

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLIENT NAME,

Defendant.

No. CASE NO.

MOTION AND MEMORANDUM IN
SUPPORT OF PRETRIAL RELEASE
AND IN SUPPORT OF COMMUNITY
EFFORTS TO LIMIT THE SPREAD OF
COVID-19

I. Introduction

Defendant requests release pursuant to 18 U.S.C. § 3142, on his personal recognizance, on an unsecured appearance bond, or on whatever combination of conditions the Court deems appropriate. [Name of Client] presents a greater danger to the community by [his or her] detention than if released to the community. [Name of client] presents a minimal risk, if any, for violence to members of the community, and any concerns about flight risk pale when weighed against the risks our community faces during this crisis.

As this Court is certainly aware, and as detailed below, this country is undergoing a serious pandemic. In every aspect of society, individuals and officials are recognizing that “business as usual” must be dramatically altered; otherwise, the impact of the pandemic will be far worse than with such changes. As numerous news reports reflect, and also as detailed below, officials around the country are recognizing that the

1 criminal justice system is an area requiring immediate systemic change in response to
2 the crisis. The threat to the jail population (and thus, indirectly, to the community as a
3 whole) has led jail officials to reduce inmate populations through early release and led
4 prosecuting agencies both to rely on summonses, rather than arrests, and to forestall
5 charges on less serious cases.¹ That includes the King County prosecutor.² Moreover,
6 Name of Client is at particular risk because of his/her [brief description of condition].

7 **II. Factual Background**

8 **A. The COVID-19 Outbreak**

9 The defense recognizes that the Court, like nearly everyone, has been exposed to a
10 wide variety of news reports about COVID-19. However, given the varying information
11 that has been dispensed, it seems worth briefly reviewing what is known. COVID-19 is
12 highly contagious and may be spread by asymptomatic individuals. It has no known
13 vaccination or cure and has killed thousands. As of March 16, 2020, the new strain of
14 coronavirus, which causes COVID-19, has infected over 181,904 people, leading to at
15 least 7,139 deaths worldwide.³ On March 11, 2020, the World Health Organization
16 officially classified COVID-19 as a pandemic.⁴ The first case of COVID-19 in the
17 United States was found in Snohomish County, Washington. The first death presumed
18 to be from COVID-19 was also in the Seattle area – in Kirkland, Washington. On
19 February 29, 2020, hours after Washington state health officials announced that death,
20 Governor Jay Inslee declared a state of emergency, directing agencies to use all
21

22 ¹ Salvador Hernandez, *Los Angeles Releasing Inmates Early Over Fears Of Coronavirus In*
23 *Jails*, BuzzFeed News (Mar. 16, 2020), at
24 <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>.

25 ² Emily Bazelon, *Our Courts and Jails Are Putting Lives at Risk*, New York Times (March 13,
2020), at <https://www.nytimes.com/2020/03/13/opinion/coronavirus-courts-jails.html>.

26 ³ <https://www.worldometer.info/coronavirus/coronavirus-cases> (updating regularly).

⁴ *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (March 11, 2020)
at <https://bit.ly/2W8dwpS>.

1 resources needed to respond to the outbreak.⁵ On March 11, 2020, Governor Inslee
2 issued a ban on gatherings and events of more than 250 people in the same counties, in
3 an effort to try to contain the COVID-19 outbreak. One day later, on March 12, 2020,
4 the governor announced the closure of all public and private K–12 schools in King,
5 Snohomish, and Pierce Counties until at least April 27, 2020, affecting 600,000
6 students.⁶ Most recently, on March 15, 2020, the governor signed an emergency
7 declaration temporarily shutting down bars, restaurants, and places of entertainment and
8 recreation statewide, and capping all public gatherings at 50 people.⁷

9 According to the CDC and epidemic experts from around the world, a possible
10 scenario—based on the characteristics of the virus, including estimates of how
11 transmissible it is and the severity of the illness it can cause—is that “[b]etween 160
12 million and 214 million people in the U.S. could be infected over the course of the
13 epidemic,” and “[a]s many as 200,000 to 1.7 million people could die.”⁸ Experts have
14 also made clear that the assumptions fueling these staggering numbers can be mitigated
15 by appropriate interventions to slow transmission. As one expert, Dr. Carter Mecher, a
16 senior medical adviser for public health at the Department of Veterans Affairs and a
17 former director of medical preparedness policy at the White House during the Obama
18 and Bush administrations, observed: “A fire on your stove you could put out with a fire
19

20 ⁵ *Gov. Jay Inslee Declares State of Emergency for Coronavirus Response*, KUOW (Feb. 29,
21 2020) at [https://www.seattletimes.com/seattle-news/health/jails-and-courthouses-across-](https://www.seattletimes.com/seattle-news/health/jails-and-courthouses-across-washington-look-for-ways-to-protect-employees-jurors-and-inmates-from-coronavirus/)
22 [washington-look-for-ways-to-protect-employees-jurors-and-inmates-from-coronavirus/](https://www.seattletimes.com/seattle-news/health/jails-and-courthouses-across-washington-look-for-ways-to-protect-employees-jurors-and-inmates-from-coronavirus/).

23 ⁶ *New, Drastic Changes Implemented in Response to Coronavirus*, KIRO 7 News (March 13,
24 2020) at [https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-](https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/)
25 [pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/](https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/) (updating
26 regularly).

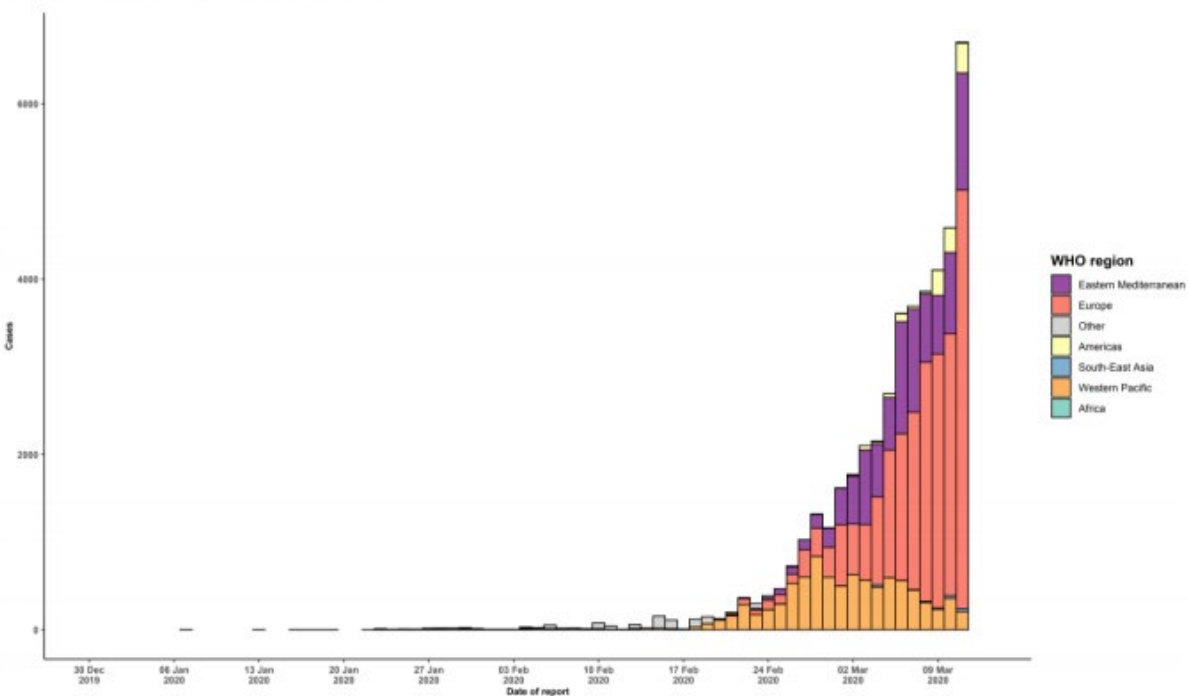
27 ⁷ *Washington State to Shut Down Restaurants, Bars, and Cap Gatherings at 50 to Stop Spread*
28 *of Coronavirus*, The Seattle Times (March 16, 2020) at [https://www.seattletimes.com/seattle-](https://www.seattletimes.com/seattle-news/king-county-and-washington-state-to-act-on-bars-restaurants-and-gatherings/)
29 [news/king-county-and-washington-state-to-act-on-bars-restaurants-and-gatherings/](https://www.seattletimes.com/seattle-news/king-county-and-washington-state-to-act-on-bars-restaurants-and-gatherings/).

30 ⁸ Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The New York Times
31 (March 13, 2020) at [https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-](https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html)
32 [estimate.html](https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html).

1 extinguisher, but if your kitchen is ablaze, that fire extinguisher probably won't work."
2 *Id.* Thus, "[c]ommunities that pull the fire extinguisher early are much more effective."
3 *Id.*

4 The graph below, showing the epidemic curve of the disease, serves as evidence
5 of the need to act forcefully and immediately to change "business as usual."⁹

6
7 **Figure 2. Epidemic curve of confirmed COVID-19 cases reported outside of China (n= 44 067), by date of report and WHO region through 12 March 2020**



19
20 The CDC has issued guidance that individuals at higher risk of contracting
21 COVID-19—adults over 60 years old and people with chronic medical conditions such
22 as lung disease, heart disease, and diabetes—take immediate preventative actions,
23 including avoiding crowded areas and staying home as much as possible.¹⁰ Meanwhile,

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25 ⁹ *Coronavirus disease2019 (COVID-19)Situation Report –48*, CDC (March 8, 2020), at
https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200308-sitrep-48-covid-19.pdf?sfvrsn=16f7ccef_4.

26 ¹⁰ *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at
<https://bit.ly/2vgUt1P>. Other conditions listed by CDC include blood disorders, kidney disease,

1 the number of COVID-19 cases in Washington continues to grow. On March 13, 2020,
2 the Department of Public Health announced 36 new cases and one death. The King
3 County total is now at 27 deaths with 270 total cases. Including the King County
4 deaths, three deaths in Snohomish County, and one Grant County death, the statewide
5 COVID-19 death total is at least 50 and the statewide case number, as reported by the
6 Department of Health and local health districts, is at least 905 and growing.¹¹ In light of
7 the confirmed cases in Seattle and surrounding areas that indicate broad community
8 spread, every necessary action must be taken to protect vulnerable populations and, in
9 turn, the broader community inside and outside the FDC.

10 COVID-19 is an extremely dangerous disease. The best estimate for its overall
11 fatality rate—i.e., its fatality rate among all demographics—is 0.3-3.5%, “which is 5-35
12 times the fatality associated with influenza infection.” Beyrer Dec. ¶ 5;¹² *see also* Nick
13 Wilson et al., *Case-Fatality Risk Estimates for COVID-19 Calculated by Using a Lag*
14 *Time for Fatality*, 26(6) EID Journal (prepublication June 2020).¹³ Fatality rates vary
15 wildly, however, depending on both environmental and demographic risk factors.

16 The death rate for those deemed at-risk is even higher. It increases rapidly with
17 age. Across all age groups, COVID-19 kills:

- 18 • 13.2% of people with cardiovascular disease

19
20 liver disease, compromised immune system, current or recent pregnancy (two weeks),
21 endocrine disorders, and neurological conditions. *Appendix A to CDC’s recommendations for*
22 *30 day Mitigation Strategies for Santa Clara County, California, based on current situation*
23 *with COVID-19 Transmission and affected health care facilities*, CDC, at
24 https://www.cdc.gov/coronavirus/2019-ncov/downloads/Santa-Clara_Community_Mitigation.pdf.

25 ¹¹ *New, Drastic Changes Implemented in Response to Coronavirus*, KIRO 7 News (March 13,
26 2020) at <https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/> (updating regularly).

¹² Declaration of Chris Beyrer, MD, MPH, Professor of Epidemiology, Johns Hopkins
Bloomberg School of Public Health, attached as Exhibit A.

¹³ Available at https://wwwnc.cdc.gov/eid/article/26/6/20-0320_article.

- 1 • 9.2% of people with diabetes
- 2 • 8.4% of people with hypertension
- 3 • 8% of people with chronic respiratory disease
- 4 • 7.6% of people with cancer¹⁴

5 **B. “An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction**
6 **Continues.”¹⁵**

7 “If you think a cruise ship is a dangerous place to be during a pandemic, consider
8 America’s jails and prisons.” *Id.* According to the CDC, the virus is mainly spread
9 person-to-person “[b]etween people who are in close contact with one another (within
10 about 6 feet)” and “[t]hrough respiratory droplets produced when an infected person
11 coughs or sneezes.”¹⁶ The spread can be slowed, public health professionals say, if
12 people practice “social distancing” by avoiding public spaces and generally limit their
13 movement. “Social distancing” is not an option at the FDC. Like most prisons, inmates
14 housed at the FDC are in closed quarters and forced to share bathrooms, laundry, and
15 meal areas. The cell toilets rarely have lids and the tank often doubles as the sink for
16 handwashing. Air circulation is uniformly poor. “Infections that are transmitted through
17 droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in
18 detention facilities.” *Beyrer Dec.*, Exhibit A, ¶ 13. These deficiencies now represent a
19 threat not only to those being housed there but to the community at large.

20 “According to health experts, it is not a matter of if, but when, this virus breaks
21 out of jails and prisons.”¹⁷ Conditions of pretrial confinement create the ideal

22 ¹⁴ World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus*
23 *Disease 2019 (COVID-19)* at 12 (Feb. 28, 2020), at [https://www.who.int/docs/default-](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf)
24 [source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf).

25 ¹⁵ Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*
26 *Continues*, *The New York Times* (March 16, 2020) at
<https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

¹⁶ *How COVID-19 Spreads*, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html)
[ncov/about/transmission.html](https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html) (last accessed on March 13, 2020).

¹⁷ Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*

1 environment for the transmission of a highly contagious disease such as COVID-19.¹⁸
2 Inmates do not live under quarantine: people cycle in and out of BOP pretrial facilities
3 daily from all over the world and the country, and people who work in the facilities
4 leave and return daily, without screening. And all of these individuals potentially carry
5 viral conditions from the FDC back to their homes and communities, and then return
6 back, bringing new germs with them. “It is therefore an *urgent priority* in this time of
7 national public health emergency to reduce the number of persons in detention as
8 quickly as possible.” Beyrer Dec., Exhibit A, at ¶ 17 (emphasis added).

9 Further, incarcerated people have poorer health than the general population, and
10 even at the best of times medical care is limited in federal pretrial detention centers.¹⁹
11 Many people who are incarcerated also have chronic conditions, such as diabetes or
12 HIV, which make them vulnerable to severe forms of COVID-19. According to public
13 health experts, incarcerated individuals “are at special risk of infection, given their
14 living situations,” and “may also be less able to participate in proactive measures to
15 keep themselves safe”; “infection control is challenging in these settings.”²⁰ Outbreaks
16 of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails
17 and prisons dealt with high numbers of cases.²¹ In China, officials have confirmed the
18 coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.²²

19
20 *Continues*, The New York Times (March 16, 2020) at

<https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

21 ¹⁸ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases*
22 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

23 ¹⁹ Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail
24 Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of
25 Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>

26 ²⁰ “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>.

²¹ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at
<https://bit.ly/2TNcNZY>.

²² Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500*

1 Secretary of State Mike Pompeo has called for Iran to release Americans detained there
2 because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian
3 prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies
4 basic human decency.”²³

5 Extreme measures are necessary because as Dr. Homer Venters, former chief
6 medical officer of the New York City jail system, made clear: “Coronavirus in these
7 settings will dramatically increase the epidemic curve, not flatten it, and
8 disproportionately for people of color.”²⁴ The critical point from health experts is that
9 slowing the rate of infection (“flattening the curve”) is critical to avoid overtaxing
10 health resources (which, if it occurs, would of course lead to more deaths for any given
11 infection rate).²⁵

12 C. Conditions at the FDC Contribute to Fueling the Pandemic

13 The FDC houses 684 total people with a capacity for 1000. Those numbers are
14 obviously not stagnant, given that people continue to be detained and released. Such
15 turnover is particularly frightening in a pandemic. The particular conditions in which
16 the majority of the people are housed offer no protections for those either detained or
17 those who come in regular contact with inmates, including FDC staff. Inmates are
18 housed in small two-person cells with a shared toilet and sink. Individuals not in the
19 special housing unit are only allowed outside of their cells for approximately two or
20

21 *Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (Feb. 21,
22 2020) at <https://bit.ly/2vSzSRT>.

23 ²³ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully
24 detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020) at
<https://cnn.it/2W4OpV7>.

25 ²⁴ Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction
26 Continues*, The New York Times (March 16, 2020) at
<https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

²⁵ See PBS News Hour graph, “One simple chart explains how social distancing saves lives”
(Mar. 13, 2020), at [https://www.pbs.org/newshour/science/one-simple-chart-explains-how-
social-distancing-saves-lives](https://www.pbs.org/newshour/science/one-simple-chart-explains-how-social-distancing-saves-lives), attached as Exhibit B.

1 three hours a day, with the upper and lower tiers of each unit alternating the hours they
2 are allowed out of cells for group meals, showers, and accessing the phones and
3 computers. Individuals must often stand in line in close proximity to one another to
4 await their turn for these resources. Groups of 30 or more individuals must share their
5 meals together without the ability to separate. On March 3, 2020, after multiple inmates
6 in the same housing unit began exhibiting flu-like symptoms, the FDC made the
7 decision to go into a 48-hour lockdown, including shutting down all social and legal
8 visits. Although initially the FDC did not have the COVID-19 tests kits they needed to
9 test those in the affected unit, the FDC eventually received the kits. But during the
10 days-long waiting period for the results, those in the affected unit were denied basic
11 hygiene necessities such as showering. There were also reports that individuals did not
12 have access to soap or hand sanitizers. Access to legal calls was also suspended, and all
13 social and legal visitation was shut down pending the test results. Limited legal
14 visitation for non-quarantined inmates was not resumed until March 6, 2020. The
15 quarantine was lifted on March 10, 2020. As of March 13, 2020, legal visits are allowed
16 only on a case-by-case basis. Further, according to George Cho, BOP’s Supervisory
17 Attorney, should “additional FDC SeaTac inmates exhibit flu-like symptoms in the
18 near-future, thus again necessitating quarantining and COVID-19 testing, FDC SeaTac
19 will again implement all necessary measures to protect the safety and security of both
20 the institution and the outside community.”²⁶ Given the speed with which COVID 19 is
21 spreading in our community, it will only be a short matter of time before a staff member
22 or inmate tests positive and the facility returns to an all-out lockdown and quarantine.

23 The FDC’s strategy appears primarily to be a reactive one—quarantining if
24 inmates “exhibit flu-like symptoms in the near-future”—it is highly unlikely the FDC’s
25 tactic for stemming the spread of COVID-19 will work. There is significant controversy

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²⁶ March 9, 2020, email from George Cho, attached as Exhibit C.

1 over the incubation and appropriate quarantine periods for the disease, insufficient
2 knowledge about how it spreads, and few treatments that appear successful. “The
3 largest study of coronavirus patients so far suggests it could take up to 24 days after
4 exposure for symptoms to show.”²⁷ The CDC’s website gives detailed instructions on
5 the complex steps health care professionals must follow in order to properly quarantine
6 infected individuals, including systems that prisons do not have and cannot
7 accommodate, such as negative air pressure circulation systems, HEPA air filtration,
8 and specific air circulation protocols.²⁸ The CDC has also detailed clinical care
9 guidance for the disease, although much remains unknown about its incubation period,
10 modes of transmission, and potential treatment protocols.²⁹ It is unknown whether any
11 of the FDC’s personnel have received training in these procedures. Thus, there is a
12 significant likelihood that prison personnel will themselves become infected and
13 thereafter transmit the disease to the broader community. Indeed, lawyers who are at
14 high risk because of age or underlying medical conditions have been advised not to
15 enter the facility, and more recently there is close to a 100% prohibition on face to face
16 client meetings at the FDC.³⁰ In order to assist in minimizing the transmission of
17 COVID 19 by legal staff into the FDC, the FPD has instituted a temporary policy of
18 prohibiting any lawyers or staff members from entering that facility unless personally
19 approved by the Federal Defender.

20 As additional people are arrested who have been out in the community as the
21 coronavirus spreads, if they are not symptomatic, they will be brought into the FDC and
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23 ²⁷ Aylin Woodward, *2 Studies of Coronavirus Patients Suggest the Disease’s Incubation*
24 *Period Could Be Longer than the Standard Quarantine Period of 14 Days*, Business Insider
(Feb. 21, 2020) at <https://www.businessinsider.com/wuhan-coronavirus-symptoms-24-days-after-infection-2020-2>.

25 ²⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.

26 ²⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

³⁰ March 5, 2020, email from George Cho, attached as Exhibit D.

1 held with the existing population, potentially bringing the virus (now officially named
2 “SARS-CoV-2”³¹) into this population held in large numbers, close quarters, and low
3 sanitary conditions.

4 **D. Detaining John Doe Puts Not Only Him, But Other FDC Inmates, Jail**
5 **and Court Personnel, and the Broader Community, at Greater Risk.**

6 **[Discuss here the factors that show client to be a part of the at-risk**
7 **population. See footnote 7 and accompanying text.]** Clearly, detaining John Doe
8 poses significant health risk to him, given the likelihood that COVID-19 will spread
9 within FDC, and given his [condition], putting him at particular risk.

10 But the risk is not limited to him. If he currently has SARS-CoV-2 but is
11 asymptomatic, detaining him risks exposing the entire FDC inmate population to the
12 disease. That, in turn, risks exposing FDC personnel, along with all court staff who
13 come in contact with either Mr. Doe or any person infected by him. And if he
14 contributes to an outbreak of COVID-19 within FDC, that will increase the demand on
15 the community’s medical resources, reducing their availability to the community at
16 large. Finally, if he contributes to the spread of the virus within the FDC, then if an
17 infected but asymptomatic inmate is released, that obviously will hasten the spread of
18 the virus and the disease within the broader community.

19 But the harm to others does not depend on the assumption that John Doe
20 currently is infected with the virus. Any increase in FDC’s population increases the
21 odds that the infection will spread if any other inmate is, or becomes, infected, leading
22 to the exact same harms discussed above to inmates, BOP and court staff, and the
23 community.

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26 ³¹ World Health Organization, “Naming the coronavirus disease (COVID-19) and the virus that
causes it,” at [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

1 **III. The Bail Reform Act Requires John Doe’s Release**

2 Responsible relevant parties, recognizing these extraordinary circumstances,
3 have acknowledged that increasing the population of detention centers like the FDC
4 presents a danger not only to inmates but to the broader community.

5 Just this month, 24 elected prosecutors from around the country, including Cy
6 Vance, the district attorney of New York, and district attorneys in Mississippi and
7 Texas, sent out a joint statement “Addressing the Rights and Needs of Those in
8 Custody.”³² Recommendations made in that Joint Statement include: “Reduc[ing] the
9 prison population to minimize sharing of cells[,]” and *immediately* “[i]dentify[ing] and
10 releas[ing]” “individuals who are elderly,” and “[p]opulations that the CDC has
11 classified as vulnerable (those with asthma, cancer, heart disease, lung disease, and
12 diabetes.)” The Statement also recommends, among others, that “[p]eople incarcerated
13 for technical violations of probation and parole be released.” *Id.*

14 Prosecutors and law enforcement are already taking some of these proactive
15 measures to mitigate the spread of the coronavirus. San Francisco District Attorney
16 Chesa Boudin has directed his prosecutors not to oppose motions to release pretrial
17 detainees facing misdemeanor charges or drug-related felony charges if the person is
18 deemed to pose no threat to public safety, and has directed his staff to “strongly
19 consider” credit for time served in plea deals so that more people can be released.³³
20 Officials in Los Angeles County, the largest county prison system in the U.S., are also
21 releasing inmates and making fewer arrests to reduce the risk of a coronavirus outbreak
22 in the prison systems. As Los Angeles Sheriff Alex Villanueva recently explained to
23 reporters, these measures are necessary because “Our population within our jails is a

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25 ³² Joint Statement From Elected Prosecutors on COVID-19 and Addressing the Rights and
Needs of Those in Custody (March 2020), attached as Exhibit E.

26 ³³ *San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak*
(Mar. 12, 2020), at <http://sfpublicdefender.org/news/2020/03/san-francisco-officials-push-to-reduce-jail-population-to-prevent-coronavirus-outbreak-the-appeal/>.

1 vulnerable population just by who they are, where they are located, so we're protecting
2 that population from potential exposure.”³⁴ Sheriff Villanueva stated his office has
3 reduced the inmate population from 17,076 to 16,459, a reduction of more than 600
4 inmates, in about two weeks. *Id.*

5 On March 17, 2020, Chief Judge Ricardo Martinez issued General Order 02-
6 20.³⁵ That Order recognized the various facts discussed above, including the need for
7 minimal contact between people. Chief Judge Martinez took the extraordinary steps of
8 continuing all civil and criminal hearings through May, continuing grand jury hearings,
9 delaying all preliminary hearings, finding excludable time under the Speedy Trial Act,
10 closing the two courthouses except for emergency matters scheduled by individual
11 judges “if necessary after considering the above public health situation,” and closing all
12 Probation and Pretrial offices.

13 If these emergency changes are warranted (and they most definitely are),
14 dramatic changes in release versus detention are equally warranted. This Court has the
15 authority to swiftly mitigate the present danger. As an initial matter, “[u]nder the Bail
16 Reform Act of 1984, as amended, Congress has determined that any person charged
17 with an offense under the federal criminal laws shall be released pending trial, subject
18 to appropriate conditions. . . .” *United States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th
19 Cir. 2015). And, “[o]nly in rare cases should release be denied, and doubts regarding
20 the propriety of release are to be resolved in favor of the defendant.” *Id.* (citing *United*
21 *States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985)). *See also United States v.*
22 *Salerno*, 481 U.S. 739, 755 (1987) (suggesting that “detention prior to trial or without

24 ³⁴ Salvador Hernandez, Los Angeles Releasing Inmates Early Over Fears of Coronavirus in
25 Jails, BuzzFeed News (Mar. 16, 2020), at
26 <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>, at <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>.

³⁵ General Order 02-20, W.D. Wash. (Mar. 17, 2020), attached as Exhibit F.

1 trial is the carefully limited exception” to liberty before trial). One charged with a crime
2 is, after all, presumed innocent. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). A single
3 individual unnecessarily detained before trial is one individual too many, and the
4 increasing use of the practice places tremendous wear on our constitutional system.
5 *United States v. Montalvo-Murillo*, 495 U.S. 711, 723–24 (1990) (Stevens, J.,
6 dissenting, joined by Brennan and Marshall, JJ.).

7 The courts have long recognized that there is no greater necessity than keeping a
8 defendant alive, no matter the charge. As former Federal District Court Judge
9 Weinstein for the Eastern District of New York stated: “We do not punish those who
10 have not been proven guilty.” *United States v. Scarpa*, 815 F. Supp. 88 (E.D.N.Y. 1993)
11 (pretrial defendant with AIDS facing murder charges released on bail because of the
12 “unacceptably high risk of infection and death on a daily basis inside the MCC”).

13 The United States Constitution affords pretrial detainees greater protection from
14 dangerous conditions of confinement than those sentenced after conviction. *See, e.g.,*
15 *Hernandez v. County of Monterey*, 110 F. Supp. 3d 929, 934 (N.D. Cal. 2015) (“A jail
16 violates both [the Fourteenth and Eight Amendments] if it incarcerates inmates under
17 conditions posing a substantial risk of serious harm to their health or safety . . . and if
18 [government] acted with deliberate indifference, that is, with conscious disregard for
19 that risk[.]”); *Morales Feliciano v. Rossello Gonzalez*, 13 F. Supp. 2d 151, 210 (D.P.R.
20 1998) (“The failure to screen incoming [inmates] for infectious diseases including
21 tuberculosis” violates the Constitution).

22 This Court should consider the “total harm and benefits to prisoner and society”
23 that detention of John Doe will yield, relative to the heightened health risks posed to
24 John Doe, and that posed to the other inmates, court and BOP staff, and the community,
25 during this rapidly encroaching pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209
26 (2015) (Kennedy, J., concurring) (calling for heightened judicial scrutiny of the

1 projected impact of jail and prison conditions on a defendant); *United States v. Mateo*,
2 299 F. Supp. 2d 201, 212 (S.D.N.Y. 2004) (reducing sentence where defendant’s
3 pretrial conditions were “qualitatively more severe in kind and degree than the prospect
4 of such experiences reasonably foreseeable in the ordinary case”).

5 All provisions of the Bail Reform Act impose a test of “reasonableness” when a
6 court makes release decisions. *See* § 3142(b) (release on personal recognizance or
7 unsecured appearance bond); § 3142(c)(1) (release on conditions); § 3142(d)(2)
8 (temporary detention); and § 3142(e) (detention). *See also United States v. Hir*, 517
9 F.3d 1081, 1092 n. 9 (9th Cir. 2008) (“We note that the Bail Reform Act contemplates
10 only that a court be able to ‘reasonably assure,’ rather than guarantee, the safety of the
11 community. *See United States v. Tortora*, 922 F.2d 880, 884 (1st Cir.1990)
12 (‘Undoubtedly, the safety of the community can be reasonably assured without being
13 absolutely guaranteed.... Requiring that release conditions *guarantee* the community’s
14 safety would fly in the teeth of Congress’s clear intent that only a limited number of
15 defendants be subject to pretrial detention.’”) (emphasis in *Tortora*).

16 When evaluating reasonable assurance of the community’s safety, the Court
17 needs to determine the extent to which *detention* threatens the community’s safety, as
18 well as the extent to which release poses a threat. For the reasons discussed in Part II.C,
19 *supra*, given that we are in the midst of a world-wide pandemic, that former risk is
20 significant, and must be an important factor in the Court’s consideration. **Include only**
21 **if a presumption applies:** Even where a rebuttable presumption of risk to the
22 community applies under §§ 3142(e)(2) or (3), the risk to the community from
23 *detention* is an important consideration in determining whether a presumption of danger
24 from release has been rebutted.

25 Furthermore, the Act specifically directs courts to consider the defendant’s
26 “physical . . . condition” when making a release decision. *See* § 3142(g)(3)(A). Here,

1 John Doe's condition means (a) detaining him poses a significant risk to him; (b) he has
2 every incentive to comply with the requirements of release, since any violation risks
3 putting him at far more risk to his health, by being detained in FDD, and (c) he
4 increases the risk those who come in contact with him and other inmates, in addition to
5 the general population, as discussed above.

6 Finally, the latest General Order means that any defendants who are detained
7 will be detained for several months, perhaps longer, without an indictment. See
8 Exhibit F, ¶ 3. That is all the more reason to favor release over detention.

9 **IV. Conditions of Release Are Available that Allow John Doe to Be Safe From**
10 **the Risks of Incarceration at FDC Also Reasonably Ensuring Any Danger to**
11 **the Community.**

12 **[Discuss here the factors you normally would argue.]**

13 **[Describe specific release conditions proposed]**

14 Even if these factors would not normally lead this Court to order release, the
15 present emergency conditions call for a cessation of “business as usual.” Just as
16 restaurants and sporting events must close, the balancing of interests in weighing
17 detention and release decisions must be altered. Under the conditions proposed, the
18 community’s safety will reasonably be assured, while avoiding the increased risk to the
19 community (and to Mr. Doe) from incarceration. Mr. Doe will not be left to his own
20 devices, but will be supported and monitored by Pretrial Services. Since 2009, Pretrial
21 Services’ data has found that only 2.9% of defendants in the highest risk category were
22 re-arrested for a violent crime while on release.³⁶ In 2017, the pretrial release rate for
23 the Western District of Washington was 72.15% and the overall revocation rate was
24 8.89%. **[Include if relevant:]** The elderly and chronically ill, no matter what crime they

25 _____
26 ³⁶ Thomas H. Cohen, Christopher T. Lowenkamp, and William E. Hicks, *Revalidating the
Federal Pretrial Risk Assessment Instrument (PTRA): A Research Summary* (September 2018)
at https://www.uscourts.gov/sites/default/files/82_2_3_0.pdf.

1 are accused of, pose a lower risk of violating supervision, particularly during a global
2 pandemic during which even leaving the house will endanger their lives.

3 **V. The Court Should Deny any Government Request for a Continuance of the**
4 **Detention Hearing.**

5 When the Government has requested a continuance of the detention hearing,
6 such a continuance has generally been granted almost automatically. But the Bail
7 Reform Act does not provide for automatic continuances for either party. In this highly
8 unusual period, a continuance should not be granted.

9 The Act generally requires that detention hearings “shall be held immediately
10 upon the person’s first appearance before the judicial officer[.]” 18 U.S.C. § 3142(f)(2).

11 The Act then provides an exception to that requirement:

12 unless that person, or the attorney for the Government, seeks a continuance.
13 Except for good cause, a continuance on motion of such person may not
14 exceed five days (not including any intermediate Saturday, Sunday, or legal
15 holiday), and a continuance on motion of the attorney for the Government
16 may not exceed three days (not including any intermediate Saturday, Sunday,
17 or legal holiday). During a continuance, such person shall be detained . . .

18 This “unless” provision does not mean that either party is *automatically* entitled
19 to a continuance. It means that the first provision – making an immediate hearing
20 mandatory – is excused if a party seeks a continuance. In short, if such a request is
21 made, nothing is required, neither a same-day detention hearing nor a continuance;
22 either is within the judicial officer’s discretion.

23 It is also clear from the statute that even when a continuance is granted, three
24 days is a maximum (absent a showing of good cause), not an automatic period. There is
25 nothing to prevent the Court from granting a shorter continuance. *See, e.g., United*
26 *States v. Bundy*, No. 2:16-CR-0046-GMN-PAL, 2016 WL 3456911, at *2 (D. Nev.
June 20, 2016) (stating, in the context of a defense request, but equally applicable to
Government requests, that, “[f]rom the plain language of the statute, it is clear that a

1 [particular length] continuance is not an entitlement, but rather, a discretionary
2 maximum amount of time the Court may continue the detention hearing upon a . . .
3 motion.”). That continuance could be one of a few hours, rather than even a day, given
4 the health risks to numerous portions of the populations, as detailed in Part II.C, since
5 the defendant must be detained until the continued hearing.

6 **VI. Conclusion**

7 For all of the above reasons, John Doe should be granted release on appropriate
8 conditions.

9 DATED this ___ day of _____ 2020.

10 Respectfully submitted,

11 s/ Attorney Name

12 Assistant Federal Public Defender

13 Attorney for Client Name

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	No. CASE NO.
)	
Plaintiff,)	
)	MOTION AND MEMORANDUM IN
v.)	SUPPORT OF PRETRIAL RELEASE
)	AND IN SUPPORT OF COMMUNITY
CLIENT NAME,)	EFFORTS TO LIMIT THE SPREAD OF
)	COVID-19
Defendant.)	

I. Introduction

Defendant requests release pursuant to 18 U.S.C. § 3142, on his personal recognizance, on an unsecured appearance bond, or on whatever combination of conditions the Court deems appropriate. [Name of Client] presents a greater danger to the community by [his or her] detention than if released to the community. [Name of client] presents a minimal risk, if any, for violence to members of the community, and any concerns about flight risk pale when weighed against the risks our community faces during this crisis.

As this Court is certainly aware, and as detailed below, this country is undergoing a serious pandemic. In every aspect of society, individuals and officials are recognizing that “business as usual” must be dramatically altered; otherwise, the impact of the pandemic will be far worse than with such changes. As numerous news reports reflect, and also as detailed below, officials around the country are recognizing that the

1 criminal justice system is an area requiring immediate systemic change in response to
2 the crisis. The threat to the jail population (and thus, indirectly, to the community as a
3 whole) has led jail officials to reduce inmate populations through early release and led
4 prosecuting agencies both to rely on summonses, rather than arrests, and to forestall
5 charges on less serious cases.¹ That includes the King County prosecutor.²

6 **II. Factual Background**

7 **A. The COVID-19 Outbreak**

8 The defense recognizes that the Court, like nearly everyone, has been exposed to
9 a wide variety of news reports about COVID-19. However, given the varying
10 information that has been dispensed, it seems worth briefly reviewing what is known.
11 COVID-19 is highly contagious and may be spread by asymptomatic individuals. It has
12 no known vaccination or cure and has killed thousands. As of March 16, 2020, the new
13 strain of coronavirus, which causes COVID-19, has infected over 181,904 people,
14 leading to at least 7,139 deaths worldwide.³ On March 11, 2020, the World Health
15 Organization officially classified COVID-19 as a pandemic.⁴ The first case of COVID-
16 19 in the United States was found in Snohomish County, Washington. The first death
17 presumed to be from COVID-19 was also in the Seattle area – in Kirkland, Washington.
18 On February 29, 2020, hours after Washington state health officials announced that
19 death, Governor Jay Inslee declared a state of emergency, directing agencies to use all
20 resources needed to respond to the outbreak.⁵ On March 11, 2020, Governor Inslee

21 ¹ Salvador Hernandez, *Los Angeles Releasing Inmates Early Over Fears Of Coronavirus In*
22 *Jails*, BuzzFeed News (Mar. 16, 2020), at
23 <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>.

24 ² Emily Bazelon, *Our Courts and Jails Are Putting Lives at Risk*, New York Times (March 13,
25 2020), at <https://www.nytimes.com/2020/03/13/opinion/coronavirus-courts-jails.html>.

26 ³ <https://www.worldometer.info/coronavirus/coronavirus-cases> (updating regularly).

⁴ *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (March 11, 2020)
at <https://bit.ly/2W8dwpS>.

⁵ *Gov. Jay Inslee Declares State of Emergency for Coronavirus Response*, KUOW (Feb. 29,

1 issued a ban on gatherings and events of more than 250 people in the same counties, in
2 an effort to try to contain the COVID-19 outbreak. One day later, on March 12, 2020,
3 the governor announced the closure of all public and private K–12 schools in King,
4 Snohomish, and Pierce Counties until at least April 27, 2020, affecting 600,000
5 students.⁶ Most recently, on March 15, 2020, the governor signed an emergency
6 declaration temporarily shutting down bars, restaurants, and places of entertainment and
7 recreation statewide, and capping all public gatherings at 50 people.⁷

8 According to the CDC and epidemic experts from around the world, a possible
9 scenario—based on the characteristics of the virus, including estimates of how
10 transmissible it is and the severity of the illness it can cause—is that “[b]etween 160
11 million and 214 million people in the U.S. could be infected over the course of the
12 epidemic,” and “[a]s many as 200,000 to 1.7 million people could die.”⁸ Experts have
13 also made clear that the assumptions fueling these staggering numbers can be mitigated
14 by appropriate interventions to slow transmission. As one expert, Dr. Carter Mecher, a
15 senior medical adviser for public health at the Department of Veterans Affairs and a
16 former director of medical preparedness policy at the White House during the Obama
17 and Bush administrations, observed: “A fire on your stove you could put out with a fire
18 extinguisher, but if your kitchen is ablaze, that fire extinguisher probably won’t work.”
19

20 2020) at [https://www.seattletimes.com/seattle-news/health/jails-and-courthouses-across-
21 washington-look-for-ways-to-protect-employees-jurors-and-inmates-from-coronavirus/](https://www.seattletimes.com/seattle-news/health/jails-and-courthouses-across-washington-look-for-ways-to-protect-employees-jurors-and-inmates-from-coronavirus/).

22 ⁶ *New, Drastic Changes Implemented in Response to Coronavirus*, KIRO 7 News (March 13,
23 2020) at [https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-
24 pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/](https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/) (updating
25 regularly).

26 ⁷ *Washington State to Shut Down Restaurants, Bars, and Cap Gatherings at 50 to Stop Spread
of Coronavirus*, The Seattle Times (March 16, 2020) at [https://www.seattletimes.com/seattle-
27 news/king-county-and-washington-state-to-act-on-bars-restaurants-and-gatherings/](https://www.seattletimes.com/seattle-news/king-county-and-washington-state-to-act-on-bars-restaurants-and-gatherings/).

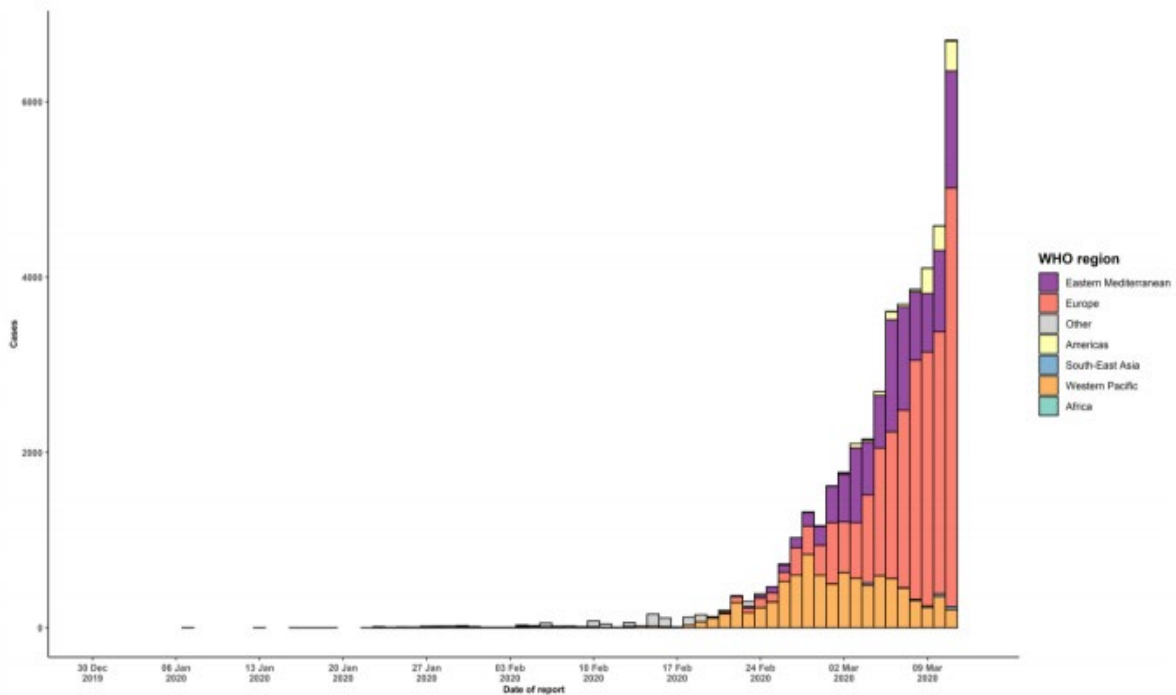
⁸ Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The New York Times
(March 13, 2020) at [https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-
28 estimate.html](https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html).

1 *Id.* Thus, “[c]ommunities that pull the fire extinguisher early are much more effective.”

2 *Id.*

3 The graph below, showing the epidemic curve of the disease, serves as evidence
4 of the need to act forcefully and immediately to change “business as usual.”⁹

5 **Figure 2. Epidemic curve of confirmed COVID-19 cases reported outside of China (n= 44 067), by date of report and WHO region through 12 March 2020**



18 The CDC has issued guidance that individuals at higher risk of contracting
19 COVID-19—adults over 60 years old and people with chronic medical conditions such
20 as lung disease, heart disease, and diabetes—take immediate preventative actions,
21 including avoiding crowded areas and staying home as much as possible.¹⁰ Meanwhile,
22 the number of COVID-19 cases in Washington continues to grow. On March 13, 2020,
23 the Department of Public Health announced 36 new cases and one death. The King

24 ⁹ *Coronavirus disease2019 (COVID-19)Situation Report –48*, CDC (March 8, 2020), at
25 [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200308-sitrep-48-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200308-sitrep-48-covid-19.pdf?sfvrsn=16f7ccef_4)
26 [covid-19.pdf?sfvrsn=16f7ccef_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200308-sitrep-48-covid-19.pdf?sfvrsn=16f7ccef_4).

¹⁰ *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at
<https://bit.ly/2vgUt1P>.

1 County total is now at 27 deaths with 270 total cases. Including the King County
2 deaths, three deaths in Snohomish County, and one Grant County death, the statewide
3 COVID-19 death total is at least 50 and the statewide case number, as reported by the
4 Department of Health and local health districts, is at least 905 and growing.¹¹ In light of
5 the confirmed cases in Seattle and surrounding areas that indicate broad community
6 spread, every necessary action must be taken to protect vulnerable populations and, in
7 turn, the broader community inside and outside the FDC.

8 COVID-19 is an extremely dangerous disease. The best estimate for its overall
9 fatality rate—i.e., its fatality rate among all demographics—is 0.3-3.5%, “which is 5-35
10 times the fatality associated with influenza infection.” Beyrer Dec. ¶ 5;¹² *see also* Nick
11 Wilson et al., *Case-Fatality Risk Estimates for COVID-19 Calculated by Using a Lag*
12 *Time for Fatality*, 26(6) EID Journal (prepublication June 2020).¹³ Fatality rates vary
13 wildly, however, depending on both environmental and demographic risk factors.

14 The death rate for those deemed at-risk is even higher. It increases rapidly with age.
15 Across all age groups, COVID-19 kills:

- 16 • 13.2% of people with cardiovascular disease
- 17 • 9.2% of people with diabetes
- 18 • 8.4% of people with hypertension
- 19 • 8% of people with chronic respiratory disease
- 20 • 7.6% of people with cancer¹⁴

21
22 ¹¹ *New, Drastic Changes Implemented in Response to Coronavirus*, KIRO 7 News (March 13,
23 2020) at [https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-
24 pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/](https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/) (updating
25 regularly).

26 ¹² Declaration of Chris Beyrer, MD, MPH, Professor of Epidemiology, Johns Hopkins
Bloomberg School of Public Health, attached as Exhibit A.

¹³ Available at https://wwwnc.cdc.gov/eid/article/26/6/20-0320_article.

¹⁴ World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus
Disease 2019 (COVID-19)* at 12 (Feb. 28, 2020), at [https://www.who.int/docs/default-
source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf).

1 **B. “An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction**
2 **Continues.”¹⁵**

3 “If you think a cruise ship is a dangerous place to be during a pandemic, consider
4 America’s jails and prisons.” *Id.* According to the CDC, the virus is mainly spread
5 person-to-person “[b]etween people who are in close contact with one another (within
6 about 6 feet)” and “[t]hrough respiratory droplets produced when an infected person
7 coughs or sneezes.”¹⁶ The spread can be slowed, public health professionals say, if
8 people practice “social distancing” by avoiding public spaces and generally limit their
9 movement. “Social distancing” is not an option at the FDC. Like most prisons, inmates
10 housed at the FDC are in closed quarters and forced to share bathrooms, laundry, and
11 meal areas. The cell toilets rarely have lids and the tank often doubles as the sink for
12 handwashing. Air circulation is uniformly poor. “Infections that are transmitted through
13 droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in
14 detention facilities.” *Beyrer Dec.*, Exhibit A, ¶ 13. These deficiencies now represent a
15 threat not only to those being housed there but to the community at large.

16 “According to health experts, it is not a matter of if, but when, this virus breaks
17 out of jails and prisons.”¹⁷ Conditions of pretrial confinement create the ideal
18 environment for the transmission of a highly contagious disease such as COVID-19.¹⁸
19 Inmates do not live under quarantine: people cycle in and out of BOP pretrial facilities
20 daily from all over the world and the country, and people who work in the facilities
21 leave and return daily, without screening. And all of these individuals potentially carry

22 ¹⁵ Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*
23 *Continues*, The New York Times (March 16, 2020) at

24 <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

25 ¹⁶ *How COVID-19 Spreads*, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html)
26 [ncov/about/transmission.html](https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html) (last accessed on March 13, 2020).

27 ¹⁷ Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*
28 *Continues*, The New York Times (March 16, 2020) at

29 <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

30 ¹⁸ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases*
31 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

1 viral conditions from the FDC back to their homes and communities, and then return
2 back, bringing new germs with them. “It is therefore an *urgent priority* in this time of
3 national public health emergency to reduce the number of persons in detention as
4 quickly as possible.” Beyrer Dec., Exhibit A, at ¶ 17 (emphasis added).

5 Further, incarcerated people have poorer health than the general population, and
6 even at the best of times medical care is limited in federal pretrial detention centers.¹⁹
7 Many people who are incarcerated also have chronic conditions, such as diabetes or
8 HIV, which make them vulnerable to severe forms of COVID-19. According to public
9 health experts, incarcerated individuals “are at special risk of infection, given their
10 living situations,” and “may also be less able to participate in proactive measures to
11 keep themselves safe”; “infection control is challenging in these settings.”²⁰ Outbreaks
12 of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails
13 and prisons dealt with high numbers of cases.²¹ In China, officials have confirmed the
14 coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.²²
15 Secretary of State Mike Pompeo has called for Iran to release Americans detained there
16 because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian
17 prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies
18 basic human decency.”²³

19
20 ¹⁹ Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail
21 Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of
22 Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>

23 ²⁰ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President
24 Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal
25 Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

26 ²¹ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at
<https://bit.ly/2TNcNZY>.

²² 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>.

²³ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully
detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020) at

1 Extreme measures are necessary because as Dr. Homer Venters, former chief
2 medical officer of the New York City jail system, made clear: “Coronavirus in these
3 settings will dramatically increase the epidemic curve, not flatten it, and
4 disproportionately for people of color.”²⁴ The critical point from health experts is that
5 slowing the rate of infection (“flattening the curve”) is critical to avoid overtaxing
6 health resources (which, if it occurs, would of course lead to more deaths for any given
7 infection rate).²⁵

8 C. Conditions at the FDC Contribute to Fueling the Pandemic

9 The FDC houses 684 total people with a capacity for 1000. Those numbers are
10 obviously not stagnant, given that people continue to be detained and released. Such
11 turnover is particularly frightening in a pandemic. The particular conditions in which
12 the majority of the people are housed offer no protections for those either detained or
13 those who come in regular contact with inmates, including FDC staff. Inmates are
14 housed in small two-person cells with a shared toilet and sink. Individuals not in the
15 special housing unit are only allowed outside of their cells for approximately two or
16 three hours a day, with the upper and lower tiers of each unit alternating the hours they
17 are allowed out of cells for group meals, showers, and accessing the phones and
18 computers. Individuals must often stand in line in close proximity to one another to
19 await their turn for these resources. Groups of 30 or more individuals must share their
20 meals together without the ability to separate. On March 3, 2020, after multiple inmates
21 in the same housing unit began exhibiting flu-like symptoms, the FDC made the

22
23 <https://cnn.it/2W4OpV7>.

24 ²⁴ Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*
Continues, The New York Times (March 16, 2020) at

25 <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

26 ²⁵ See PBS News Hour graph, “One simple chart explains how social distancing saves lives”
(Mar. 13, 2020), at <https://www.pbs.org/newshour/science/one-simple-chart-explains-how-social-distancing-saves-lives>, attached as Exhibit B.

1 decision to go into a 48-hour lockdown, including shutting down all social and legal
2 visits. Although initially the FDC did not have the COVID-19 tests kits they needed to
3 test those in the affected unit, the FDC eventually received the kits. But during the
4 days-long waiting period for the results, those in the affected unit were denied basic
5 hygiene necessities such as showering. There were also reports that individuals did not
6 have access to soap or hand sanitizers. Access to legal calls was also suspended, and all
7 social and legal visitation was shut down pending the test results. Limited legal
8 visitation for non-quarantined inmates was not resumed until March 6, 2020. The
9 quarantine was lifted on March 10, 2020. As of March 13, 2020, legal visits are allowed
10 only on a case-by-case basis. Further, according to George Cho, BOP’s Supervisory
11 Attorney, should “additional FDC SeaTac inmates exhibit flu-like symptoms in the
12 near-future, thus again necessitating quarantining and COVID-19 testing, FDC SeaTac
13 will again implement all necessary measures to protect the safety and security of both
14 the institution and the outside community.”²⁶ Given the speed with which COVID 19 is
15 spreading in our community, it will only be a short matter of time before a staff member
16 or inmate tests positive and the facility returns to an all-out lockdown and quarantine.

17 The FDC’s strategy appears primarily to be a reactive one—quarantining if
18 inmates “exhibit flu-like symptoms in the near-future”—it is highly unlikely the FDC’s
19 tactic for stemming the spread of COVID-19 will work. There is significant controversy
20 over the incubation and appropriate quarantine periods for the disease, insufficient
21 knowledge about how it spreads, and few treatments that appear successful. “The
22 largest study of coronavirus patients so far suggests it could take up to 24 days after
23 exposure for symptoms to show.”²⁷ The CDC’s website gives detailed instructions on

24 ²⁶ March 9, 2020, email from George Cho, attached as Exhibit C.

25 ²⁷ Aylin Woodward, *2 Studies of Coronavirus Patients Suggest the Disease’s Incubation*
26 *Period Could Be Longer than the Standard Quarantine Period of 14 Days*, Business Insider
(Feb. 21, 2020) at <https://www.businessinsider.com/wuhan-coronavirus-symptoms-24-days-after-infection-2020-2>.

1 the complex steps health care professionals must follow in order to properly quarantine
2 infected individuals, including systems that prisons do not have and cannot
3 accommodate, such as negative air pressure circulation systems, HEPA air filtration,
4 and specific air circulation protocols.²⁸ The CDC has also detailed clinical care
5 guidance for the disease, although much remains unknown about its incubation period,
6 modes of transmission, and potential treatment protocols.²⁹ It is unknown whether any
7 of the FDC’s personnel have received training in these procedures. Thus, there is a
8 significant likelihood that prison personnel will themselves become infected and
9 thereafter transmit the disease to the broader community. Indeed, lawyers who are at
10 high risk because of age or underlying medical conditions have been advised not to
11 enter the facility, and more recently there is close to a 100% prohibition on face to face
12 client meetings at the FDC.³⁰ In order to assist in minimizing the transmission of
13 COVID 19 by legal staff into the FDC, the FPD has instituted a temporary policy of
14 prohibiting any lawyers or staff members from entering that facility unless personally
15 approved by the Federal Defender.

16 As additional people are arrested who have been out in the community as the
17 coronavirus spreads, if they are not symptomatic, they will be brought into the FDC and
18 held with the existing population, potentially bringing the virus (now officially named
19 “SARS-CoV-2”³¹) into this population held in large numbers, close quarters, and low
20 sanitary conditions.

23 ²⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.

24 ²⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

25 ³⁰ March 5, 2020, email from George Cho, attached as Exhibit D.

26 ³¹ World Health Organization, “Naming the coronavirus disease (COVID-19) and the virus that causes it,” at [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

1 **D. Detaining John Doe Puts Not Only Him, But Other FDC Inmates, Jail**
2 **and Court Personnel, and the Broader Community, at Greater Risk.**

3 Clearly, detaining John Doe poses significant health risk to him, given the
4 likelihood that COVID-19 will spread within FDC. But the risk is not limited to him. If
5 he currently has SARS-CoV-2 but is asymptomatic, detaining him risks exposing the
6 entire FDC inmate population to the disease. That, in turn, risks exposing FDC
7 personnel, along with all court staff who come in contact with either Mr. Doe or any
8 person infected by him. And if he contributes to an outbreak of COVID-19 within FDC,
9 that will increase the demand on the community’s medical resources, reducing their
10 availability to the community at large. Finally, if he contributes to the spread of the
11 virus within the FDC, then if an infected but asymptomatic inmate is released, that
12 obviously will hasten the spread of the virus and the disease within the broader
13 community.

14 But the harm to others does not depend on the assumption that John Doe
15 currently is infected with the virus. Any increase in FDC’s population increases the
16 odds that the infection will spread if any other inmate is, or becomes, infected, leading
17 to the exact same harms discussed above to inmates, BOP and court staff, and the
18 community.

19 **III. The Bail Reform Act Requires John Doe’s Release**

20 Responsible relevant parties, recognizing these extraordinary circumstances,
21 have acknowledged that increasing the population of detention centers like the FDC
22 presents a danger not only to inmates but to the broader community.

23 Just this month, 24 elected prosecutors from around the country, including Cy
24 Vance, the district attorney of New York, and district attorneys in Mississippi and
25 Texas, sent out a joint statement “Addressing the Rights and Needs of Those in
26 Custody.”³² Recommendations made in that Joint Statement include: “Reduc[ing] the

³² Joint Statement From Elected Prosecutors on COVID-19 and Addressing the Rights and

1 prison population to minimize sharing of cells[,]” and *immediately* “[i]dentify[ing] and
2 releas[ing]” “individuals who are elderly,” and “[p]opulations that the CDC has
3 classified as vulnerable (those with asthma, cancer, heart disease, lung disease, and
4 diabetes.)” The Statement also recommends, among others, that “[p]eople incarcerated
5 for technical violations of probation and parole be released.” *Id.*

6 Prosecutors and law enforcement are already taking some of these proactive
7 measures to mitigate the spread of the coronavirus. San Francisco District Attorney
8 Chesa Boudin has directed his prosecutors not to oppose motions to release pretrial
9 detainees facing misdemeanor charges or drug-related felony charges if the person is
10 deemed to pose no threat to public safety, and has directed his staff to “strongly
11 consider” credit for time served in plea deals so that more people can be released.³³
12 Officials in Los Angeles County, the largest county prison system in the U.S., are also
13 releasing inmates and making fewer arrests to reduce the risk of a coronavirus outbreak
14 in the prison systems. As Los Angeles Sheriff Alex Villanueva recently explained to
15 reporters, these measures are necessary because “Our population within our jails is a
16 vulnerable population just by who they are, where they are located, so we’re protecting
17 that population from potential exposure.”³⁴ Sheriff Villanueva stated his office has
18 reduced the inmate population from 17,076 to 16,459, a reduction of more than 600
19 inmates, in about two weeks. *Id.*

20
21
22 Needs of Those in Custody (March 2020), attached as Exhibit E.

23 ³³ *San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak*
24 (Mar. 12, 2020), at <http://sfpublicdefender.org/news/2020/03/san-francisco-officials-push-to-reduce-jail-population-to-prevent-coronavirus-outbreak-the-appeal/>.

25 ³⁴ Salvador Hernandez, *Los Angeles Releasing Inmates Early Over Fears of Coronavirus in*
26 *Jails*, BuzzFeed News (Mar. 16, 2020), at <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>), at <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>.

1 On March 17, 2020, Chief Judge Ricardo Martinez issued General Order 02-
2 20.³⁵ That Order recognized the various facts discussed above, including the need for
3 minimal contact between people. Chief Judge Martinez took the extraordinary steps of
4 continuing all civil and criminal hearings through May, continuing grand jury hearings,
5 delaying all preliminary hearings, finding excludable time under the Speedy Trial Act,
6 closing the two courthouses except for emergency matters scheduled by individual
7 judges “if necessary after considering the above public health situation,” and closing all
8 Probation and Pretrial offices.

9 If these emergency changes are warranted (and they most definitely are),
10 dramatic changes in release versus detention are equally warranted. This Court has the
11 authority to swiftly mitigate the present danger. As an initial matter, “[u]nder the Bail
12 Reform Act of 1984, as amended, Congress has determined that any person charged
13 with an offense under the federal criminal laws shall be released pending trial, subject
14 to appropriate conditions. . . .” *United States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th
15 Cir. 2015). And, “[o]nly in rare cases should release be denied, and doubts regarding
16 the propriety of release are to be resolved in favor of the defendant.” *Id.* (citing *United*
17 *States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985)). *See also United States v.*
18 *Salerno*, 481 U.S. 739, 755 (1987) (suggesting that “detention prior to trial or without
19 trial is the carefully limited exception” to liberty before trial). One charged with a crime
20 is, after all, presumed innocent. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). A single
21 individual unnecessarily detained before trial is one individual too many, and the
22 increasing use of the practice places tremendous wear on our constitutional system.
23 *United States v. Montalvo-Murillo*, 495 U.S. 711, 723–24 (1990) (Stevens, J.,
24 dissenting, joined by Brennan and Marshall, JJ.).

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26

³⁵ General Order 02-20, W.D. Wash. (Mar. 17, 2020), attached as Exhibit F.

1 The courts have long recognized that there is no greater necessity than keeping a
2 defendant alive, no matter the charge. As former Federal District Court Judge
3 Weinstein for the Eastern District of New York stated: “We do not punish those who
4 have not been proven guilty.” *United States v. Scarpa*, 815 F. Supp. 88 (E.D.N.Y. 1993)
5 (pretrial defendant with AIDS facing murder charges released on bail because of the
6 “unacceptably high risk of infection and death on a daily basis inside the MCC”).

7 The United States Constitution affords pretrial detainees greater protection from
8 dangerous conditions of confinement than those sentenced after conviction. *See, e.g.*,
9 *Hernandez v. County of Monterey*, 110 F. Supp. 3d 929, 934 (N.D. Cal. 2015) (“A jail
10 violates both [the Fourteenth and Eight Amendments] if it incarcerates inmates under
11 conditions posing a substantial risk of serious harm to their health or safety . . . and if
12 [government] acted with deliberate indifference, that is, with conscious disregard for
13 that risk[.]”); *Morales Feliciano v. Rossello Gonzalez*, 13 F. Supp. 2d 151, 210 (D.P.R.
14 1998) (“The failure to screen incoming [inmates] for infectious diseases including
15 tuberculosis” violates the Constitution).

16 This Court should consider the “total harm and benefits to prisoner and society”
17 that detention of John Doe will yield, relative to the heightened health risks posed to
18 John Doe, and that posed to the other inmates, court and BOP staff, and the community,
19 during this rapidly encroaching pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209
20 (2015) (Kennedy, J., concurring) (calling for heightened judicial scrutiny of the
21 projected impact of jail and prison conditions on a defendant); *United States v. Mateo*,
22 299 F. Supp. 2d 201, 212 (S.D.N.Y. 2004) (reducing sentence where defendant’s
23 pretrial conditions were “qualitatively more severe in kind and degree than the prospect
24 of such experiences reasonably foreseeable in the ordinary case”).

25 All provisions of the Bail Reform Act impose a test of “reasonableness” when a
26 court makes release decisions. *See* § 3142(b) (release on personal recognizance or

1 unsecured appearance bond); § 3142(c)(1) (release on conditions); § 3142(d)(2)
2 (temporary detention); and § 3142(e) (detention). *See also United States v. Hir*, 517
3 F.3d 1081, 1092 n. 9 (9th Cir. 2008) (“We note that the Bail Reform Act contemplates
4 only that a court be able to ‘reasonably assure,’ rather than guarantee, the safety of the
5 community. *See United States v. Tortora*, 922 F.2d 880, 884 (1st Cir.1990)
6 (‘Undoubtedly, the safety of the community can be reasonably assured without being
7 absolutely guaranteed.... Requiring that release conditions *guarantee* the community's
8 safety would fly in the teeth of Congress's clear intent that only a limited number of
9 defendants be subject to pretrial detention.’)”) (emphasis in *Tortora*).

10 When evaluating reasonable assurance of the community’s safety, the Court
11 needs to determine the extent to which *detention* threatens the community’s safety, as
12 well as the extent to which release poses a threat. For the reasons discussed in Part II.C,
13 *supra*, given that we are in the midst of a world-wide pandemic, that former risk is
14 significant, and must be an important factor in the Court’s consideration. **[Include only**
15 **if a presumption applies:]** Even where a rebuttable presumption of risk to the
16 community applies under §§ 3142(e)(2) or (3), the risk to the community from
17 *detention* is an important consideration in determining whether a presumption of danger
18 from release has been rebutted.

19 And in evaluating reasonable assurances, the Court also needs to consider the
20 risk to **John Doe** in detaining him. As discussed above, those risks are considerable for
21 any person detained at FDC.

22 Finally, the latest General Order means that any defendants who are detained
23 will be detained for several months, perhaps longer, without an indictment. *See*
24 Exhibit F, ¶ 3. That is all the more reason to favor release over detention.

1 **IV. Conditions of Release Are Available that Allow John Doe to Be Safe From**
2 **the Risks of Incarceration at FDC Also Reasonably Ensuring Any Danger to**
3 **the Community.**

4 [Discuss here the factors you normally would argue.]

5 [Describe specific release conditions proposed]

6 Even if these factors would not normally lead this Court to order release, the
7 present emergency conditions call for a cessation of “business as usual.” Just as
8 restaurants and sporting events must close, the balancing of interests in weighing
9 detention and release decisions must be altered. Under the conditions proposed, the
10 community’s safety will reasonably be assured, while avoiding the increased risk to the
11 community (and to Mr. Doe) from incarceration. Mr. Doe will not be left to his own
12 devices, but will be supported and monitored by Pretrial Services. Since 2009, Pretrial
13 Services’ data has found that only 2.9% of defendants in the highest risk category were
14 re-arrested for a violent crime while on release.³⁶ In 2017, the pretrial release rate for
15 the Western District of Washington was 72.15% and the overall revocation rate was
16 8.89%. [Include if relevant:] The elderly and chronically ill, no matter what crime they
17 are accused of, pose a lower risk of violating supervision, particularly during a global
18 pandemic during which even leaving the house will endanger their lives.

19 **V. The Court Should Deny any Government Request for a Continuance of the**
20 **Detention Hearing.**

21 When the Government has requested a continuance of the detention hearing,
22 such a continuance has generally been granted almost automatically. But the Bail
23 Reform Act does not provide for automatic continuances for either party. In this highly
24 unusual period, a continuance should not be granted.

25 _____
26 ³⁶ Thomas H. Cohen, Christopher T. Lowenkamp, and William E. Hicks, *Revalidating the
Federal Pretrial Risk Assessment Instrument (PTRA): A Research Summary* (September 2018)
at https://www.uscourts.gov/sites/default/files/82_2_3_0.pdf.

1 The Act generally requires that detention hearings “shall be held immediately
2 upon the person’s first appearance before the judicial officer[.]” 18 U.S.C. § 3142(f)(2).

3 The Act then provides an exception to that requirement:

4 unless that person, or the attorney for the Government, seeks a
5 continuance. Except for good cause, a continuance on motion of such
6 person may not exceed five days (not including any intermediate
7 Saturday, Sunday, or legal holiday), and a continuance on motion of the
8 attorney for the Government may not exceed three days (not including
9 any intermediate Saturday, Sunday, or legal holiday). During a
10 continuance, such person shall be detained . . .

11 This “unless” provision does not mean that either party is *automatically* entitled
12 to a continuance. It means that the first provision – making an immediate hearing
13 mandatory – is excused if a party seeks a continuance. In short, if such a request is
14 made, nothing is required, neither a same-day detention hearing nor a continuance;
15 either is within the judicial officer’s discretion.

16 It is also clear from the statute that even when a continuance is granted, three
17 days is a maximum (absent a showing of good cause), not an automatic period. There is
18 nothing to prevent the Court from granting a shorter continuance. *See, e.g., United*
19 *States v. Bundy*, No. 2:16-CR-0046-GMN-PAL, 2016 WL 3456911, at *2 (D. Nev.
20 June 20, 2016) (stating, in the context of a defense request, but equally applicable to
21 Government requests, that, “[f]rom the plain language of the statute, it is clear that a
22 [particular length] continuance is not an entitlement, but rather, a discretionary
23 maximum amount of time the Court may continue the detention hearing upon a . . .
24 motion.”). That continuance could be one of a few hours, rather than even a day, given
25 the health risks to numerous portions of the populations, as detailed in Part II.C, since
26 the defendant must be detained until the continued hearing.

1 **VI. Conclusion**

2 For all of the above reasons, John Doe should be granted release on appropriate
3 conditions.

4 DATED this ___ day of _____ 2020.

5 Respectfully submitted,

6 s/ Attorney Name

7 Assistant Federal Public Defender

8 Attorney for Client Name

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,) No. CASE NO.
Plaintiff,)
v.) EMERGENCY MOTION FOR
CLIENT NAME,) TEMPORARY RELEASE DUE TO
Defendant.) COVID-19 CRISIS PURSUANT TO
18 U.S.C. § 3142(i)

I. Introduction

[Name of Client] presents a greater danger to the community by [his or her] continued detention at the Federal Detention Center, SeaTac (FDC) than if released to the community. [Name of client] presents a minimal risk, if any, for violence against members of the community, and any concerns about flight risk pale when weighed against the risks to the broader community during this escalating crisis.

[Name of client] should be temporarily released on an appearance bond with conditions set by the Court. If a hearing is necessary, the defendant and counsel both agree to appear telephonically. The Court is requested to consider the Pretrial Services report and [list all supporting documents here].

John Doe, who is a pretrial defendant detained at the FDC, is within the group of people 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

1 world, through Washington State, and within the Seattle metropolitan area. The Bail
2 Reform Act provides for the “temporary release” of a person in pretrial custody “to the
3 extent that the judicial officer determines such release to be necessary for preparation of
4 the person’s defense **or for another compelling reason.**” 18 U.S.C. § 3142(i)
5 (emphasis added). The health risk to John Doe, because of his [age/condition], given
6 the conditions at the FDC as described in detail below, necessitates his temporary
7 release on bail until this pandemic has ended. **[Explain in one sentence where client**
8 **will live, under what conditions: e.g. home detention, electronic monitoring.]**

9 II. Factual Background

10 A. Changed Circumstances: The Coronavirus Pandemic

11 The defense recognizes that the Court, like nearly everyone, has been exposed to
12 a wide variety of news reports about COVID-19. However, given the varying
13 information that has been dispensed, it seems worth briefly reviewing what is known.
14 COVID-19 is highly contagious and may be spread by asymptomatic individuals. It has
15 no known vaccination or cure and has killed thousands. As of March 16, 2020, the new
16 strain of coronavirus, which causes COVID-19, has infected over 181,904 people,
17 leading to at least 7,139 deaths worldwide.¹ On March 11, 2020, the World Health
18 Organization officially classified COVID-19 as a pandemic.² The first case of COVID-
19 19 in the United States was found in Snohomish County, Washington. The first death
20 presumed to be from COVID-19 was also in the Seattle area – in Kirkland, Washington.
21 On February 29, 2020, hours after Washington state health officials announced that
22 death, Governor Jay Inslee declared a state of emergency, directing agencies to use all
23 resources needed to respond to the outbreak.³ On March 11, 2020, Governor Inslee

24 ¹ <https://www.worldometer.info/coronavirus/coronavirus-cases> (updating regularly).

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

26 ³ *Gov. Jay Inslee Declares State of Emergency for Coronavirus Response*, KUOW (Feb. 29,
2020) at <https://www.seattletimes.com/seattle-news/health/jails-and-courthouses-across->

1 issued a ban on gatherings and events of more than 250 people in the same counties, in
2 an effort to try to contain the COVID-19 outbreak. One day later, on March 12, 2020,
3 the governor announced the closure of all public and private K–12 schools in King,
4 Snohomish, and Pierce Counties until at least April 27, 2020, affecting 600,000
5 students.⁴ Most recently, on March 15, 2020, the governor signed an emergency
6 declaration temporarily shutting down bars, restaurants, and places of entertainment and
7 recreation statewide, and capping all public gatherings at 50 people.⁵

8 According to the CDC and epidemic experts from around the world, a possible
9 scenario—based on the characteristics of the virus, including estimates of how
10 transmissible it is and the severity of the illness it can cause—is that “[b]etween 160
11 million and 214 million people in the U.S. could be infected over the course of the
12 epidemic,” and “[a]s many as 200,000 to 1.7 million people could die.”⁶ Experts have
13 also made clear that the assumptions fueling these staggering numbers can be mitigated
14 by appropriate interventions to slow transmission. As one expert, Dr. Carter Mecher, a
15 senior medical adviser for public health at the Department of Veterans Affairs and a
16 former director of medical preparedness policy at the White House during the Obama
17 and Bush administrations, observed: “A fire on your stove you could put out with a fire
18 extinguisher, but if your kitchen is ablaze, that fire extinguisher probably won’t work.”
19

20
21 [washington-look-for-ways-to-protect-employees-jurors-and-inmates-from-coronavirus/](https://www.washingtonpost.com/news/health/wp/2020/03/13/washington-look-for-ways-to-protect-employees-jurors-and-inmates-from-coronavirus/)

22 ⁴ *New, Drastic Changes Implemented in Response to Coronavirus*, KIRO 7 News (March 13,
23 2020) at [https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-
24 pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/](https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/) (updating
25 regularly).

26 ⁵ *Washington State to Shut Down Restaurants, Bars, and Cap Gatherings at 50 to Stop Spread
of Coronavirus*, The Seattle Times (March 16, 2020) at [https://www.seattletimes.com/seattle-
news/king-county-and-washington-state-to-act-on-bars-restaurants-and-gatherings/](https://www.seattletimes.com/seattle-news/king-county-and-washington-state-to-act-on-bars-restaurants-and-gatherings/).

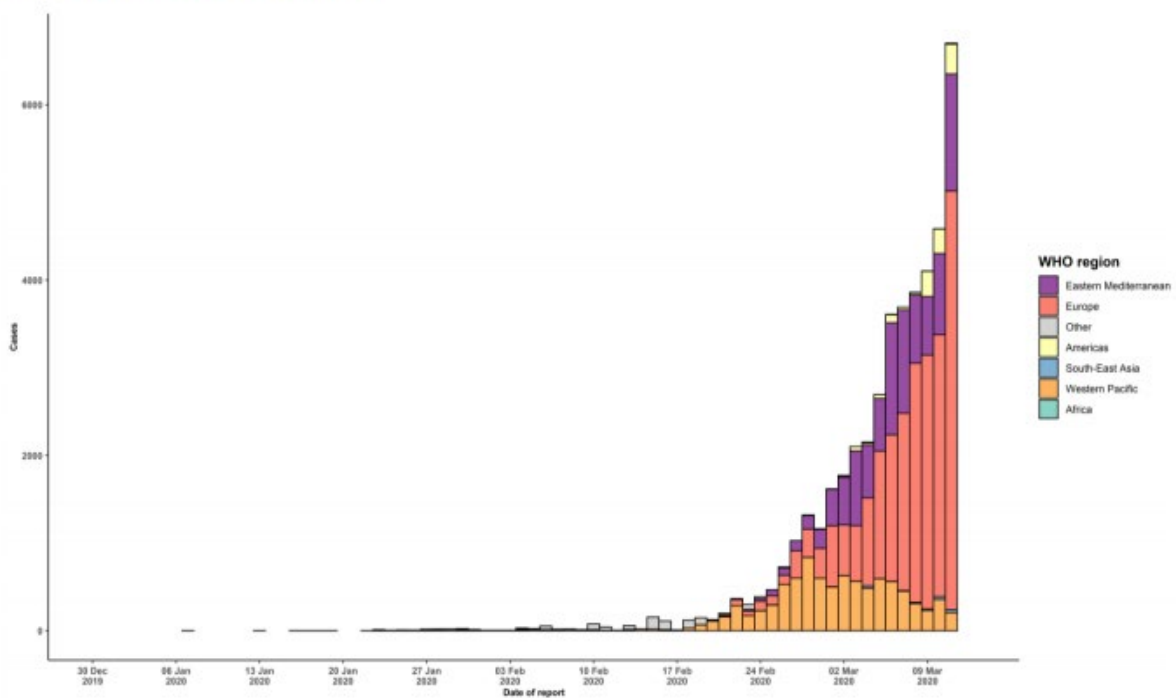
⁶ Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The New York Times
(March 13, 2020) at [https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-
estimate.html](https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html).

1 *Id.* Thus, “[c]ommunities that pull the fire extinguisher early are much more effective.”

2 *Id.*

3 The graph below, showing the epidemic curve of the disease, serves as evidence
4 of the need to act forcefully and immediately to change “business as usual.”⁷

5 **Figure 2. Epidemic curve of confirmed COVID-19 cases reported outside of China (n= 44 067), by date of report and WHO region through 12 March 2020**



18 The CDC has issued guidance that individuals at higher risk of contracting
19 COVID-19—adults over 60 years old and people with chronic medical conditions such
20 as lung disease, heart disease, and diabetes—take immediate preventative actions,
21 including avoiding crowded areas and staying home as much as possible.⁸ Meanwhile,
22 the number of COVID-19 cases in Washington continues to grow. On March 13, 2020,
23 the Department of Public Health announced 36 new cases and one death. The King

24 ⁷ *Coronavirus disease2019 (COVID-19)Situation Report –48*, CDC (March 8, 2020), at
25 [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200308-sitrep-48-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200308-sitrep-48-covid-19.pdf?sfvrsn=16f7ccef_4)
26 [covid-19.pdf?sfvrsn=16f7ccef_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200308-sitrep-48-covid-19.pdf?sfvrsn=16f7ccef_4).

⁸ *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at
<https://bit.ly/2vgUt1P>.

1 County total is now at 27 deaths with 270 total cases. Including the King County
2 deaths, three deaths in Snohomish County, and one Grant County death, the statewide
3 COVID-19 death total is at least 50 and the statewide case number, as reported by the
4 Department of Health and local health districts, is at least 905 and growing.⁹ In light of
5 the confirmed cases in Seattle and surrounding areas that indicate broad community
6 spread, every necessary action must be taken to protect vulnerable populations and, in
7 turn, the broader community inside and outside the FDC.

8 COVID-19 is an extremely dangerous disease. The best estimate for its overall
9 fatality rate—i.e., its fatality rate among all demographics—is 0.3-3.5%, “which is 5-35
10 times the fatality associated with influenza infection.” Beyrer Dec. ¶ 5;¹⁰ *see also* Nick
11 Wilson et al., *Case-Fatality Risk Estimates for COVID-19 Calculated by Using a Lag*
12 *Time for Fatality*, 26(6) EID Journal (prepublication June 2020).¹¹ Fatality rates vary
13 wildly, however, depending on both environmental and demographic risk factors.

14 The death rate for those deemed at-risk is even higher. It increases rapidly with
15 age. Across all age groups, COVID-19 kills:

- 16 • 13.2% of people with cardiovascular disease
- 17 • 9.2% of people with diabetes
- 18 • 8.4% of people with hypertension
- 19 • 8% of people with chronic respiratory disease
- 20 • 7.6% of people with cancer¹²

21 ⁹ *New, Drastic Changes Implemented in Response to Coronavirus*, KIRO 7 News (March 13,
22 2020) at [https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-](https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/)
23 [pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/](https://www.kiro7.com/news/local/coronavirus-all-k-12-schools-king-snohomish-pierce-counties-be-closed-through-april-24/XIDPHMLVOJAAREQ5YCL75367PU/) (updating
regularly).

24 ¹⁰ Declaration of Chris Beyrer, MD, MPH, Professor of Epidemiology, Johns Hopkins
Bloomberg School of Public Health, attached as Exhibit A.

25 ¹¹ Available at https://wwwnc.cdc.gov/eid/article/26/6/20-0320_article.

26 ¹² World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus
Disease 2019 (COVID-19)* at 12 (Feb. 28, 2020), at [https://www.who.int/docs/default-](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf)
[source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf).

1 **B. “An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction**
2 **Continues.”**¹³

3 “If you think a cruise ship is a dangerous place to be during a pandemic,
4 consider America’s jails and prisons.” *Id.* According to the CDC, the virus is mainly
5 spread person-to-person “[b]etween people who are in close contact with one another
6 (within about 6 feet)” and “[t]hrough respiratory droplets produced when an infected
7 person coughs or sneezes.”¹⁴ The spread can be slowed, public health professionals say,
8 if people practice “social distancing” by avoiding public spaces and generally limit their
9 movement. “Social distancing” is not an option at the FDC. Like most prisons, inmates
10 housed at the FDC are in closed quarters and forced to share bathrooms, laundry, and
11 meal areas. The cell toilets rarely have lids and the tank often doubles as the sink for
12 handwashing. Air circulation is uniformly poor. “Infections that are transmitted through
13 droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in
14 detention facilities.” *Beyrer Dec., Exhibit A, ¶ 13.* These deficiencies now represent a
15 threat not only to those being housed there but to the community at large.

16 “According to health experts, it is not a matter of if, but when, this virus breaks
17 out of jails and prisons.”¹⁵ Conditions of pretrial confinement create the ideal
18 environment for the transmission of a highly contagious disease such as COVID-19.¹⁶
19 Inmates do not live under quarantine: people cycle in and out of BOP pretrial facilities
20 daily from all over the world and the country, and people who work in the facilities
21 leave and return daily, without screening. And all of these individuals potentially carry

22 ¹³ Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*
23 *Continues*, The New York Times (March 16, 2020) at

24 <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

25 ¹⁴ *How COVID-19 Spreads*, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html)
26 [ncov/about/transmission.html](https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html) (last accessed on March 13, 2020).

27 ¹⁵ Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*
28 *Continues*, The New York Times (March 16, 2020) at

29 <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

30 ¹⁶ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases*
31 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

1 viral conditions from the FDC back to their homes and communities, and then return
2 back, bringing new germs with them. “It is therefore an *urgent priority* in this time of
3 national public health emergency to reduce the number of persons in detention as
4 quickly as possible.” Beyrer Dec., Exhibit A, at ¶ 17 (emphasis added).

5 Further, incarcerated people have poorer health than the general population, and
6 even at the best of times medical care is limited in federal pretrial detention centers.¹⁷
7 Many people who are incarcerated also have chronic conditions, such as diabetes or
8 HIV, which make them vulnerable to severe forms of COVID-19. According to public
9 health experts, incarcerated individuals “are at special risk of infection, given their
10 living situations,” and “may also be less able to participate in proactive measures to
11 keep themselves safe”; “infection control is challenging in these settings.”¹⁸ Outbreaks
12 of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails
13 and prisons dealt with high numbers of cases.¹⁹ In China, officials have confirmed the
14 coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.²⁰
15 Secretary of State Mike Pompeo has called for Iran to release Americans detained there
16 because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian
17 prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies
18 basic human decency.”²¹

19
20 ¹⁷ Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail
21 Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of
22 Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>

22 ¹⁸ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President
23 Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal
24 Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

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

25 ²⁰ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500*
26 *Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (Feb. 21,
2020) at <https://bit.ly/2vSzSRT>.

26 ²¹ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully*
detained Americans in Iran amid coronavirus outbreak, CNN (Mar. 10, 2020) at

1 Extreme measures are necessary because as Dr. Homer Venters, former chief
2 medical officer of the New York City jail system, made clear: “Coronavirus in these
3 settings will dramatically increase the epidemic curve, not flatten it, and
4 disproportionately for people of color.”²² The critical point from health experts is that
5 slowing the rate of infection (“flattening the curve”) is critical to avoid overtaxing
6 health resources (which, if it occurs, would of course lead to more deaths for any given
7 infection rate).²³

8 C. Conditions at the FDC Contribute to Fueling the Pandemic

9 The FDC houses 684 total people with a capacity for 1000. Those numbers are
10 obviously not stagnant, given that people continue to be detained and released. Such
11 turnover is particularly frightening in a pandemic. The particular conditions in which
12 the majority of the people are housed offer no protections for those either detained or
13 those who come in regular contact with inmates, including FDC staff. Inmates are
14 housed in small two-person cells with a shared toilet and sink. Individuals not in the
15 special housing unit are only allowed outside of their cells for approximately two or
16 three hours a day, with the upper and lower tiers of each unit alternating the hours they
17 are allowed out of cells for group meals, showers, and accessing the phones and
18 computers. Individuals must often stand in line in close proximity to one another to
19 await their turn for these resources. Groups of 30 or more individuals must share their
20 meals together without the ability to separate. On March 3, 2020, after multiple inmates
21 in the same housing unit began exhibiting flu-like symptoms, the FDC made the
22

23 <https://cnn.it/2W4OpV7>.

24 ²² Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*
Continues, The New York Times (March 16, 2020) at

25 <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.amp.html>.

26 ²³ See PBS News Hour graph, “One simple chart explains how social distancing saves lives”
(Mar. 13, 2020), at <https://www.pbs.org/newshour/science/one-simple-chart-explains-how-social-distancing-saves-lives>, attached as Exhibit B.

1 decision to go into a 48-hour lockdown, including shutting down all social and legal
2 visits.

3 Although initially the FDC did not have the COVID-19 tests kits they needed to
4 test those in the affected unit, the FDC eventually received the kits. But during the
5 days-long waiting period for the results, those in the affected unit were denied basic
6 hygiene necessities such as showering. There were also reports that individuals may not
7 have had access to soap or hand sanitizers. Access to legal calls was also suspended,
8 and all social and legal visitation was shut down pending the test results. Limited legal
9 visitation for non-quarantined inmates was not resumed until March 6, 2020. The
10 quarantine was lifted on March 10, 2020. As of March 13, 2020, legal visits are allowed
11 only on a case-by-case basis. Further, according to George Cho, BOP's Supervisory
12 Attorney, should "additional FDC SeaTac inmates exhibit flu-like symptoms in the
13 near-future, thus again necessitating quarantining and COVID-19 testing, FDC SeaTac
14 will again implement all necessary measures to protect the safety and security of both
15 the institution and the outside community."²⁴ Given the speed with which COVID-19 is
16 spreading in our community, it will only be a short matter of time before a staff member
17 or inmate tests positive and the facility returns to an all-out lockdown and quarantine.

18 And, because the FDC's strategy appears primarily to be a reactive one—
19 quarantining if inmates "exhibit flu-like symptoms in the near-future"—it is highly
20 unlikely the FDC's tactic for stemming the spread of COVID-19 will work. There is
21 significant controversy over the incubation and appropriate quarantine periods for the
22 disease, insufficient knowledge about how it spreads, and few treatments that appear
23 successful. "The largest study of coronavirus patients so far suggests it could take up to
24 24 days after exposure for symptoms to show."²⁵ The CDC's website gives detailed

25 ²⁴ March 9, 2020, email from George Cho, attached as Exhibit C.

26 ²⁵ Aylin Woodward, *2 Studies of Coronavirus Patients Suggest the Disease's Incubation
Period Could Be Longer than the Standard Quarantine Period of 14 Days*, Business Insider

1 instructions on the complex steps health care professionals must follow in order to
2 properly quarantine infected individuals, including systems that prisons do not have and
3 cannot accommodate, such as negative air pressure circulation systems, HEPA air
4 filtration, and specific air circulation protocols.²⁶ The CDC has also detailed clinical
5 care guidance for the disease, although much remains unknown about its incubation
6 period, modes of transmission, and potential treatment protocols.²⁷ It is unknown
7 whether the FDC's personnel have received training in these procedures. Thus, there is
8 a significant likelihood that prison personnel will themselves become infected and
9 thereafter transmit the disease to the broader community. Indeed, lawyers who are at
10 high risk because of age or underlying medical conditions have been advised not to
11 enter the facility, and more recently there is close to a 100% prohibition on face-to-face
12 client meetings at the FDC.²⁸ And in order to minimize the transmission of COVID-19
13 by legal staff into the FDC, the FPD has instituted a temporary policy of prohibiting
14 any lawyers or staff members from entering that facility unless personally approved by
15 the Federal Defender.

16 As additional people are arrested who have been out in the community as the
17 coronavirus spreads, if they are not symptomatic, they will be brought into the FDC and
18 held with the existing population, potentially bringing the virus (now officially named
19 "SARS-CoV-2"²⁹) into this population held in large numbers, close quarters, and low
20 sanitary conditions.

21
22 (Feb. 21, 2020) at <https://www.businessinsider.com/wuhan-coronavirus-symptoms-24-days-after-infection-2020-2>.

23 ²⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.

24 ²⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

25 ²⁸ March 5, 2020, email from George Cho, attached as Exhibit D.

26 ²⁹ World Health Organization, "Naming the coronavirus disease (COVID-19) and the virus that causes it," at [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

1 **III. Under these Extraordinary Conditions, the Bail Reform Act Requires John**
2 **Doe's Temporary Release.**

3 Responsible relevant parties, recognizing these extraordinary circumstances,
4 have acknowledged that increasing the population of detention centers like the FDC
5 presents a danger not only to inmates but to the broader community.

6 Just this month, 24 elected prosecutors from around the country, including
7 Cy Vance, the district attorney of New York, and district attorneys in Mississippi and
8 Texas, sent out a joint statement “Addressing the Rights and Needs of Those in
9 Custody.”³⁰ Recommendations made in that Joint Statement include: “Reduc[ing] the
10 prison population to minimize sharing of cells[,]” and *immediately* “[i]dentify[ing] and
11 releas[ing]” “individuals who are elderly,” and “[p]opulations that the CDC has
12 classified as vulnerable (those with conditions, including asthma, cancer, heart disease,
13 lung disease, and diabetes.)” The prosecutors’ Joint Statement also recommends, among
14 others, that “[p]eople incarcerated for technical violations of probation and parole be
15 released.” *Id.*

16 Prosecutors and law enforcement are already taking some of these proactive
17 measures to mitigate the spread of the coronavirus. San Francisco District Attorney
18 Chesa Boudin has directed his prosecutors not to oppose motions to release pretrial
19 detainees facing misdemeanor charges or drug-related felony charges if the person is
20 deemed to pose no threat to public safety, and has directed his staff to “strongly
21 consider” credit for time served in plea deals so that more people can be released.³¹
22 Officials in Los Angeles County, the largest county prison system in the U.S., are also
23 releasing inmates and making fewer arrests to reduce the risk of a coronavirus outbreak

24 _____
25 ³⁰ Joint Statement From Elected Prosecutors on COVID-19 and Addressing the Rights and
26 Needs of Those in Custody (March 2020), attached as Exhibit E.

³¹ *San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak*
(Mar. 12, 2020), at <http://sfpublicdefender.org/news/2020/03/san-francisco-officials-push-to-reduce-jail-population-to-prevent-coronavirus-outbreak-the-appeal/>.

1 in the prison systems. As Los Angeles Sheriff Alex Villanueva recently explained to
2 reporters, these measures are necessary because “Our population within our jails is a
3 vulnerable population just by who they are, where they are located, so we’re protecting
4 that population from potential exposure.”³² Sheriff Villanueva stated his office has
5 reduced the inmate population from 17,076 to 16,459, a reduction of more than 600
6 inmates, in about two weeks. *Id.*

7 On March 17, 2020, Chief Judge Ricardo Martinez issued General Order 02-
8 20.³³ That Order recognized the various facts discussed above, including the need for
9 minimal contact between people. Chief Judge Martinez took the extraordinary steps of
10 continuing all civil and criminal hearings through May, continuing grand jury hearings,
11 delaying all preliminary hearings, finding excludable time under the Speedy Trial Act,
12 closing the two courthouses except for emergency matters scheduled by individual
13 judges “if necessary after considering the above public health situation,” and closing all
14 Probation and Pretrial offices.

15 If these emergency changes are warranted (and they most definitely are),
16 dramatic changes in release versus detention are equally warranted. This Court has the
17 authority to swiftly mitigate the present danger. A “judicial officer may, by subsequent
18 order, permit the temporary release of the person, in the custody of a United States
19 marshal or another appropriate person, to the extent that the judicial officer determines
20 such release to be necessary for preparation of the person’s defense or for another
21 compelling reason.” 18 U.S.C. § 3142(i). The circumstances that existed when **John**
22 **Doe** was ordered detained have now changed. There is a pandemic that poses a direct
23

24 ³² Salvador Hernandez, Los Angeles Releasing Inmates Early Over Fears of Coronavirus in
25 Jails, BuzzFeed News (Mar. 16, 2020), at
26 <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>.

³³ General Order 02-20, W.D. Wash. (Mar. 17, 2020), attached as Exhibit F.

1 risk to John Doe that is far greater if he continues to be detained during this public
2 health crisis.

3 John Doe is vulnerable because he is [fill in facts: over the age of 60/has a
4 serious medical condition.] [If applicable. If not, delete but file the motion anyway.]

5 As an initial matter, “[u]nder the Bail Reform Act of 1984, as amended, Congress
6 has determined that any person charged with an offense under the federal criminal laws
7 shall be released pending trial, subject to appropriate conditions. . . .” *United States v.*
8 *Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015). And, “[o]nly in rare cases should
9 release be denied, and doubts regarding the propriety of release are to be resolved in
10 favor of the defendant.” *Id.* (citing *United States v. Motamedi*, 767 F.2d 1403, 1405
11 (9th Cir. 1985)). *See also United States v. Salerno*, 481 U.S. 739, 755 (1987)
12 (suggesting that “detention prior to trial or without trial is the carefully limited
13 exception” to liberty before trial). One charged with a crime is, after all, presumed
14 innocent. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). A single individual unnecessarily
15 detained before trial is one individual too many, and the increasing use of the practice
16 places tremendous wear on our constitutional system. *United States v. Montalvo-*
17 *Murillo*, 495 U.S. 711, 723–24 (1990) (Stevens, J., dissenting, joined by Brennan and
18 Marshall, JJ.). Due to the crucial interests involved, it follows that a “case-by-case”
19 approach is required at any stage of the case in assessing the propriety of pretrial
20 detention. *See, e.g., United States v. Gelfuso*, 838 F.2d 358, 359–60 (9th Cir. 1988)
21 (concluding due process analysis for evaluating propriety of prolonged pretrial
22 detention requires “assessment on a case-by-case basis”).

23 The courts have long recognized that there is no greater necessity than keeping a
24 defendant alive, no matter the charge. As former Federal District Court Judge
25 Weinstein for the Eastern District of New York, stated: “We do not punish those who
26 have not been proven guilty. When we do punish, we do not act cruelly. Continued

1 incarceration of this terminally ill defendant threatens both of these fundamental
2 characteristics of our democracy.” *United States v. Scarpa*, 815 F. Supp. 88 (E.D.N.Y.
3 1993) (pretrial defendant with AIDS facing murder charges released on bail because of
4 the “unacceptably high risk of infection and death on a daily basis inside the MCC”).
5 *See also United States v. Adams*, No. 6:19-mj-00087-MK, 2019 WL 3037042 (D. Or.
6 July 10, 2019) (defendant charged with violation of the Mann Act and possession of
7 child pornography and suffering from diabetes, heart conditions, and open sores
8 released on home detention because of his medical conditions); *United States v.*
9 *Johnston*, No. 17-00046 (RMM), 2017 WL 4277140 (D.D.C. Sept. 27, 2017)
10 (defendant charged with violation of the Mann Act and in need of colon surgery
11 released to custody of his wife for 21 days); *United States v. Cordero Caraballo*, 185 F.
12 Supp. 2d 143 (D.P.R. 2002) (badly wounded defendant released to custody of his
13 relatives).

14 The United States Constitution affords pretrial detainees greater protection from
15 dangerous conditions of confinement than those sentenced after conviction. *See*
16 *Hernandez v. County of Monterey*, 110 F. Supp. 3d 929, 934 (N.D. Cal. 2015) (“A jail
17 violates both [the Fourteenth and Eight Amendments] if it incarcerates inmates under
18 conditions posing a substantial risk of serious harm to their health or safety . . . and if
19 [government] acted with deliberate indifference, that is, with conscious disregard for
20 that risk[.]”); *Morales Feliciano v. Rossello Gonzalez*, 13 F. Supp. 2d 151, 210 (D.P.R.
21 1998) (“The failure to screen incoming [inmates] for infectious diseases including
22 tuberculosis” violates the Constitution).

23 This Court should consider the total harm and benefits to prisoner and society
24 that continued pretrial imprisonment of John Doe will yield, relative to the heightened
25 health risks posed to John Doe during this rapidly encroaching pandemic. *See Davis v.*
26 *Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (calling for heightened

1 judicial scrutiny of the projected impact of jail and prison conditions on a defendant);
2 *United States v. Mateo*, 299 F. Supp. 2d 201, 212 (S.D.N.Y. 2004) (reducing sentence
3 where defendant’s pretrial conditions were “qualitatively more severe in kind and
4 degree than the prospect of such experiences reasonably foreseeable in the ordinary
5 case”). **[Add if not yet indicted:]** The latest General Order means that any defendants
6 who are detained will be detained for several months, perhaps longer, without an
7 indictment. *See* Exhibit E, ¶ 3. That is all the more reason to favor release over
8 detention.

9 **IV. Conditions of Release Are Available that Allow **John Doe** to Be Treated
10 **Humanely While Also Ameliorating Any Danger to the Community.****

11 From **John Doe’s** perspective **his** life—not only **his** liberty—is on the line,
12 creating a powerful incentive to abide by any release conditions the Court may impose
13 and changing the calculus that initially led to the denial of bail in this case. **[address
14 **specific concerns that led client to be detained]****

15 Critically, during this temporary release, **John Doe** will not be left to **his** own
16 devices, but will be supported and monitored by Pretrial Services. Since 2009, Pretrial
17 Services’ data has found that only 2.9% of defendants in the highest risk category were
18 re-arrested for a violent crime while on release.³⁴ In 2017, the pretrial release rate for
19 the Western District of Washington was 72.15% and the overall revocation rate was
20 8.89%. The elderly and chronically ill, no matter what crime they are accused of, pose a
21 lower risk of violating supervision, particularly during a global pandemic during which
22 even leaving the house will endanger their lives.

23 **[Describe specific release conditions proposed]**

24
25
26 ³⁴ Thomas H. Cohen, Christopher T. Lowenkamp, and William E. Hicks, *Revalidating the
Federal Pretrial Risk Assessment Instrument (PTRA): A Research Summary* (September 2018)
at https://www.uscourts.gov/sites/default/files/82_2_3_0.pdf.

1 Even if these factors would not normally lead this Court to order release, the
2 present emergency conditions call for a cessation of “business as usual.” Just as
3 restaurants and sporting events must close, the balancing of interests in weighing
4 detention and release decisions must be altered.

5 **V. Conclusion**

6 **John Doe** is among the vulnerable population at heightened risk of getting very
7 sick from this illness. For all of the above reasons, **John Doe** should be granted
8 temporary release on bond.

9 DATED this ___ day of March 2020.

10 Respectfully submitted,

11 *s/ Attorney Name*

12 Assistant Federal Public Defender

13 Attorney for **Client Name**

Declaration for Persons in Detention and Detention Staff
COVID-19

Chris Beyrer, MD, MPH
Professor of Epidemiology
Johns Hopkins Bloomberg School of Public Health
Baltimore, MD

I, Chris Beyrer, declare as follows:

1. I am a professor of Epidemiology, International Health, and Medicine at the Johns Hopkins Bloomberg School of Public Health, where I regularly teach courses in the epidemiology of infectious diseases. This coming semester, I am teaching a course on emerging infections. I am a member of the National Academy of Medicine, a former President of the International AIDS Society, and a past winner of the Lowell E. Bellin Award for Excellence in Preventive Medicine and Community Health. I have been active in infectious diseases Epidemiology since completing my training in Preventive Medicine and Public Health at Johns Hopkins in 1992.
2. I am currently actively at work on the COVID-19 pandemic in the United States. Among other activities I am the Director of the Center for Public Health and Human Rights at Johns Hopkins, which is active in disease prevention and health promotion among vulnerable populations, including prisoners and detainees, in the US, Africa, Asia, and Latin America.

The nature of COVID-19

3. The SARS-nCoV-2 virus, and the human infection it causes, COVID-19 disease, is a global pandemic and has been termed a global health emergency by the WHO. Cases first began appearing sometime between December 1, 2019 and December 31, 2019 in Hubei Province, China. Most of these cases were associated with a wet seafood market in Wuhan City.
4. On January 7, 2020, the virus was isolated. The virus was analyzed and discovered to be a coronavirus closely related to the SARS coronavirus which caused the 2002-2003 SARS epidemic.
5. COVID-19 is a serious disease. The overall case fatality rate has been estimated to range from 0.3 to 3.5%, which is 5-35 times the fatality associated with influenza infection. COVID-19 is characterized by a flu-like illness. While more than 80% of cases are self-limited and generally mild, overall some 20% of cases will have more severe disease requiring medical intervention and support.
6. The case fatality rate varies significantly depending on the presence of certain demographic and health factors. The case fatality rate is higher in men, and varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardio-vascular disease, respiratory disease, diabetes, and immune compromise.
7. Among patients who have more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS) which has a 30% mortality rate overall, higher in those with other health conditions. Some 13% of these patients will require mechanical

ventilation, which is why intensive care beds and ventilators have been in insufficient supply in Italy, Iran, and parts of China.

8. COVID-19 is widespread. Since it first appeared in Hubei Province, China, in late 2019, outbreaks have subsequently occurred in more than 100 countries and all continents, heavily affected countries include Italy, Spain, Iran, South Korea, and increasingly, the US. As of today, March 16th, 2020, there have been 178,508 confirmed human cases globally, 7,055 known deaths, and some 78,000 persons have recovered from the infection. The pandemic has been termed a global health emergency by the WHO. It is not contained and cases are growing exponentially.
9. SARS-nCoV-2 is now known to be fully adapted to human to human spread. This is almost certainly a new human infection, which also means that there is no pre-existing or “herd” immunity, allowing for very rapid chains of transmission once the virus is circulating in communities.
10. The U.S. CDC estimates that the reproduction rate of the virus, the R_0 , is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. This is highly infectious and only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity. This again, is likely a function of all human populations currently being highly susceptible. The attack rate given an exposure is also high, estimated at 20-30% depending on community conditions, but may be as high as 80% in some settings and populations. The incubation period is thought to be 2-14 days, which is why isolation is generally limited to 14 days.

The risks of COVID-19 in detention facilities

11. COVID-19 poses a serious risk to inmates and workers in detention facilities. Detention Facilities, including jails, prisons, and other closed settings, have long been known to be associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, MRSA (methicillin resistant staph aureus), and viral hepatitis.
12. The severe epidemic of Tuberculosis in prisons in Central Asia and Eastern Europe was demonstrated to increase community rates of Tuberculosis in multiple states in that region, underscoring the risks prison outbreaks can lead to for the communities from which inmates derive.
13. Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities, as 6-foot distancing and proper decontamination of surfaces is virtually impossible. For example, several deaths were reported in the US in immigration detention facilities associated with ARDS following influenza A, including a 16-year old male immigrant child who died of untreated ARDS in custody in May, 2019.
14. A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of these infectious diseases. These include physical/mechanical risks such as overcrowding, population density in close confinement, insufficient ventilation, shared toilet, shower, and eating environments and limits on hygiene and personal protective equipment such as masks and gloves in some facilities.
15. Additionally, the high rate of turnover and population mixing of staff and detainees increases likelihoods of exposure. This has led to prison outbreaks of COVID-19 in multiple detention facilities in China, associated with introduction into facilities by staff.

16. In addition to the nature of the prison environment, prison and jail populations are also at additional risk, due to high rates of chronic health conditions, substance use, mental health issues, and, particularly in prisons, aging and chronically ill populations who may be vulnerable to more severe illnesses after infection, and to death.
17. While every effort should be made to reduce exposure in detention facilities, this may be extremely difficult to achieve and sustain. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.
18. Pre-trial detention should be considered only in genuine cases of security concerns. Persons held for non-payment of fees and fines, or because of insufficient funds to pay bail, should be prioritized for release. Immigrants awaiting decisions on their removal cases who are not a flight risk can be monitored in the community and should be released from immigration detention centers. Older inmates and those with chronic conditions predisposing to severe COVID-19 disease (heart disease, lung disease, diabetes, immune-compromise) should be considered for release.
19. Given the experience in China as well as the literature on infectious diseases in jail, an outbreak of COVID-19 among the U.S. jail and prison population is likely. Releasing as many inmates as possible is important to protect the health of inmates, the health of correctional facility staff, the health of health care workers at jails and other detention facilities, and the health of the community as a whole.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of March, 2020.

A handwritten signature in dark ink, appearing to read "Chris Beyrer". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Professor Chris Beyrer¹

¹ These views are mine alone; I do not speak for Johns Hopkins University or any department therein.

References

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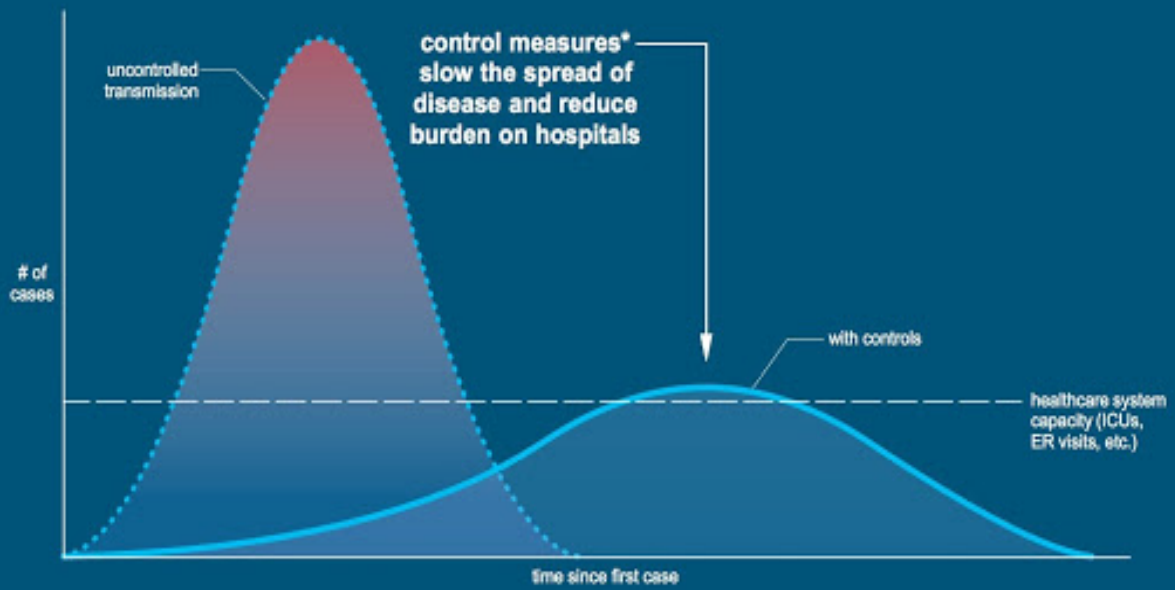
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LOWER AND DELAY THE EPIDEMIC PEAK



* control measures may include handwashing, teleworking, limiting large gatherings, minimizing travel, etc.

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Carl T. Bergstrom, @CT_Bergstrom

From: George Cho [<mailto:gcho@bop.gov>]
Sent: Monday, March 9, 2020 3:54 PM
Subject: FDC SeaTac Update (03-09-20)

All,

Today, 03-09-20, all pending FDC SeaTac inmate COVID-19 tests results came back NEGATIVE.

Accordingly, all FDC SeaTac housing units will be lifted from quarantine tomorrow, 03-10-20. USMS court-line, for both Tacoma and Seattle, will resume in full for all housing units and inmates, including those previously quarantined, unless a specific court-line defendant exhibits flu-like symptoms.

However, if additional FDC SeaTac inmates exhibit flu-like symptoms in the near-future, thus again necessitating quarantining and COVID-19 testing, FDC SeaTac will again implement all necessary measures to protect the safety and security of both the institution and the outside community.

With regards to FDC SeaTac legal visitation, it will also commence in full starting tomorrow, 03-10-20, again for all housing units and inmates, including those previously quarantined. FYI, four (4) legal visits have been successfully conducted today, thus far.

However, Front Lobby staff will be asking all visiting attorneys, to include support staff, COVID-19 self-assessment questions upon entry (i.e. recent foreign travel and/or any flu-like symptoms). Any visiting attorneys and/or support staff who positively self-identify for COVID-19 will be strongly encouraged to postpone their legal visit.

Lastly, due to the limited current staff resources, plus the fact that there were zero (0) legal visits over this past weekend, FDC SeaTac will be temporarily suspending legal visitation on the weekends (i.e. Saturdays and Sundays) only. Social visitation, in its entirety, will remain suspended as well, while the State of Washington remains in this current State of Emergency.

FDC SeaTac will continue to conduct modified operations on all of its housing units, but begin the process of resuming full operations tomorrow. This will include allowing more extensive access to showers, laundry, legal/social mail delivery, legal calls, and social telephone calls/electronic messaging (i.e. e-mail). FYI, inmates in non-quarantined units were allowed limited access earlier today to social telephone and e-mail.

I will continue to provide updates in the future as necessary. Please feel free to contact me if you have any issues or concerns, thank you all for your patience and understanding during this time of crisis.

George Y. Cho
Supervisory Attorney
U.S. Department of Justice
Federal Bureau of Prisons
FDC SeaTac Consolidated Legal Center
Direct: (206) 870-1057
E-mail: george.cho@usdoj.gov

From: George Cho <gcho@bop.gov>
Sent: Thursday, March 5, 2020 3:44 PM
To: Michael Filipovic <Michael.Filipovic@fd.org>; Jacob Green <Jacob.Green@usdoj.gov>; Micki Brunner <Micki.Brunner@usdoj.gov>; Sarah Vogel <Sarah.Vogel@usdoj.gov>; Tessa Gorman <Tessa.Gorman@usdoj.gov>; Brian Tsuchida <Brian.Tsuchida@wawd.uscourts.gov>; Laurie Cuaresma <Laurie.Cuaresma@wawd.uscourts.gov>; Michelle Peterson <Michelle.L.Peterson@wawd.uscourts.gov>; Ricardo Martinez <Ricardo.Martinez@wawd.uscourts.gov>; Theresa Fricke <Theresa.Fricke@wawd.uscourts.gov>; Timothy Farrell <Tim.Farrell@wawd.uscourts.gov>; Traci Whiteley <Traci.Whiteley@wawd.uscourts.gov>; Connie Smith <Connie.Smith@wawp.uscourts.gov>
Subject: FDC SeaTac Update

All,

Today, Thursday, 03/05/20, FDC SeaTac successfully conducted modified operations on all of its housing units (i.e. showers, laundry, and social mail delivery). In addition, all pre-trial inmates, including those in quarantine, were offered the opportunity to make a legal telephone call. Addressing a separate inquiry from Jennifer Wellman, special/legal mail has not been suspended or interrupted and continues to be processed and delivered during this institutional lock down.

Inmates not quarantined in the affected housing unit are still currently allowed to leave the institution via court-line for hearings in both Seattle and Tacoma. FDC SeaTac currently remains on lock down, with no social or legal visitation allowed at this time, pending the complete testing results for COVID-19.

However, tomorrow, 03/06/20, FDC SeaTac will resume limited legal visitation for non-quarantined inmates only. Attorneys may contact the FDC SeaTac Front Lobby Officer by either telephone, 206-870-5700, or by utilizing our online Inmate Attorney Visit Request system, <https://www.bop.gov/locations/legalVisit.jsp?name=set>, to confirm that their client is not currently quarantined and, thus, available for a legal visit. That said, FDC SeaTac strongly encourages attorneys at higher risk of severe illness (i.e. over age 60, underlying health conditions, pregnant, etc.) and/or feeling sick to refrain from legal visitation at this current time, if at all possible.

Thank you for your continued patience and understanding during these extenuating circumstances. I will continue to update you all and, specifically, let you know once the complete COVID-19 testing results are received.

If you have any issues or concerns, please feel free to contact me directly.

George Y. Cho
Supervisory Attorney
U.S. Department of Justice
Federal Bureau of Prisons
FDC SeaTac Consolidated Legal Center
Direct: (206) 870-1057
E-mail: george.cho@usdoj.gov



JOINT STATEMENT FROM ELECTED PROSECUTORS
ON COVID-19 AND ADDRESSING THE RIGHTS AND NEEDS OF THOSE IN CUSTODY
March 2020

COVID-19 has the world on high alert. In recognition that the coronavirus is spreading quickly among high concentrations of people in close proximity, [schools](#) are being shut down, [conferences](#) rescheduled, international [travel is being restricted](#), and cruise ships -- [the early incubators of the virus](#) -- are being quarantined. Those measures are all sensible, but they also drive home how little attention is being paid to the millions of people in the most overcrowded conditions that are ripe for the spread of this contagious and deadly virus: the people behind bars in America's jails, prisons, and immigration detention centers.

There are [2.3 million adults and children](#) locked up in the United States in various systems of confinement, including state and federal prisons, local jails, youth correctional facilities, and immigration detention centers. Far more cycle in and out of jail on a daily basis; there are [10.6 million](#) jail admissions every year.

Our country's [jail and prison populations have exploded](#) over the last few decades, a result of people being prosecuted more often for [less serious behavior](#); an increase in the severity of sentences imposed; and our cash-based pretrial detention system, which [keeps hundreds of thousands](#) of people in jail prior to any determination of guilt and merely because they [can't afford to pay bail](#). Recently, immigration detention has reached [record proportions](#), despite apprehensions at the border being far below [historic highs](#). The result of these practices is overcrowded jail, prison and immigration detention facilities that force people together in close quarters [without access to proper hygiene](#) or [medical care](#), sometimes living barracks-style in [gyms or other open spaces](#), breathing the same recycled air for up to 23 hours per day. These conditions are fertile ground for the spread of a virus like COVID-19.

We, as elected prosecutors, have an obligation to protect the safety and wellbeing of *everyone* in our community, regardless of their race, ethnicity, or country of origin. Those obligations [extend](#) behind prison walls. And they require elected prosecutors to step up in this time of growing public health concerns to address the needs and rights of individuals in these facilities.

An outbreak of the coronavirus in these custodial facilities would not only move fast, it would potentially be catastrophic. [According to the Center for Disease Control](#), the elderly and people with underlying medical conditions are more susceptible to falling severely ill with COVID-19. Both populations are, unfortunately, well represented among incarcerated people. People over the age of 55 make up the [fastest growing demographic](#) of those imprisoned. From 1999 to 2016, the number of people age 55 or older in state and federal prisons increased 280 percent and it is estimated that by 2030, there will be over [400,000 people in our prisons over the age of 50](#). Similarly, jails and prisons house disproportionately large numbers of people [with chronic](#)

[illnesses and complex medical needs](#) that many facilities are already [ill-equipped to treat](#). And at least 57 ICE detention centers have already experienced outbreaks of infectious diseases [like mumps](#) that have presented challenging health issues.

If these facilities become breeding grounds for the coronavirus, it will not only impact those incarcerated, but our entire community. [Jails and prisons cycle large numbers of people](#) in and out of close, unsanitary quarters on a daily basis. Many people are arrested and booked into jail on the same day, while others are released within a short time back to their community. People leave immigration detention and return to communities in the US or to vulnerable refugee shelters and [encampments](#) along the border. All of these facilities rely on services and support from vendors and medical professionals, employ staff who come and go, and appropriately provide access for legal counsel and family members to visit. And people with severe conditions who need intensive medical treatment are often removed from these facilities to be treated in local hospitals.

Most states and localities recognize the present danger and are considering [stopgap solutions](#), including [temporary release for certain populations](#). Some have also instituted more extreme measures such as [locking down jails](#). These ad hoc responses underscore the urgent need for the broader and long-overdue reforms we were elected to carry out and are deeply committed to -- advancing fairness and equity and addressing overincarceration.

To that end, we believe that the current crisis creates an even more pressing need for elected prosecutors, public health officials, and other leaders to work together to implement concrete steps in the near-term to dramatically reduce the number of incarcerated individuals and the threat of disastrous outbreaks. And we are equally committed to not eroding the rights and safety of those in custody, even as we take steps to address the current health crises. We also recognize that there is no singular “right” approach on how to handle what is a rapidly evolving situation and that the dynamics in each jurisdiction will vary. Nonetheless, we believe that the principles set forth below are vitally important ones to consider and to implement to the fullest extent possible.

Achieving Reductions in Detention and Incarcerated Populations

First and foremost, we urge local officials to stop admitting people to jail absent a serious risk to the physical safety of the community. Policymakers, prosecutors and criminal justice leaders should also take steps to dramatically reduce detention and the incarcerated population. To that end, we believe that elected prosecutors should work with public health officials and other leaders in their communities to implement and advocate for the following reforms:

- Adopt cite and release policies for offenses which pose no immediate physical threat to the community, including simple possession of controlled substances.
- Release all individuals who are being detained solely because they can’t afford cash bail, unless they pose a serious risk to public safety.
- Reduce the prison population to minimize sharing of cells and ensure that there are sufficient medical quarantine beds, and enough staff, to promote the health and safety of staff, those incarcerated, and visitors.

- Identify and release the following people immediately, unless doing so would pose a serious risk to the physical safety of the community:
 - Individuals who are elderly;
 - Populations that the CDC has classified as vulnerable (those with asthma, cancer, heart disease, lung disease, and diabetes);
 - People in local jails who are within 6 months of completing their sentence; and
 - People incarcerated due to technical violations of probation and parole.
- Put in place procedures and advocate for reforms that enable past lengthy sentences to be revisited and support release for those individuals who can safely return to the community.

Humane Conditions of Confinement

For those who must remain incarcerated, every effort should be made to ensure they have access to good healthcare, as defined by public health officials, and that their basic human rights are being met. It is critical to balance the precautions necessary to protect against any spread of the virus with the constitutional rights of those in custody. To that end, government officials and criminal justice leaders should work together, and with corrections and public health officials, to:

- Eliminate medical co-pays for anyone in confinement;
- Maintain access to counsel and preserve family visitation rights as long as possible and with precautions (such as glass wall barriers) that can address concerns around the introduction and spread of the virus in correctional facilities;
- Make phone calls free and increase teleconferencing capacity and means to help people stay connected to family and counsel; and
- Ensure that containment measures do not result in the denial of due process (for instance, avoid postponing court appearances and trials when doing so would violate speedy trial guarantees and do not creating barriers that inhibit access to counsel).

Protecting Immigrant Communities and Reducing Immigration Detention

Additionally, the federal government should take the following actions to end the spread of COVID-19 among immigrant communities:

- Suspend new detentions of suspected non-citizens unless there are compelling public safety reasons that support the need for ongoing detention;
- Immediately release all people under the age of 21 in immigration detention unless there are compelling public safety reasons that support the need for ongoing detention; and
- Direct the Department of Homeland Security to honor the sensitive locations policy and not conduct immigration enforcement operations in or around hospitals or medical clinics.

Health Care Measures and Protections for Confined Individuals

Prosecutors should also work with public health, corrections, immigration and government leaders to:

- Avoid the use of widespread lock-downs or solitary confinement as a containment measure and implement more targeted quarantines to control the spread of infection;
- Educate people in custody and staff about the virus and the measures they can take to minimize their risk of contracting or spreading the virus;
- Implement a humane plan for housing of persons who are not released but who are sick. In particular, patients should receive medical care in a hospital, rather than in a detention or corrections facility -- where treatment and housing poses a risk to both the patient and detention staff;
- Encourage and direct detention and corrections employees to stay home, with pay, if they feel sick; and
- Provide free soap and CDC-recommended hand sanitizer, increased medical care, comprehensive sanitation and cleaning of facilities and other safety measures as recommended by the CDC for those who remain incarcerated or detained.

Finally, elected prosecutors must be leaders and collaborate with, and where helpful convene, public health experts and the officials responsible for detention and custodial facilities to ensure that all members of their community are protected and *no one* is forgotten. They should also work with these partners to release to the public the plans and procedures in place to address COVID-19 within jails, correctional facilities and detention centers.

Even after the urgent threat of the coronavirus subsides, these sensible and smart policies should remain. The United States is an international outlier in its rate of incarceration -- we put far too many people behind bars for far too long, and fail to provide adequate care to those we incarcerate. That's a humanitarian crisis with or without COVID-19. We need to make deflection and diversion the presumptive default to shrink our rate and length of incarceration. We need to stop criminalizing immigrants. And we need to address the underlying inequities, public health system inadequacies, and racial biases that bring far too many people into contact with the justice system.

We are facing a serious threat as a country, but it also presents a unique opportunity to come together and swiftly address these longstanding systemic problems. These reforms are long overdue and they will help make our entire country more just, safe, and healthy.

Signed,

Diana Becton, District Attorney, Contra Costa County, California

Buta Biberaj, Commonwealth's Attorney, Loudoun County, Virginia

Chesa Boudin, District Attorney, City and County of San Francisco, California

John Choi, County Attorney, Ramsey County, Minnesota

David Clegg, District Attorney, Ulster County, New York

Shameca Collins, District Attorney, Sixth Judicial District, Mississippi

Scott Colom, District Attorney, Sixteenth Judicial District, Mississippi

John Creuzot, District Attorney, Dallas County, Texas

Satana Deberry, District Attorney, Durham County, North Carolina

Parisa Dehghani-Tafti, Commonwealth's Attorney, Arlington County and the City of Falls Church, Virginia

Michael Dougherty, District Attorney, Twentieth Judicial District, Colorado

Mark Dupree, District Attorney, Wyandotte County, Kansas

Kim Gardner, Circuit Attorney, City of St. Louis, Missouri

Sarah F. George, State's Attorney, Chittenden County, Vermont

Eric Gonzalez, District Attorney, Kings County, New York

Mark Gonzalez, District Attorney, Nueces County, Texas

Andrea Harrington, District Attorney, Berkshire County, Massachusetts

Jim Hingeley, Commonwealth's Attorney, Albemarle County, Virginia

Natasha Irving, District Attorney, Prosecutorial District Six, Maine

Justin F. Kollar, Prosecuting Attorney, County of Kaua'i, Hawai'i

Lawrence S. Krasner, District Attorney, Philadelphia, Pennsylvania

Stephanie Morales, Commonwealth's Attorney, Portsmouth, Virginia

Marilyn Mosby, State's Attorney, Baltimore City, Maryland

Karl Racine, Attorney General, District of Columbia

Rachael Rollins, District Attorney, Suffolk County, Massachusetts

Daniella Shorter, District Attorney, Twenty-Second Judicial District, Mississippi

Carol Siemon, Prosecuting Attorney, Ingham County, Michigan

David Soares, District Attorney, Albany County, New York

David Sullivan, District Attorney, Northwestern District, Massachusetts

Cyrus R. Vance, District Attorney, New York County, New York

Lynneice Washington, District Attorney, Jefferson County, Bessemer Division, Alabama

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON

8 In Re:

9
10 COURT OPERATIONS UNDER THE
11 EXIGENT CIRCUMSTANCES
12 CREATED BY COVID-19 AND
RELATED CORONAVIRUS

GENERAL ORDER NO. 02-20

13 This General Order is being issued in response to the developing outbreak of
14 Coronavirus Disease 2019 (COVID-19) and in conjunction with the Court's March 6, 2020,
15 General Order, which limited in-Court appearances and continued all jury matters.
16

17 In response to the continued spread of COVID-19, President Trump has declared a
18 national emergency and issued guidelines directing at-risk individuals including those 60 and
19 older, to stay home and away from other people, and encouraging everyone to work from home
20 whenever possible, to avoid discretionary travel, and to avoid social gatherings in groups of
21 more than ten people. Governor Inslee has also declared a state of emergency. The Centers for
22 Disease Control and Prevention ("CDC") and other health authorities have advised people to
23 take precautions to reduce the possibility of exposure to the COVID-19 virus and to slow the
24 spread of the disease. In particular, the CDC is recommending that people attempt to keep
25 physical distance between themselves and other people. This technique, known as social
26 distancing, is especially important for people who have a higher health risk should they
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1 contract the disease. The CDC is recommending employers attempt to minimize exposure
2 between employees and the public and to consider the public health and safety when scheduling
3 group or public events. Additionally, there is recent evidence indicating that COVID-19 may
4 be spread by persons who are asymptomatic.

5 Given this guidance, and to protect the safety and health of all those entering and
6 working in the Courthouse, the Court ORDERS, effective immediately:
7

- 8 1. The Seattle and Tacoma Courthouses will be closed to the public except as stated
9 below. This temporary closure will last at least 30 days and may be continued based on
10 public health guidance.
- 11 2. All civil and criminal hearings and trial dates in these Courthouses scheduled to occur
12 before June 1, 2020, are continued pending further order of the Court. The Court may
13 proceed with video/telephonic conferences as appropriate and at the discretion of
14 individual judges. Scheduling orders in cases may need to be amended as appropriate
15 on a case-by-case basis. This paragraph does not apply to Bankruptcy Court hearings,
16 which are addressed below.
- 17 3. All grand jury proceedings scheduled before June 1, 2020, are continued.
- 18 4. With regard to criminal matters, due to the Court's reduced ability to obtain an adequate
19 spectrum of jurors and the effect of the above public health recommendations on the
20 availability of witnesses, counsel and Court staff to be present in the courtroom, the
21 time period of the continuances implemented by this General Order will be excluded
22 under the Speedy Trial Act, as the Court specifically finds that the ends of justice served
23 by ordering the continuances outweigh the best interests of the public and any
24 defendant's right to a speedy trial, pursuant to 18 U.S.C. §3161(h)(7)(A). For the same
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1 reasons, the Court finds under 18 U.S.C. § 3060(C) extraordinary circumstances exist,
2 and justice requires delay of all criminal preliminary hearings during the time period of
3 the continuances implemented by this order.

- 4 5. All criminal initial appearances and detention hearings will be conducted via
5 video/telephone conference with the defendant's permission, unless directed otherwise
6 by the Court.
- 7
8 6. Due to the nature of bankruptcy proceedings, the Bankruptcy Court will continue with
9 scheduled non-evidentiary hearings telephonically as posted on the Bankruptcy Court's
10 website (www.wawb.uscourts.gov) and announced by the individual bankruptcy judge.
11 All evidentiary hearings and trial dates scheduled to occur before June 1, 2020, are
12 continued pending further order. These may proceed with video/telephonic conferences
13 as appropriate and at the discretion of individual judges. Scheduling orders in cases may
14 need to be amended as appropriate on a case-by-case basis.
- 15
16 7. Individual judges may continue to conduct emergency matters in the Seattle and
17 Tacoma Courthouses if necessary after considering the above public health situation.
18 Those required to attend these matters will be permitted to enter the Courthouses.
- 19
20 8. This Order does not affect the Court's consideration of civil or criminal motions that
21 can be resolved without oral argument. Attorneys and pro se parties are encouraged to
22 continue to file documents with the Court electronically through CM/ECF.
- 23
24 9. Staff in each of the Clerks' Offices will be available by telephone, mail will be
25 received, and new filings will be processed. However, the Court's intake window will
26 be closed. Those wishing to make in-person filings will be directed to leave such
27 materials at established drop off points near the entrance to the courthouses.
28

1 10. All five Probation and Pretrial Offices will be closed. However, drug testing will
2 continue as directed by U.S. Probation and Pretrial. A duty officer will be able to
3 answer telephonic questions.

4 If you have a scheduled appointment or are otherwise required to appear at the
5 courthouse but are denied entry, you should proceed as follows:

- 6 • If you are represented by an attorney, please contact your attorney;
- 7 • If you are an attorney or a pro se litigant and you are scheduled to appear in court before
8 a judge, please contact that judge's chambers or courtroom deputy (see court websites at
9 www.wawd.uscourts.gov/judges and www.wawb.uscourts.gov/chambers-information);
- 10 • For all other matters or questions, please contact the Clerk's Office at (206) 370-8400
11 (Seattle) or (253) 882-3800 (Tacoma). For questions related to bankruptcy court please
12 contact the Bankruptcy Court Clerk's Office at 206-370-5200 (Seattle) or 253-882-3900
13 (Tacoma).

14 This Order amends and supersedes the Court's previous General Order 01-20 related to
15 COVID-19. The Court will vacate or amend this General Order no later than April 15, 2020.
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17 Dated this 17 day of March 2020.

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22 RICARDO S. MARTINEZ
23 CHIEF UNITED STATES DISTRICT JUDGE
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