shall be determined by USPO Enoch Eller or the Probation Office in the Southern District of Georgia—Augusta Division who will provide pretrial supervision. She is required to properly maintain the monitoring device. Any attempt to tamper with or mask the device's monitoring capabilities may result in removal back to incarceration and/or additional criminal charges.

6. Defendant Mason shall follow all of the rules, regulations, requirements and conditions of any bond she may obtain. She must maintain reporting requirements as directed by the Probation Office, abide by her Location Monitoring program, be permitted to travel within the District of South Carolina and the Southern District of Georgia only after receiving approval from her supervising officers, participate in all drug testing/drug program requirements if directed by her supervising officer, and abide by all other conditions imposed by the court and as directed by the Probation Office. Any violation of these, or other applicable, requirements will subject her, at a minimum, to administrative sanctions.

7. Defendant Mason shall not access the internet or make use of any internet-capable device, this includes any smartphone, computer, laptop, or video game console or any other device which would enable Defendant Mason to contact or share data with any other individual.

8. Defendant Mason shall not possess any firearm, destructive device or other dangerous weapon and shall not use or possess any narcotic drug or controlled substance unless prescribed by a licensed medical practitioner.

9. Defendant Mason must abide by any and all other conditions determined by the Probation Office or this court.

10. The Probation Office is directed to immediately alert the court, the Government, and defense counsel of any violation of the above conditions, without need for a formal violation petition. Defendant is hereby notified that violation of the conditions of release will likely result in revocation of this temporary release.

11. This Order is subject to modification or revocation by the court at any time. The court intends to terminate Defendant's temporary release and return Defendant to

pretrial detention as soon as the court concludes that Defendant no longer faces the acute health risk posed by the current circumstances.

IT IS SO ORDERED.

April 18, 2020
Columbia, SC

A handwritten signature in black ink that reads "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

UNITED STATES OF AMERICA) CR. No: 1:18-cr-01065
)
vs.)
)
ANNA MASON)
)
_____)

MOTION FOR RELEASE FROM CUSTODY PENDING SENTENCING

Defendant, Anna Mason (Mason), respectfully submits the following Motion for Release from Custody Pending Sentencing.

I. Procedural History.

Mason was arrested under the pending federal charges on December 12, 2018. Mason made her initial appearance in this Court on the same day, whereupon, the government moved for detention. Mason’s detention hearing was held on December 17, 2018, and the Honorable Shiva V. Hodges, United States Magistrate Judge, ordered Mason detained.

On July 2, 2019, under a written plea agreement, Mason pleaded guilty to count 1 of the indictment.

A presentence investigation report (PSR) has been completed. Mason submitted objections to the PSR, and an addendum has been prepared. No sentencing date has been set.

Mason has remained in pre-trial or post-plea confinement since her arrest – a period of 469 days as of the filing of this motion.

II. International, National and South Carolina COVID – 19 Effects and Responses

On March 11, 2020, the World Health Organization (WHO) classified COVID-19 as a pandemic. *WHO Characterizes COVID-19 as a Pandemic, World Health Organization* (March 11, 2020), at <https://bit.ly/2W8dwpS>. As of March 23, 2020, the Centers for Disease Control (CDC) reported 33,404 cases of COVID-19 in the United States, with 400 deaths resulting from the disease. *CDC* at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>). WHO reported that as of March 21, 2020, there were 292,142 confirmed COVID-19 cases worldwide, with 12,784 confirmed deaths resulting from the disease. (*WHO Situation Report – 62*, at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200322-sitrep-62-covid-19.pdf?sfvrsn=f7764c46_2).

On March 13, 2020, the President of the United States declared the COVID-19 pandemic a national emergency, and on the same day, the Governor of South Carolina declared the COVID-19 a state emergency.

By order entered March 16, 2020, the Honorable R. Bryan Harwell, Chief Judge for the District of South Carolina, directed, among other matters, that all criminal jury selections, jury trials, roster meetings, and grand jury proceedings be continued until May 8, 2020, and, unless ordered by the presiding District Judge, all other civil and criminal matters scheduled for in-court appearances through May 8, 2020, also be continued, unless the presiding District Judge and all parties agree to resolve those pending matters with appearances arranged by means other than in-court hearings.

Mason's sentencing date was not scheduled before the declaration of National and State emergencies, and Chief Judge Harwell's order.

III. COVID – 19 and the Incarcerated.

The CDC has issued guidance that individuals at higher risk of contracting COVID-19, *e.g.*, adults over 60 years old and people with chronic medical conditions such as lung disease, take immediate preventative actions, including avoiding crowded areas and staying home as much as possible. *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at <https://bit.ly/2vgUtlP>.

Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease. Joseph A. Bick, *Infection Control in Jails and Prisons*, *Clinical Infectious Diseases* 45(8)1047- 1055 (2007), at <https://doi.org/10.1086/521910>. Inmates cycle in and out of pretrial facilities from the local areas served by the jail, and possibly elsewhere. People who work in the facilities leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited in jail settings. Laura M. Maruschak, et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12* (2015), NCJ 248491, Washington, D.C., U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfjji1112.pdf>. 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;” concluding “infection control is challenging in these settings.” *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>. 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. *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (March 7, 2020) at <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>. In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases. Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Causes Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (February 21, 2020) at <https://bit.ly/2vSzSRT>. United States Secretary of State Michael Pompeo 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.” Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN (March 10 2020) at <https://cnn.it/2W4OpV7>. Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country. Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, Associated Press (March 7, 2020) at <https://apnews.com/af98b0a38aaabcd059092db356697>.

A. Mason’s medical condition.

According to Mason’s medical records from Morris Village and the South Carolina Department of Corrections, as well as reported in Mason’s pretrial services report, Mason suffers from asthma and has used an inhaler.¹

According to the CDC, people with asthma may be at higher risk of getting very ill from COVID-19. COVID-19 can affect asthma sufferers’ respiratory tract (nose, throat,

¹ Mason’s medical records from the Alvin S. Glenn Detention Center, where Mason is presently confined, do not reflect her asthmatic condition. Why that is so is unknown to the undersigned.

lungs), cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease. The CDC advises asthma sufferers to take precautions such as cleaning and disinfecting frequently touched surfaces like tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, and avoiding disinfectants that can cause an asthma attack, steps which, because of her confinement, Mason cannot undertake. (CDC at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/asthma.html>).

IV. This Court has the authority and should exercise that authority to release, on bond, Mason pending her sentencing.

A. The Bail Reform Act (BRA) does not require mandatory detention pending sentencing in all cases.

The Fourth Circuit has directly addressed whether someone in Mason's position, i.e., a defendant pleading guilty to a mandatory detention offense, can be released on bond pending sentencing.

In *United States v. Goforth*, 546 F.3d 712, 713 – 14 (4th Cir. 2008), the Fourth Circuit, addressing the authority of a court to allow such release, held:

[The BRA] made detention for specified categories of offenses mandatory with three exceptions. Two of the exceptions are based on the presence of specified conditions: (1) if the judicial officer finds a substantial likelihood that a motion for acquittal or new trial will be granted, or (2) if an attorney for the government recommends no sentence of imprisonment be imposed. *18 U.S.C. § 3143(a)(2)(A)*. Critical to this case, the Act amended § 3145 to create a third, more general exception to mandatory detention:

(c) Appeal from a release or detention order. An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. *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.*

Emphasis in the original.

The *Goforth* panel agreed with all other circuit courts addressing the issue and found that “because there has been nothing to ‘otherwise indicate’ that the § 3156(a)(1) definition of ‘judicial officer’ does not apply, we hold that district judges unambiguously qualify as ‘judicial officers’ under § 3145(c).” A district judge thus qualifies as a “judicial officer” and possesses “exceptional reasons” authority under § 3145(c) to order the release of defendants under § 3145(c) when “exceptional reasons” exist....” *Id* at 715.

Further, this release authority under § 3145(c) does not require a release request pending sentencing to be before the district court under an appeal of a Magistrate Judge’s detention order.

In *U.S. v Carr*, 947 F.2d 1239, 1240 (5th Cir. 2010), the Fifth Circuit reversed a district court finding that it could not consider release on bond after conviction. The appellate court held “[w]e see no reason why Congress would have limited this means of relief [under the BRA] to reviewing courts. Thus, we conclude that the ‘exceptional reasons’ language of § 3145 may be applied by the judicial officer initially ordering such mandatory detention, despite its inclusion in a section generally covering appeals.”.

B. The “exceptional reasons” is the test for release pending sentencing.

Goforth establishes that a defendant can be released pending sentencing if she establishes “exceptional reasons” why her detention “would not be appropriate” under § 3145(c).

The Second Circuit has construed the phrase “exceptional reasons” to mean, “a unique combination of circumstances giving rise to situations that are out of the ordinary.” *United States v. Lea*, 360 F.3d 401, 403 (2nd Cir. 2004). The test under § 3145(c) is

necessarily a flexible one, and district courts have wide latitude to determine whether a set of circumstances qualifies as “exceptional.” *U.S. v. DiSomma*, 951 F.2d 494, 497 (2nd Cir. 1991).

Courts addressing this issue have considered the following non-exclusive circumstances: a defendant’s health, substantial assistance, and exceptional pretrial performance/rehabilitation. Courts in the Second Circuit have found that a combination of unique facts that includes personal factors may be so exceptional as to warrant release. *United States v. DiMattina*, 885 F. Supp. 2d 572, 589 (E.D.N.Y. 2012).

C. Mason has demonstrated exceptional reasons for her release.

The COVID – 19 pandemic is an exceptional reason for Mason’s release. Mason’s underlying medical condition which makes COVID – 19 much more threatening to her health is another exceptional reason for her release.

Mason’s criminal history is not extensive. She has no prior drug convictions. Her one 3-point criminal history conviction was for offenses she committed when she was 16, although she was sentenced as an adult.

Mason’s mother lives in Lincolnton, Georgia, and has been very supportive of her daughter. She is taking care of Mason’s two young children. The undersigned is informed Mason will live at her mother’s home if released on bond.

Regarding the offense to which Mason pleaded guilty, which is a serious offense, nevertheless, there is no violence associated with Mason’s involvement with that offense, and there is no evidence Mason ever carried or used a weapon of any sort in relation to that offense.

Since her arrest and confinement, now 15 months ago, Mason has availed herself of every possible avenue of rehabilitation, though those avenues are severely limited in a local jail.

Mason has obtained Certificates of Completion in Emotional Literacy 101, Recovery for Life Training, and Civics, and received a Platinum Ready for Work credential. These certificates and credential are attached collectively as **Exhibit “A.”**

While these achievements may seem minor, they represent everything that is available to Mason under her present circumstances of confinement. They demonstrate Mason’s strong motivation and desire to rehabilitate herself.

Finally, there is the further delay resulting from the COVID – 19 pandemic. Mason’s sentencing hearing has not been continued – it has not even been scheduled. As of 2016, the average pretrial detention period (from initial appearance to sentencing) was 255 days (although several districts averaged over 400 days in pretrial detention). Amaryllis Austin, *The Presumption for Detention Statute’s Relationship to Release Rates*, 81 FEDERAL PROBATION 52, 53 (2017), at <https://perma.cc/9HGU-MN2B>. Mason’s pre-trial, post-guilty-plea to sentencing detention period, as of March 25, 2020, is 469 days, with no end in sight.

Mason is more than willing to be subjected to whatever restrictions the Court deems appropriate, including electronic monitoring, curfew, participation in drug treatment program(s), and the like.

V. CONCLUSION

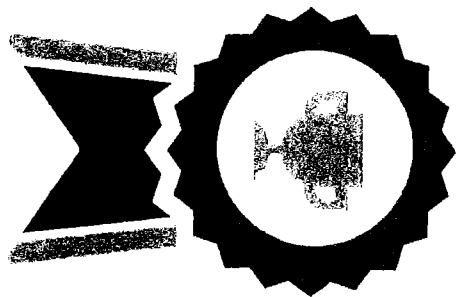
For the reasons set forth above, Mason respectfully requests the Court release Mason on bond pending her sentencing.

CALLISON TIGHE & ROBINSON, LLC

/s/ Louis H. Lang
Louis H. Lang, Esq., Fed.ID#240
1812 Lincoln Street, Suite 200
Post Office Box 1390
Columbia, SC 29202-1390
Telephone: (803) 404-6900
E-mail: louislang@callisontighe.com

Counsel for ANNA MASON

Columbia, South Carolina
March 25, 2020



Y
Certificate of
Completion
RECOVERY FOR LIFE SERIES

awarded to

Anna Mason

*in recognition of
your dedication, passion, and hard work*

Regina Davis, CPS
Name / Title of Presenter

2/26/2020
Date

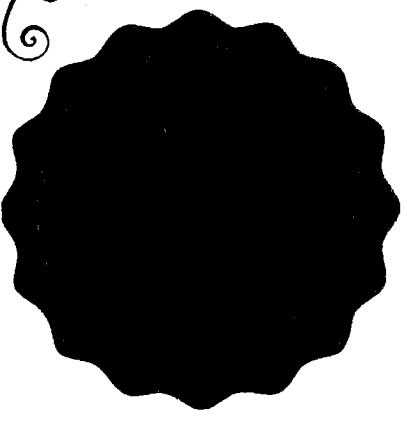
CERTIFICATE of COMPLETION

THIS ACKNOWLEDGES THAT

Anna Mason

HAS SUCCESSFULLY COMPLETED

Emotional Literacy 101

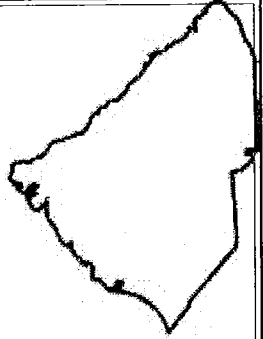


x 

SIGNED,
Jessica Blizzard, Library Social Worker



**RICHLAND
LIBRARY**



**SOUTH CAROLINA CERTIFIED
PEER SUPPORT SPECIALIST**

OFFERING HOPE THROUGH LIVED EXPERIENCE

Certificate of Completion

Recovery for Life Training

July 2019

Anna Mason

Bonnie Pate

Bonnie Pate, Executive Director
SC SHARE

Platinum Ready to Work Credential

Ready to Work is based on validated career readiness assessments that provide a direct comparison of the skills an individual possesses with the skills needed to perform a job. The holder of this credential has a Platinum Credential which indicates the achievement of career readiness skills at a level required by 99% of all jobs in today's job market. The holder of this credential has mastered all the related skills leading up to and including:

Applied Mathematics Skills for Level 6

- Use fractions, negative numbers, ratios, percentages, or mixed numbers
- Rearrange a formula before solving a problem
- Use two formulas to change from one unit to another within the same system of measurement
- Use two formulas to change from one unit in one system of measurement to a unit in another system of measurement
- Find mistakes in items that belong at Levels 3, 4, and 5
- Find the best deal and use the result for another calculation
- Find areas of basic shapes when it may be necessary to rearrange the formula, convert units of measurement in the calculations, or use the result in further calculations
- Find the volume of rectangular solids
- Calculate multiple rates

Locating Information Skills for Level 6

- Draw conclusions based on one complicated graphic or several related graphics
- Apply information from one or more complicated graphics to specific situations
- Use the information to make decisions

Reading for Information Skills for Level 7

- Figure out the definitions of difficult, uncommon words based on how they are used
- Figure out the meaning of jargon or technical terms based on how they are used
- Figure out the general principles behind the policies and apply them to situations that are quite different from any described in the materials

There are four credential levels (Bronze, Silver, Gold, and Platinum). Each level requires successful completion of all three employability skills assessments. (Applied Mathematics, Locating Information, and Reading for Information).

Bronze requires a minimum score of 3 on all academic assessments.
A bronze level credential demonstrates career readiness skills for 35% of today's jobs.

Silver requires a minimum score of 4 on all academic assessments.
A silver level credential demonstrates career readiness skills for 65% of today's jobs.

Gold requires a minimum score of 5 on all academic assessments.
A gold level credential demonstrates career readiness skills for 90% of today's jobs.

Platinum requires a minimum score of 6 on all academic assessments.
A platinum level credential demonstrates career readiness skills for 99% of today's jobs.

Employers, to verify this Credential, please call 1-888-717-9461.

The South Carolina Ready to Work

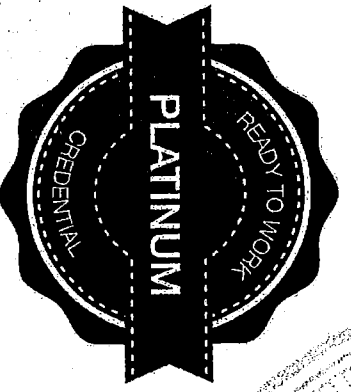
PLATINUM CREDENTIAL

has been earned by

Anna Mason

for demonstrating mastery of the academic and employability skills.

2/12/2019



A handwritten signature in black ink, appearing to read 'Henry McMaster'.

Henry McMaster, Governor

CERTIFICATE OF COMPLETION

Divics:
Your Rights and Duties

awarded to

Anna Mason

Awarded this 1st of October, 2019

Paul R. Wall

Instructor



Interim Guidance for COVID-19 for Correctional Facilities

This guidance is based on what is currently known about the transmission and severity of novel coronavirus disease 2019 (COVID-19). This is a rapidly evolving situation, and South Carolina Department of Health and Environmental Control (DHEC) will update this guidance as needed and as additional information becomes available.

All South Carolina facilities should carefully review the current CDC interim infection control recommendations regarding residents who require or may require evaluation for COVID-19 available at the following links: <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/infection-control.html>.

Overview of COVID-19:

- Discovered in Wuhan, China in December 2019. Since its initial discovery it has spread world-wide and is considered a Pandemic.
- The virus spreads person-to-person via respiratory droplets that are expelled from the sick individual while sneezing or coughing. One can also become infected through touching objects that have these respiratory droplets on them and then touching their eyes, nose, or mouth.
- Symptoms can appear 2 to 14 days after exposure to the virus. Symptoms include fever, cough, and shortness of breath; however, symptoms can range from mild to severe.
- Those at risk for severe illness include elderly adults, immunocompromised individuals, individuals with serious chronic medical conditions (i.e., heart disease, diabetes, lung disease). Currently, there is not enough data to say that pregnant women are not high risk (see resources: CDC Guidance on Pregnancy & Breastfeeding COVID-19).

Infection control recommendations to minimize exposure upon entrance to the facility:

- Ensure proper communication with staff, inmates/detainees, and visitors, including legal counsel, regarding current visitation policies and provide other healthcare facilities and emergency medical services (EMS) with proper details regarding residents before their arrival to the facility and when planning to meet an inmate's/detainee's or staff's individual needs and care goals.
- Ensure procedures (e.g. screening questions and temperature checks) are in place at the correctional facility's point of entry to detect and isolate new inmates/detainees who might require further evaluation for COVID-19. Immediately provide a facemask to these persons and contact medical personnel (see resources: Bureau of Prisons' Visitor/volunteer/contractor COVID-19 Screening Tool).
- Staff and facility workers should be screened upon each entry into the facility. If the staff member is coming from an area with community transmission or has answered yes to any of the screening questions, then the staff member's temperature should be taken

March 24, 2020



Interim Guidance for COVID-19 for Correctional Facilities

at each time of entry for 30 days (see resource: Federal Bureau of Prisons COVID-19 Action Plan).

- Due to the ease of spread among the high-risk populations and close quarters in correctional facilities, facilities should discourage visitation, and group activities. Facilities should begin screening visitors even before COVID-19 is identified in their community.
 - *As of March 13, 2020, visitation at state and local correctional facilities in all 46 counties shall be suspended immediately per state of emergency declaration order from Governor McMaster.****
- Access to in-person legal counsel remains important and can be determined on a case-by-case basis at the local level. If approved, the legal counsel should undergo health screenings and a temperature check (see resource: Federal Bureau of Prisons COVID-19 Action Plan).
- Contractors that perform essential services (i.e. medical services, mental health services, religious services, and critical infrastructure repairs) and necessary maintenance to the facility should undergo health screenings and temperature checks before entrance into the facility.
- Limit inmate transfers to other facilities unless it is for forensic studies, interstate agreements on detainees (IAD), judicial proceedings, medical or mental health reasons, and Residential Reentry Center (RCC) placements.
- All persons entering the facility should perform hand hygiene.
 - Hand washing with soap and water **for at least 20 seconds**. Steps: (1)wet hands with clean water, (2)lather with soap, (3)sing the Happy Birthday Song (20 seconds in length), (4)rinse hands with clean water, (5)dry hands with clean paper towel or air dry. OR
 - Use of Alcohol Based Hand Sanitizer (ABHS) **that contains at least 60% alcohol**. Cover all surfaces of your hands and rub them together until they feel dry.
- Contact local health department if you suspect an inmate/detainee or staff member has COVID-19 (see last page).

Infection control recommendations to minimize risk within the facility:

- Provide education on proper hand hygiene, respiratory etiquette, and social distancing of at least 6 feet from other individuals to staff and inmates/detainees (see resource: CDC's How to Protect Yourself).



Interim Guidance for COVID-19 for Correctional Facilities

- If allowed, post signs throughout the facility encouraging hand hygiene, respiratory etiquette, and avoiding touching your face with unwashed hands (see resources: CDC's COVID-19 Print Resources & DHEC COVID-19 Education & Outreach Materials).
- If feasible, have hand hygiene available at all entry points and other high activity areas of the building. If inmates cannot use ABHS then hand washing is the best alternative:
 - Hand Washing with soap and water **for at least 20 seconds**. Steps: (1)wet hands with clean water, (2)lather with soap, (3)sing the Happy Birthday Song (20 seconds in length), (4)rinse hands with clean water, (5)dry hands with clean paper towel (see Resource: CDC's When and How to Wash Your Hands).
- Hand hygiene should be practiced: before, during, and after preparing food, before eating, before and after caring for someone that is sick, before and after using the toilet, after blowing your nose/sneezing/coughing, before and after touching your face, after touching garbage, etc (see Resource: CDC's When and How to Wash Your Hands).
- Keep restrooms stocked with soap, disposable paper towels, and use non-touch disposal receptacles with liners if possible.
- Routinely clean all frequently touched surfaces within the facility (i.e., doorknobs, light switches, handrails, bathroom fixtures, countertops, tables, chairs, elevator buttons, workstations, workout room equipment, dining condiment containers, etc). To do this use an EPA-registered disinfectant and follow cleaning directions on the label (see resources: CDC's List of EPA Registered Disinfectant- COVID-19).
- Minimize group dining and/or outside activities by staggering meal and outside times if facility layout permits.

To ensure the health and safety of healthcare personnel and facility workers:

- Educate, train, and practice the appropriate use of PPE with healthcare personnel and workers that may be at risk of exposure to COVID-19 prior to caring for an inmates/detainee (see resources: CDC's Protecting Healthcare Personnel).
- Healthcare personnel and staff at risk of exposure to an individual presenting with signs, symptoms, and/or exposure criteria consistent with COVID-19 should adhere to **Standard, Contact, and Airborne Precautions including eye protection** (e.g., goggles or face shield; NOTE: glasses are not sufficient for protection).
- Require appropriate hand hygiene with soap and water or ABHS before and after all inmates/detainee contact, contact with potentially infectious material, and before putting on and upon removal of PPE, including gloves. Use soap and water if hands are visibly soiled or when otherwise indicated. See above sections for proper ABHS and hand washing practices.



Interim Guidance for COVID-19 for Correctional Facilities

- Require staff members to stay home for the appropriate amount of time if they are ill (until symptoms are gone for 24 hours) or if they have come into contact with a suspect COVID-19 positive individual (14 days after exposure). If you are experiencing a staff shortage and need guidance, contact your local health department for guidance (see last page).

Infection Control Measures for Asymptomatic & Symptomatic Individuals:

- Inmates/detainees that are asymptomatic but have exposure risk factors should be quarantined for 14 days after exposure and monitored for symptoms. If symptoms develop see next bullet.
- Symptomatic inmates/detainees with exposure risk factors should be isolated and tested for COVID-19 per state public health protocols. (see resources: DHEC HAN Alert for up-to-date guidance).
- If staff or of employees start to experience symptoms while on the job, give a facemask to these persons, remove them from contact with inmates/detainees, and contact medical personnel.

It is important to ensure policies and practices are in place to reduce exposure to respiratory pathogens. The risk for contracting influenza remains high in SC, and DHEC reminds you there is still time to offer influenza vaccine to your inmates/detainees and staff if they have not already received the influenza vaccine this season.

To prevent any virus, all individuals including, but not limited to, staff, inmates/ detainees, and visitors are advised to take the following steps:

- Perform hand hygiene frequently;
- Adhere to respiratory hygiene and cough etiquette; and
- Stay isolated or at home when experiencing symptoms of illness.

How to Report a Suspect COVID-19 Case

Report to the DHEC Regional Epidemiology office (listed below) in the region in which the patient resides.

Immediately Reportable (TELEPHONE)

Lowcountry Allendale, Bamberg, Beaufort, Berkeley, Calhoun, Charleston, Colleton,	Midlands Aiken, Barnwell, Chester, Edgefield, Fairfield, Lancaster, Lexington, Kershaw,	Pee Dee Clarendon, Chesterfield, Darlington, Dillon, Florence,	Upstate Abbeville, Anderson, Cherokee, Greenville, Greenwood,
--	--	---	--



Interim Guidance for COVID-19 for Correctional Facilities

<p>Dorchester, Hampton, Jasper, Orangeburg</p> <p>4050 Bridge View Drive, Suite 600 N. Charleston, SC 29405</p> <p>Office: (843) 441-1091 Fax: (843) 953-0051</p> <p>Nights/Weekends: (843) 441-1091</p>	<p>Newberry, Richland, Saluda, York</p> <p>2000 Hampton Street Columbia, SC 29204</p> <p>Office: (888) 801-1046 Fax: (803) 576-2993</p> <p>Nights/Weekends: (888) 801-1046</p>	<p>Georgetown, Horry, Lee, Marion, Marlboro, Sumter, Williamsburg</p> <p>1931 Industrial Park Road Conway, SC 29526</p> <p>Office: (843) 915-8886 Fax: (843) 915-6502 Fax2: (843) 915-6506</p> <p>Nights/Weekends: (843) 915-8845</p>	<p>Laurens, McCormick, Oconee, Pickens, Spartanburg, Union</p> <p>200 University Ridge Greenville, SC 29602</p> <p>Office: (864) 372-3133 Fax: (864) 282-4373</p> <p>Nights/Weekends: (864) 423-6648</p>
--	--	---	--

What to Report

-
- | | |
|--|---|
| <ul style="list-style-type: none"> • Patient’s name • Patient’s complete address, phone, county, date of birth, race, sex, last five digits of social security number • Physician’s name and phone number • Name, institution, and phone number of person reporting • Disease or condition (suspect 2019-nCoV) • Date of diagnosis • Symptoms | <ul style="list-style-type: none"> • Date of onset of symptoms • Recent travel history (locales, arrival dates, departure dates, mode of transportation) • Lab results, specimen site, collection date • If female, pregnancy status • Patient status: In childcare, food-handler, health care worker, childcare worker, nursing home, prisoner/detainee, travel in last 4 weeks |
|--|---|

HIPAA: Federal HIPAA legislation allows disclosure of protected health information, without consent of the individual, to public health authorities for the purpose of preventing or controlling disease. (HIPAA 45 CFR §164.512)



Interim Guidance for COVID-19 for Correctional Facilities

COVID-19 Resources for Correctional Facilities

South Carolina Department of Health and Environmental Control (DHEC):

COVID-19 Education & Outreach Materials: <https://www.scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/educational-outreach-materials-2019-ncov>

COVID-19 Website: <https://www.scdhec.gov/index.php/health/infectious-diseases/viruses/coronavirus-disease-2019-covid-19>

DHEC HAN Alert: <https://scdhec.gov/health-professionals/south-carolina-health-alert-network>

SC State of Emergency Order: <https://governor.sc.gov/news/2020-03/gov-henry-mcmaster-declare-state-emergency-order-lancaster-kershaw-county-schools>

South Carolina Department of Corrections (SC DOC):

SC DOC: <http://www.doc.sc.gov/>

American Jail Association:

American Jail Association COVID-19 Resources:
<https://www.americanjail.org/content.asp?admin=Y&contentid=282>

Centers for Disease Control and Prevention (CDC):

Coronavirus (COVID-19) Information: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

COVID-19 Hospital Preparedness Assessment Tool: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/hospital-preparedness-checklist.pdf>

***Note:** Even though for hospitals, this provides a good foundation for all healthcare facilities to ensure their preparedness.

Frequently Asked Questions: <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

Guidance on Evaluating and Reporting Persons Under Investigation (PUI):
<https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>

Guidance for Risk Assessment and PH Management of HCP with potential Exposure to Coronavirus:
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>

Guidance on Pregnancy & Breastfeeding COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/pregnancy->



Interim Guidance for COVID-19 for Correctional Facilities

[breastfeeding.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fpregnancy-faq.html](#)

How to Protect Yourself: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>

Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes: <https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html>

List of EPA Registered Disinfectant- Novel Coronavirus (COVID-19)- Fighting Products: <https://www.americanchemistry.com/Novel-Coronavirus-Fighting-Products-List.pdf>

Preventing the Spread of Coronavirus Disease 2019 in Homes and Residential Communities: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html>

Print Resources: <https://www.cdc.gov/coronavirus/2019-ncov/communication/factsheets.html>

When and How to Wash Your Hands: <https://www.cdc.gov/handwashing/when-how-handwashing.html>

Federal Bureau of Prisons (BOP):

COVID-19 Action Plan: https://www.bop.gov/resources/news/20200313_covid-19.jsp

Implementing Modified Operations: https://www.bop.gov/coronavirus/covid19_status.jsp

Visitor/volunteer/contractor COVID-19 Screening Tool: https://www.bop.gov/coronavirus/docs/Visitor_Volunteer_Contractor_COVID-19%20Screening_v1_March_2020.pdf

National Commission on Correction Health Care (NCCHC):

NCCHC: COVID-19 (Coronavirus): What You Need to Know in Corrections: <https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections>

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

UNITED STATES OF AMERICA)	Criminal Action No. 1:18-1065
)	
)	
v.)	
)	GOVERNMENT’S RESPONSE TO
)	DEFENDANT’S MOTION
)	REQUESTING A BOND HEARING
ANNA MASON)	

On November 20, 2018, Anna Mason was charged in an Indictment, with a violation of 21 U.S.C. § 846, conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine and a quantity of heroin, a violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A) and 841(b)(1)(C). (ECF #3). Mason was arrested on December 12, 2020. (ECF #57). At her arraignment on December 12, 2020, the Government moved for detention based on the dangerous nature of the charges in the indictment, the defendant’s flight risk and under the rebuttable presumption of 18 U.S.C. 3142(e). (ECF #61). On December 21, 2020, the Magistrate Judge held Mason’s detention hearing. (ECF #160). Following the detention hearing, the Magistrate Judge found, by clear and convincing evidence, that detention was appropriate because:

1. Mason failed to rebut the rebuttal presumption;
2. Mason was a danger to the community;
3. Mason was a flight risk;
4. The weight of the evidence was strong;
5. Mason was subject to a lengthy period of incarceration;
6. Mason participated in criminal activity while on probation, parole or supervision;
7. Mason had a history of violence, or use of a weapon;
8. Mason’s history of alcohol or substance abuse;
9. Mason lack of stable employment;
10. Mason lack of stable residence; and,
11. Mason lack of financial responsible sureties.

(ECF #161).

On July 2, 2019, Mason pled guilty to Count 1. A Presentence Report and Addendum have been completed and the parties are awaiting a sentencing hearing in this matter. Mason's guideline range is 135-168 months. On March 25, 2020, Mason filed a motion requesting a bond hearing based on her medical condition puts her more at risk of COVID-19, that she lacks an extensive criminal history and did not use a weapon in commission of this offense. (ECF #452). Of these three arguments, the last two are not new and were either raised or could have been raised at her initial detention hearing. Her argument regarding COVID-19 is based on general concerns and her allegation that she is more prone to COVID-19 based upon her asthma and an argument that the Alvin S. Glenn Detention Center is unequipped either to prevent transmission of COVID-19 among detainees and staff or to isolate and treat individuals who become infected.

The Government does not believe that Mason has shown any evidence that she is at an increased risk for contracting COVID-19. Furthermore, the Government contacted the United States Marshals Service who advised that the USMS is in daily contact with the local detention centers, including the Alvin S. Glenn Detention Center where Mason is currently housed, and there is no suspected or confirmed cases of COVID-19. Additionally, the USMS advised that the detention centers are conducting medical screenings and following South Carolina DHEC guidance for new admissions of inmates to the facilities, including taking temperatures and monitoring new and current inmates for symptoms.

Given these facts, the Government asserts that Mason has not shown a sufficient basis to overrule the Court's previous decision concerning detention pending sentencing

in this matter. For these reasons, the Government opposes Mason's motion and respectfully request it be denied.

Respectfully submitted,

A. LANCE CRICK
ACTING UNITED STATES ATTORNEY

By: s/ William K. Witherspoon
William K. Witherspoon (Federal ID #5945)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina, 29201

March 27, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

UNITED STATES OF AMERICA) CR. No: 1:18-cr-01065
)
vs.)
)
ANNA MASON)
)
_____)

**REPLY TO GOVERNMENT’S RESPONSE TO MOTION FOR RELEASE FROM
CUSTODY PENDING SENTENCING**

Defendant, Anna Mason (Mason), respectfully submits the following Reply to the government’s Response to her Motion for Release from Custody Pending Sentencing.

REPLY

The government seeks to minimize the threat of the COVID – 19 pandemic by asserting: (1) Mason’s motion for release pending sentencing is based only on her “general concern” regarding COVID – 19 and the *allegation* she is more prone to COVID – 19 infection; (2) the U.S. Marshal’s Service is in daily contact with the Alvin S. Glen Detention Center (ASGDC); (3) there are no “suspected or confirmed” COVID – 19 cases at the ASGDC; (4) ASGDC is conducting medical screenings; and (5) ASGDC is following South Carolina Department of Health and Environmental Control (SCDHEC) guidelines for new admissions and is taking the temperatures of new and current inmates. (Gov’t Response at 2).

Mason does not “allege” she is at greater risk for serious health consequences should she be infected by COVID – 19; she is, unless one wishes to challenge the Center for Disease Control’s conclusions regarding asthma suffers and COVID – 19. *People at*

Risk for Serious Illness from COVID-19, CDC (March 12, 2020) at <https://bit.ly/2vgUtlP>. Further, the government does not challenge the conclusions of the authorities cited in Mason's Motion for Release Pending Sentencing that jail inmates, because of the environment they inhabit, are particularly susceptible to COVID – 19 type outbreaks. *See e.g.*, Joseph A. Bick, *Infection Control in Jails and Prisons*, *Clinical Infectious Diseases* 45(8)1047- 1055 (2007), at <https://doi.org/10.1086/521910>. Mason respectfully submits that she should not be placed in the position of waiting until she becomes infected with COVID – 19, and suffers the increased health consequences from that infection because she has asthma, before she can legitimately seek relief. Given the extraordinary circumstances now extant in the United States and South Carolina resulting from the COVID – 19 pandemic, the Court should grant Mason's Motion for Release Pending Sentencing.

The undersigned does not doubt that the United States Marshal's Services is in daily contact with ASGDC. Witnessing a train wreck does nothing to avert the wreck or assist the victims. Daily contact with ASGDC is similarly ineffective.

While there may be no "suspected" COVID – 19 cases at ASGDC now, that is little comfort to Mason and does not mean there will not be suspected and confirmed cases tomorrow or the next day.

While ASGDC may be conducting medical screenings, the government fails to describe what those medical screenings consist of and who are their subjects. The government does not assert that anyone – inmate or staff – at the ASGDC has actually been *tested* for COVID – 19, which is the only way to confirm an infection and thus accurately report the level of COVID – 19 infection at ASGDC.

Finally, Mason does not doubt that the ASGDC is following SCDHEC guidelines for new admissions and taking the temperatures of new and current inmates.

However, the SCDHEC guidelines for correctional institutions available on – line, a copy of which are attached as **Exhibit “A,”** are dated March 24, 2020, eleven days *after* the declarations of national and state emergencies because of the COVID – 19 pandemic. ASGDC could not follow the SCDHEC guidelines before March 24, 2020, because there appear to have been none. Further, those guidelines do not address one of the key factors in preventing the spread of COVID -19 – social distancing – other than to say that inmates and staff should be provided “education” on the subject.

Social distancing is one of the keys to avoiding COVID- 19 infection. “Researchers say that SARS-CoV-2’s [COVID – 19] rapid spread is likely due to the movements of people with no or very mild symptoms — namely, those who are unaware that they even have the virus.” Maris Cohut, Phd., *Why Social Distancing is Key to Containing the New Coronavirus*, Medical News Today, March 24, 2020, <https://www.medicalnewstoday.com/articles/why-social-distancing-is-key-in-containing-the-new-coronavirus>. Mason resides in “U” Pod at ASGDC, where there is little physical separation between where inmates eat and sleep, and equally little physical separation between those areas and the restrooms and shower facilities. Social distancing is impossible in “U” Pod.

CONCLUSION

The Court has now had the advantage of the presentence investigation report prepared by the United States Probation Office regarding Mason, which the United States Magistrate Judge did not have when, over 464 days ago, Mason’s detention hearing was

held. Mason respectfully submits her social history and minimal prior criminal record support the relief she seeks here.

Based on the foregoing, and the matters set forth in Mason's Motion for Release Pending Sentencing, Mason respectfully submits she has shown exception reasons for such release and the Court should grant her motion.

CALLISON TIGHE & ROBINSON, LLC

/s/ Louis H. Lang
Louis H. Lang, Esq., Fed.ID#240
1812 Lincoln Street, Suite 200
Post Office Box 1390
Columbia, SC 29202-1390
Telephone: (803) 404-6900
E-mail: louislang@callisontighe.com

Counsel for ANNA MASON

Columbia, South Carolina
March 30, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

UNITED STATES OF AMERICA) CR. No: 1:18-cr-01065
)
vs.)
)
ANNA MASON)
)
_____)

**SUPPLEMENTAL MEMORANDUM TO DEFENDANT’S MOTION FOR
RELEASE FROM CUSTODY PENDING SENTENCING**

Defendant, Anna Mason (Mason), respectfully submits the following Supplemental Memorandum to her Motion for Release from Custody Pending Sentencing.

I. Procedural History.

Mason moved for Release from Custody Pending Sentencing (docket number 452) on March 25, 2020. The government filed its response (docket number 454) on March 27, 2020, and Mason filed her Reply to that Response (docket number 455) on March 30, 2020.

II. Supplemental Argument.

In response to Mason’s Motion for Release Pending Sentencing, the government argued that, as of the date of its response, “there [are] no suspected or reported cases of COVID-19” at the Alvin S. Glenn Detention Center (ASGDC), where Mason is housed. (Gov’t’s Response at 2).

This is no longer the case. Reported in the State Newspaper on April 8, 2020, two ASGDC employees have tested positive for COVID-19.

<https://www.thestate.com/news/coronavirus/article241840821.html>.

The April 8, 2020 State Newspaper article says the “confirmation of the employee cases came after a Richland County Council committee met Tuesday [April 7, 2020]....” It is not known when the employees were tested and when it was first learned they were positive. Nor is it known why the employees were tested or if any inmates or pretrial detainees such as Mason have been tested or, if so, why.

Mason would also respectfully invite the Court’s attention to the Order of the Honorable Jesse M. Furman, United States District Judge for the Southern District of New York, in *United States v. Nkanga* No. 18-cr-713 (JMF) (S.D.N.Y. March 31, 2020 (Memorandum Op. and Order).

In *Nkanga*, Judge Furman had before him the motion of the defendant for release pending “execution of sentence...,” *id.* at *4, the defendant having already been sentenced upon his guilty plea to “several narcotic offenses.” *Id.* at *2.

Ultimately, Judge Furman concluded he did not have the authority to release the defendant on bail after sentencing.

In so concluding, Judge Furman undertook a thorough analysis of the authority of a district judge to release a defendant after conviction (by plea or otherwise), but before sentencing, concluding:

In general, 18 U.S.C. § 3143(a)(2) mandates detention for “a person” who was convicted of a drug offense “and is awaiting imposition or execution of sentence.” Under 18 U.S.C. § 3145(c), however, a district court has authority to order the release of someone subject to detention pursuant to Section 3143(a)(2) if he “meets the conditions of release set forth in section 3143(a)(1)” and “it is clearly shown that there are exceptional reasons why such person’s detention would not be appropriate.” *See United States v. Lea*, 360 F.3d 401, 403 (2d Cir. 2004) (“The test under § 3145(c) is necessarily a flexible one, and district courts have wide latitude to determine whether a particular set of circumstances qualifies as ‘exceptional.’”).

Id. at * 6.

Judge Furman reasoned that while at the time of Nkanga's guilty plea (October 24, 2019), he met the conditions of § 3143(a)(1), Nkanga could not show the required § 3143(b) "exceptional reasons why [his] detention would not be appropriate," concluding that "today Dr. Nkanga could, and would, easily make that showing...." based on his health risks and the COVID – 19 pandemic. *Id.* at *6 – 7.

Mason is not Nkanga. She is not 67 years old, she has a criminal record,¹ and she has not had a stroke, as Nkanga had in 2008. However, both she and Nkanga are confined in facilities regarding which there is no dispute cannot accomplish that which all authorities recognize is key to reducing COVID-19 exposure – social distancing. In addition, both Mason and Nkanga suffer from asthma, which makes both more susceptible to serious medical consequences if either become infected with COVID-19. In addition, and unlike Nkanga, Mason has been in pretrial and presentencing custody, as of March 25, 2020, for 469 days.

As an additional statutory basis for release, Mason respectfully invites the Courts attention to 18 U.S.C. § 3142(i) which provides that where a detention order has been issued, a district court may issue "a subsequent order" temporarily releasing a custody defendant if the district judge determines such release is " necessary for the preparation of the person's defense or for another compelling reason."

In *United States v. Kennedy*, No. 18-20315 (E.D. Mich. March 27, 2020), the district court found two compelling reasons to temporarily release the defendant – (1) the danger posed by the COVID – 19 pandemic to the defendant confined at the Saginaw

¹ As pointed out in her Motion, Mason's only three-point presentence investigation report countable offense was committed when she was 16. Mason's Motion for Release Pending Sentencing at 7.

County jail, and (2) temporary release was necessary for the defendant to prepare his presentencing defense. The district court in *Kennedy* rejected the government’s argument against release saying:

The United States argues that release is improper here because it was unaware of any known COVID-19 cases at Saginaw County Jail. However, this argument fails to address the facts of the current global public health crisis—particularly as Michigan prisons are beginning to see exponential spread of the disease. *See Burns, supra*. The seemingly preemptive nature of Defendant’s release renders it no less necessary or compelling. To the contrary—as the above background makes clear—waiting for either Defendant to have a confirmed case of COVID-19, or for there to be a major outbreak in Defendant’s facility, would render meaningless this request for release. Such a failure to act could have devastating consequences for Defendant and would create serious medical and security challenges to the existing prison population and the wider community.

Id. at *13.

The district court concluded that the *Kennedy* defendant had shown compelling reasons to support his temporary release, ordering his immediate release.

III. Conclusion.

There are now two reported cases of COVID – 19 infection of staff at ASGDC. There are also three reported cases of COVID – 19 infection at the Al Cannon Detention Center in Charleston. <https://www.thestate.com/news/coronavirus/article241882241.html>. Two of the infected inmates/pretrial detainees were in the same “sleeping quarters” as the first inmate/pretrial detainee who tested positive, *id.*, which demonstrates that the close quarters of those confined in county jails exacerbates the already highly contagious nature of COVID-19.

For the reasons set forth above, in Mason’s Motion for Release Pending Sentencing, and in her Reply to the government’s Response, Mason respectfully requests the Court release her on bond pending sentencing.

CALLISON TIGHE & ROBINSON, LLC

/s/ Louis H. Lang

Louis H. Lang, Esq., Fed.ID#240

1812 Lincoln Street, Suite 200

Post Office Box 1390

Columbia, SC 29202-1390

Telephone: (803) 404-6900

E-mail: louislang@callisontighe.com

Counsel for ANNA MASON

Columbia, South Carolina

April 13, 2020