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March 15, 2020

BY ECF & ELECTRONIC MAIL

Hon. Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square
New York, N.Y. 10007

Re: United States v Carl Andrews
19-CR-131 (PAE)

Dear Judge Engelmayer:

The defense writes to apprise the Court that we have requested the assistance of the NACDL Strike Force assistance. Attached is NACDL's letter.

Respectfully submitted,

/s/ Alan M. Nelson

Alan M. Nelson

Ezra Spilke

Lee Bergstein

cc: All Counsel
Encl.

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JOSHUA L. DRATEL
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March 15, 2020

BY ECF

The Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Carl Andrews,
19 Cr. 131 (PAE)

Dear Judge Englemayer:

This letter is respectfully submitted on behalf of the National Association of Criminal Defense Lawyers (“NACDL”) in support of defendant Carl Andrews’s motion for a stay of the trial underway before the Court. I am an NACDL Strike Force (providing assistance to lawyers) representative for the jurisdictions covered by the United States Court of Appeals for the Second Circuit. NACDL has been asked by the defense attorneys in this case for Strike Force assistance (in the form of this letter) because those attorneys are gravely concerned for their own health and safety, as well as that of all other participants in the trial (in addition to their families and others with whom they all will come in contact).

NACDL believes that a stay is necessary to protect the health of jurors, lawyers, witnesses, and Court staff and personnel. Compelling jurors to spend a fair portion of the day in a confined space in which they share a bathroom, a sink, a table, and chairs, and then another few hours in close proximity in the jury box, presents an unnecessary and inordinate risk under the current circumstances, in which both New York City and the United States as a whole are operating under a state of emergency.

Also, the danger is not simply to those in the courtroom and courthouse. As public health officials and experts have explained repeatedly, the dynamic of community contagion means that anyone with whom the persons identified above come in contact are at risk, as are the people with whom they come in contact, *ad infinitum*. The defense lawyers herein not only do not want to be infected, they do not want to be responsible for infecting others; nor should anyone

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Hon. Paul A. Engelmayer
United States District Judge
Southern District of New York
March 15, 2020
Page 2 of 3

involved in the trial be placed in that untenable moral position.

In that respect, continuing the trial is contrary to every public health instruction and policy currently in place, and the government's position is dangerously obtuse, as it ignores and is irreconcilable with the admonitions from government authorities and public health experts – not to mention the ominous example tardy responses from other countries provide.¹ Every day prophylactic steps are taken improves the ability of the U.S.'s health care system (which is woefully under-resourced to handle the projected infection and potential hospitalization rates) to confront the crisis effectively – to “flatten the curve.”² Conversely, every day of inaction worsens the situation, and contributes to the crisis and its severity.

The situation is fluid, and courts are adjusting on a daily basis. In Los Angeles today, the court suspended the trial of Robert Durst.³ That is a homicide trial in which the victim and her family have waited 20 years for closure. Yet even the gravity of those circumstances yielded to the public health emergency the U.S. and the world face at present.

In addition, it cannot be expected that Mr. Andrews will receive fair or proper deliberation from the jury. Imagine the pressure on a hold-out juror to capitulate. Imagine the atmosphere in the jury room if there is dissent. There will be the proverbial rush to judgment,

¹ The government's position also creates a double standard regarding communicability. Due to the infections within the U.S. Attorney's Office, upon information and belief, Assistant United States Attorneys have requested and received permission to work from home. That is sensible and appropriate. The jurors, lawyers, witnesses, and Court staff are entitled to choose the same protective measures – not just for themselves, but for the their families and their secondary and tertiary (and beyond) contacts.

² Sheri Fink, “Worst-Case Estimates for U.S. Coronavirus Deaths,” *The New York Times*, March 13, 2020, available at <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html?referringSource=articleShare>; Siobhan Roberts, “Flattening the Coronavirus Curve,” *The New York Times*, March 11, 2020, available at <https://www.nytimes.com/2020/03/11/science/coronavirus-curve-mitigation-infection.html?searchResultPosition=5>; Claire Lehmann, “Dealing With a Once-In-A-Century Pathogen,” *Quillette*, March 3, 2020, available at <https://quillette.com/2020/03/03/dealing-with-a-once-in-a-century-pathogen/>

³ See Paul Vercammen and Hollie Silverman, “Robert Durst murder trial is suspended because of coronavirus concerns,” *CNN*, March 15, 2020, available at <https://www.cnn.com/2020/03/15/us/california-jury-trials-suspended/index.html>

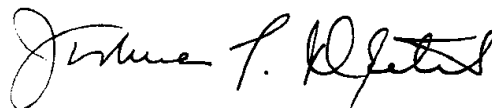
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Hon. Paul A. Engelmayer
United States District Judge
Southern District of New York
March 15, 2020
Page 3 of 3

which will effectively deny Mr. Andrews his Sixth Amendment right to trial by jury. Not since the immediate aftermath of 9/11 has there been such a cause for mass and continuing anxiety among the public. In light of that ongoing drain on the jurors' emotional resources, demanding or even expecting them to provide the appropriate measure of concentration to this case, and to which Mr. Andrews is entitled under the Sixth Amendment – during the evidentiary phase, summations, instructions, or deliberations – is asking too much and unrealistic.⁴

General deterrence is a concept that courts apply at sentencing to set an example for others to influence future behavior. Here, that principle is pertinent. The city and national governments have urged a course of action in an ongoing public health crisis, and it is respectfully submitted that the courts – a coordinate branch of the U.S. government – should follow suit to set the proper example. Otherwise, exceptions to the rules for addressing this pandemic will be rationalized throughout society, to the detriment of all. NACDL firmly believes all of us need to follow the rules in these exceptional times not only to mitigate the impact of the pandemic's spread, but also to "flatten the curve" and preserve the capacity of the public health system to handle it adequately.

Respectfully submitted,



Joshua L. Dratel

JLD/

⁴ The jurors' attention will also likely be diverted, and their anxiety exacerbated, by the announcement, just moments ago, that New York State Governor Andrew Cuomo has ordered the closing of public schools in New York City as well as Westchester County (and Nassau County). See Eliza Shapiro, "Coronavirus in N.Y.: New York City Public Schools to Close," *The New York Times*, March 15, 2020, available at <https://www.nytimes.com/2020/03/15/nyregion/nyc-schools-closed.html?searchResultPosition=1>