

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

CASE NO. 3:19-cr-00192-HES-JRK

UNITED STATES OF AMERICA,

Plaintiff,

v.

GE SONGTAO,

Defendant.

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**EMERGENCY MOTION TO REOPEN PRETRIAL DETENTION HEARING OR  
FOR THE TEMPORARY RELEASE OF DEFENDANT GE SONGTAO  
AND INCORPORATED MEMORANDUM OF LAW**

This motion is based on simple humanity. Defendant, Ge Songtao (“Mr. Ge”) is not charged with an offense which carries the death penalty. As a presumptively innocent pretrial detainee charged with non-violent offenses carrying relatively modest or even lower advisory guideline exposures, his confinement must not carry the risk of preventable death from disease. Such conditions of pretrial confinement must surely be shocking to the conscience of everyone and be unconstitutional.<sup>1</sup>

Mr. Ge respectfully moves this Honorable Court to immediately reopen his Pretrial

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<sup>1</sup> On her regular Wednesday night program on MSNBC on March 18, 2020, host Rachael Maddow reported that diagnosed Coronavirus cases in New York City had doubled *in the last 24 hours*. Deaths had multiplied there as well. NYC is practically shut down. Videos of Times Square look like a ghost town. All stores, bars, restaurants, gyms and gathering places are closed. Yet the virus is still spreading like wildfire. If and when the disease hits the Baker County Jail (“BCJ”) where Mr. Ge is pretrial detained, assuming it has not already done so, crowded conditions of confinement there portend the real possibility that Mr. Ge, a high risk individual, may well contract the disease before anything can be done to prevent it. He might even die. This is why we have styled this as an “Emergency” motion.

Detention Hearing as provided under the Bail Reform Act (“BRA”). 18 U.S.C. § 3145(f)(2) provides that a detention hearing may be reopened at any time before trial, if the judicial officer finds that information exists that was not known to the movant at the time of the detention hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person and the safety of any other person and the community. The “physical and mental condition” of the defendant are statutory factors to be considered on the issue of detention under the BRA.<sup>2</sup> Additionally, the BRA also provides for the “Temporary Release” of a pretrial detainee for any “compelling reason”.<sup>3</sup> As will be shown below, there are important factual changed circumstances both as to Mr. Ge himself and as to any risk that he might flee if released.

The incredible risks posed by the Coronavirus Pandemic were not known to Mr. Ge at the time of his pretrial detention hearing. Nor were important Coronavirus-created circumstances related to his ability to flee known at that time. No pandemic had even been declared by the World Health Organization (“WHO”) at the time of the detention hearing. No one was even thinking or talking about the Coronavirus then. As a high-risk inmate, a 50-year old male with chronic asthma, the Baker County Jail is ill equipped, and is not believed to be taking the necessary steps recommended by the United States Centers for Disease Control and Prevention (“CDC”) or the WHO to prevent Mr. Ge from infection with the New Covid-19 virus.

We respectfully request a complete, immediate evidentiary inquiry by the Court into the conditions of Mr. Ge’s detention, including specifically what, if any, truly effective measures are being taken by the BCJ to protect him from contracting, then succumbing to the Coronavirus. Our

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<sup>2</sup> See 18 U.S.C. §3145(g)(3)(A)

<sup>3</sup> See 18 U.S.C. § 3142(i)

own very basic attempt at an inquiry with the BCJ has not been answered.<sup>4</sup> Consequently, Mr. Ge's anecdotal reporting to counsel to the effect that no apparent meaningful steps have been taken by the BCJ to prevent an outbreak of disease within the institution is the present limit of our information. But evidence abounds of emerging and emergency issues involving prison populations across the country. We have zero reason to believe these problems do not exist at the BCJ.

The problems related to detainees regarding Covid-19 are so acute that at least one federal Magistrate Judge has already entered a "CRIMINAL CASE STANDING ORDER RE: PROCEDURE FOR REVIEW OF DETENTION ORDERS IN LIGHT OF CORONAVIRUS PANDEMIC."<sup>5</sup> (all caps in original)

As of March 18, 2020, the new strain of Coronavirus which causes Covid-19, has infected over 198,214 people, leading to at least 7,965 deaths worldwide.<sup>6</sup> In the United States alone, there have been at least 7,568 confirmed cases and 117 fatalities.<sup>7</sup> On March 11, 2020, the WHO

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<sup>4</sup> The following email was sent to Officer Evelyn Blue at the BCJ on Tuesday, March 17, 2020:

Good afternoon Ms. Blue. I hope this correspondence finds you well.

Can you tell me whether the Baker County Jail has initiated any special attorney visitation limitations or other prevention rules in response to the Coronavirus threat? Has anyone connected with the facility, officer or inmate, contracted the Covid-19 virus? Can you tell me how many new inmates on average per day are processed into the jail?

Thank you for your courtesy and professionalism

<sup>5</sup> See CRIMINAL CASE STANDING ORDER RE: PROCEDURE FOR REVIEW OF DETENTION ORDERS IN LIGHT OF CORONAVIRUS PANDEMIC, (U.S. Dist. Ct. No. Dist. Ca., Magistrate Judge Nat Cousin, March 16, 2020) (Exhibit "A" hereto)

<sup>6</sup> See *Worldometer*, <https://www.worldometers.info/coronavirus/>

<sup>7</sup> *COVID-19 Coronavirus - Update Last updated: 2020-03-18*, <https://virusncov.com/As> of 9 pm on 3/18, media reports exceeded 8,000 confirmed cases.

officially classified Covid-19 as a Pandemic.<sup>8</sup> The WHO classifies persons with asthma as high-risk.<sup>9</sup>

Reports suggest that the Bureau of Prisons (“BOP”) has thus far failed to follow the most important recommendations of the White House. On March 18, 2020, The New York Times reported that at the crowded federal prison complex in Tallahassee, Florida, there are insufficient masks, soap, or hand sanitizer and the sole doctor is out sick.<sup>10</sup> “On Monday, a new inmate arrived and was immediately put into quarantine. And on Tuesday, a bus with almost a dozen inmates from a U.S. Immigration and Customs Enforcement detention center showed up.”<sup>11</sup> According to the article, they all had elevated temperatures and were scheduled for quarantine.<sup>12</sup> The BOP recognizes that the densely-packed nature of prisons “creates a risk of infection and transmission for inmates and staff.”<sup>13</sup> However, as to measures that can be taken, “[m]uch of the advice given by the CDC — such as staying six feet away from others and routinely disinfecting surfaces —

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<sup>8</sup> World Health Organization, *WHO Characterizes COVID-19 as a Pandemic*, (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

<sup>9</sup> World Health Organization, *Coronavirus disease (COVID-19) advice for the public: Myth busters*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters> (“People of all ages can be infected by the new coronavirus (2019-nCoV). Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus.”)

<sup>10</sup> Danielle Ivory, ‘We Are Not a Hospital’: A Prison Braces for the Coronavirus, The New York Times (March 18, 2020), <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

can be nearly impossible to follow behind bars”<sup>14</sup> Also, prisoners are in regular contact with staff who do not have sufficient protective gear themselves.<sup>15</sup> The prisons and local jails that house those on pretrial detention do not have the Intensive Care facilities that can handle an outbreak. Plus, none of them have ventilators. If inmates succumb to the virus and become critically ill, they will have to be sent to hospitals where hospital officials will have to decide who among the needy, not just prison inmates, will receive treatment.<sup>16</sup> Does anyone really think prison inmates will get a fair shake in this process? Many leading experts suggest that the situation will become much worse as time goes on, and the virus spreads and our health care facilities will be seriously strained, if not entirely overwhelmed<sup>17</sup>

The CDC has issued guidance that individuals at higher risk of contracting Covid-19—adults over 60 years old or people with chronic medical conditions such as—asthma, lung disease, heart disease, and diabetes—take immediate preventative actions, including avoiding crowded areas and staying home as much as possible.<sup>18</sup>

Conditions of pretrial confinement create the ideal environment for the transmission of

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See Sheri Flink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The New York Times (March 13, 2020), <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>

<sup>18</sup> See Centers for Disease Control and Prevention, *People at Risk for Serious Illness from COVID-19*, (last updated March 12, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>; See also Centers for Disease Control and Prevention, *People with Asthma and COVID-19*, (last updated March 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/asthma.html>

contagious disease.<sup>19</sup> Inmates cycle in and out of detention facilities from all over the country and the world, and people who work in the facilities including correctional officers, and care and service providers leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited.<sup>20</sup> Many people who are incarcerated also have chronic conditions, like asthma, diabetes or HIV, which makes them vulnerable to severe forms of Covid-19.

According to public health experts, incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe;” “infection control is challenging in these settings.”<sup>21</sup> Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases.<sup>22</sup> In China, officials have confirmed the Coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.<sup>23</sup> Secretary of State Mike

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<sup>19</sup> Joseph A. Bick, *Infection Control in Jails and Prisons*, *Clinical Infectious Diseases*, Volume 45, Issue 8 (October 15, 2007), pp. 1047-1055, <https://doi.org/10.1086/521910>

<sup>20</sup> Laura M. Maruschak et al., *Medical Problems of State and Federal Prisoners and Jail Inmates*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (February 2015, revised October 2016), <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>

<sup>21</sup> Greg S. Gonsalves et al., *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), [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final\\_covid-19\\_letter\\_from\\_public\\_health\\_and\\_legal\\_experts.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf)

<sup>22</sup> Nicole Wetsman, *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, *The Verge* (March 7, 2020), <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>

<sup>23</sup> 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), <https://www.businessinsider.com/500-coronavirus-cases-reported-in-jails-in-china-2020-2>

Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that Covid-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human decency.”<sup>24</sup> These same considerations pushed by the government abroad must be applied here at home as well. Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain the Coronavirus across the country.<sup>25</sup>

Beyond the Northern District of California as referenced in footnote 5, *supra*, in the U.S., steps are being taken in some jurisdictions to facilitate the release of elderly and sick prisoners and to reduce jail populations by discouraging the admission of individuals arrested on non-violent misdemeanor charges.<sup>26</sup> New York City has already begun releasing vulnerable prisoners.<sup>27</sup>

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<sup>24</sup> Jennifer Hansler and Kylie Atwood, *Pompeo Calls for Humanitarian Release of Wrongfully Detained Americans in Iran Amid Coronavirus Outbreak*, CNN (Mar. 10, 2020), <https://www.cnn.com/2020/03/10/politics/mike-pompeo-iran-release-detained-americans-coronavirus/index.html>

<sup>25</sup> Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press (March 7, 2020), <https://apnews.com/af98b0a38aaabedbc059092db356697>

<sup>26</sup> In New York Brooklyn District Attorney Eric Gonzalez, joined by public health experts, has asked Governor Cuomo to grant emergency clemencies to elderly and sick prisoners. *See* Sarah Lustbader, *Coronavirus: Sentenced to COVID-19*, The Daily Appeal (Mar. 12, 2020), <https://theappeal.org/sentenced-to-covid-19/>; *see also* Cory Shaffer, *Cuyahoga County (Ohio) is Holding Mass Pleas and Bail Hearings to Reduce the Current Jail Population*, Cleveland.com (March 12, 2020), <https://www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html>; *see also* WKBN Staff, *Local County Jails Making Changes Due to Coronavirus Outbreak*, WKBN First News 27 (March 12, 2020), <https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>; *see also* Charles Scudder, *Facing Coronavirus Concerns, Collin County Sheriff Asks Police Not to Bring Petty Criminals to Jail*, The Dallas Morning News (March 12, 2020) (<https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>)

<sup>27</sup> *See* Julia Marsh and Ben Feuerherd, *NYC To Begin Releasing Inmates Amid Coronavirus Outbreak*, The New York Post (March 18, 2020), <https://nypost.com/2020/03/18/nyc-to-begin-releasing-inmates-amid-coronavirus-outbreak/>

District Attorneys from around the country are moving to seek the release of non-violent offenders who pose the greatest threat of succumbing to the virus.<sup>28</sup> Such measures are even being taken by the State Attorney's Office in Jacksonville.<sup>29</sup> The danger to prisoners in Florida has become even more acute as the Department of Corrections has ordered that the state prison system stop taking inmates. This means those inmates who are currently in state or county jails must remain in those jails which will lead to further over-crowding in those facilities.<sup>30</sup>

Mr. Ge is fifty years old and has asthma with which he was diagnosed approximately 10

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<sup>28</sup> See Jane Wester, *District Attorneys Call for 'Cite and Release' for Offenses That Pose No 'Physical Threat'*, New York Law Journal (March 17, 2020), <https://www.law.com/newyorklawjournal/2020/03/17/district-attorneys-call-for-cite-and-release-for-offenses-that-pose-no-physical-threat/?slreturn=20200218194209>

Four New York state district attorneys announced Monday that they support a “cite and release” approach toward offenses posing “no physical threat to the community” and the release of inmates particularly vulnerable to the novel coronavirus. Manhattan District Attorney Cyrus Vance Jr., Brooklyn's Eric Gonzalez, Albany County's David Soares and Ulster County's David Clegg joined a nationwide group including 27 prosecutors from outside New York who say they're open to major changes as the virus continues to spread in the United States.

<sup>29</sup> See Andrew Pantazi, *Coronavirus: Social Distancing is Hard When You're Booked in The Jacksonville Jail*, The Florida Times-Union, Jacksonville (March 18, 2020), <https://www.jacksonville.com/news/20200318/coronavirus-social-distancing-is-hard-when-yoursquore-booked-in-jacksonville-jail>

In Jacksonville, the State Attorney's Office said it would “continue to work with law enforcement, the courts, the Public Defender's Office and the private Bar to identify nonviolent and eligible offenders for expedited release from jail[.]”

<sup>30</sup> *Id.*



years ago.<sup>31</sup> Mr. Ge is presumed innocent.<sup>32</sup> Although housed in the BCJ, the Marshal's Service is ultimately responsible for his safety. The BRA's concern for the safety of detained individuals is reflected in 18 U.S.C. §3142 (i) which states that in an order imposing pretrial detention, the judicial officer shall:

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal[.]<sup>33</sup>

Though there may have been, we are unaware of any action by the Marshal's service in connection with the BCJ, to protect Mr. Ge or other federal detainees there.

Just making a phone call subjects Mr. Ge to possible infection.<sup>34</sup> Without sanitary wipes available to clean telephones before every use, Mr. Ge is in jeopardy from everyone who has previously used the phone. Also, we understand that the BCJ houses INS detainees which results in a regular influx of persons who may have been exposed to the virus.

In truth, the reasons for the immediate release of Mr. Ge are both obvious and compelling. In light of the above reported emerging trend around the country recognizing the serious risks

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<sup>31</sup> Mr. Ge's asthma is presently asymptomatic. But that does not lessen or eliminate the high risk he faces from contracting Covid-19 which is especially dangerous for people with respiratory problems. Counsel anticipates making a supplement filing with Mr. Ge's medical records, once they are received from China and are translated.

<sup>32</sup> See 18 U.S.C. §3142(j)

<sup>33</sup> 18 U.S.C. §3142(i)(2)

<sup>34</sup> Access to a conference room where attorney visits had been taking place prior to the pandemic has now been cutoff by the BCJ. Attorney visits are now limited to a small, glass partitioned room. This case, which involves tape recorded and documentary evidence which must be reviewed with Mr. Ge, cannot be properly prepared this way. Mr. Ge is dependent on his ability to access and use the telephone, even more so where his counsel are self-isolating in compliance with CDC, WHO and other State and Federal guidelines. The phone is also his lifeline to his family and to others who are assisting in the preparation of his defense.

inherent in detention, it is disappointing that the government opposes this motion outright<sup>35</sup>, apparently not even caring to have itself and the Court consider the issues. An immediate evidentiary inquiry by this Court, followed by Mr. Ge's release from pretrial detention to house arrest with electronic monitoring and reporting to Pretrial Services is necessary to protect Mr. Ge's right to not be subjected to preventable infection with the Coronavirus and possible death is, simply put, the right thing to do.

There are also other important changed realities since the detention hearing which make Mr. Ge's release to house arrest more than reasonable. As a result of the Coronavirus pandemic, our borders with Canada and Mexico are closed. There are no flights to China or practically anywhere in that part of the world. The airports are all but empty making any visit there by Mr. Ge stand out like a sore thumb to certain to be pre-alerted law enforcement officers. He has no passport. Catherine Linn Finn, our paralegal interpreter who also serves as the official Court Chinese interpreter, manages rental properties. She advises that there is an apartment available for Mr. Ge. Cameras can be installed to monitor the apartment doors and building exits if necessary. Thus, there is literally no place for Mr. Ge to go, no way for him to get there and several ways to reliably monitor his movements.

WHEREFORE, defendant, Ge Songtao respectfully requests his immediate release pending trial, and any further relief deemed just and proper.

#### **CERTIFICATE OF CONFERENCE**

Counsel for Mr. Songtao has conferred with Michael Coolican, Assistant United States Attorney, with respect to this motion. The Government opposes the motion.

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<sup>35</sup> See, Certificate of Conference, *infra*. p. 10.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 19th day of March, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in another authorized manner for those counsel or parties not authorized to receive electronically Notices of Electronic Filing.

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