**EMERGENCY MOTION FOR REINSTATEMENT OF BAIL**

**87 years old + Many Covid-19 Risk Factors + Covid-19 Infected Institution = Likelihood of Death As Such Requires Immediate Release Where Not a Risk or a Danger**

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

The petition of D, Defendant Petitioner in the above referenced matter, by his attorney, A, Esquire, moves this Court for a bail hearing and an order granting his release. This motion is based on the attached points and authorities, the declaration of counsel and any testimony or evidence adduced at the hearing on this motion as well as the U.S. and Pennsylvania Constitutions including but not limited to the 5th, 6th, and 8th Amendment to the U.S. Constitution and Article 1, Section 1, 9, 13, 14, 26, 28.

1. March 4, 2020, D was resentenced by the Honorable

Judge Y. At the time, Mr. D was sentenced in material part to the following sentence of incarceration: 1) IDSI Person Less Than 13 Yrs Age, Confinement Minimum of 5 Years Maximum of 10 Years; 2) IDSI Person Less Than 13 Yrs Age, Confinement 5 to 10 years,

Probation maximum of 3 years; 3) Ind Asslt Person Less, Probation Maximum of 1 year. The sentences were to run consecutively so as to render a sentence of 10 to 20 years followed by 3 years' probation.

2. On March 16, 2020, a timely Post Sentencing Motion was filed and is pending before the Honorable Y. (See attached March 16, 2020 confirmation email from Y, secretary to the Honorable Y, marked as Exhibit “A”.) Additionally, it should be noted that Mr. D raised Mr. D’s medical condition in combination with the COVID-19 pandemic as a basis to modify and reconsider his sentence. (“Given the combination of these medical conditions and Mr. D’s advanced age, he is clearly at highest risk for contracting and spreading COVID-19.” Post Sentencing Motion, No. 8.)

1. In this Post Sentencing Motion, there is also a request for a recusal and for

reconsideration of sentence. Here, Mr. D seeks temporary release during determination of post sentencing motions and if necessary bail pending appeal.

4. Mr. D is presently housed at the Z Facility. It has been reported that the Z Facility has been exposed to coronavirus.

(See the March 15, 2020 Delco Times article <https://www.delcotimes.com/news/local/prison-inmates-and-employees-exposed-to-a-positive-covid-/article_2c0154a4-658d-11ea-a497-2f59407a187c.html>, marked as Exhibit “B”.) This March 15, 2020 article stated that “The 11 inmates and 23 employees at George W. Hill Correctional Facility who were quarantined after exposure to another prison employee who tested positive for COVID-19 have been showing no symptoms of the coronavirus after eight days, sources close to the situation said.” Not surprisingly, we now know more – and more troubling news. We know that, “Three inmates and five employees at the 1,883-inmate George W. Hill Correctional Facility have tested positive for coronavirus and 13 more employees had to be self-quarantined, officials said Saturday.” (See March 22, 2020 Delco Times article <https://www.delcotimes.com/news/three-inmates-five-employees-infected-at-county-prison/article_b2391512-6bb3-11ea-aba0-7f83b3216e8e.html>, marked as Exhibit “C.”) We know from other publications that once the coronavirus infects a prison setting, “It Spreads Like Wildfire...”. (See March 27, 2020, The New Yorker article <https://www.newyorker.com/news/news-desk/it-spreads-like-wildfire-covid-19-comes-to-new-yorks-prisons>, marked as Exhibit “D”.) We also understand that prison workers by necessity continue to enter and leave the institution, as well as attorneys who are constitutionally mandated to provide services and to continue to visit their clients. However, on information and belief, no particular precautionary measures have been taken to protect inmates from the introduction of unaware carriers of COVID-19. Given that asymptomatic individuals can be carriers - including prison workers and sadly, as you can see visiting attorneys are additional reasons for release. While we understand the constitutionally mandated services provided by attorneys and that attorney client visits should not be compromised, nonetheless we believe there has not been any (and certainly not sufficient) precautionary and protective measures to assure the health and welfare of inmates including but limited to such things as confidential meetings to continue but to adapt to include social distancing, the ability to wash hands immediately before and after meetings, and the use of hand sanitizers. Unfortunately, attorneys can introduce COVID-19 and where so with extraordinary tragic results. See, for ex. interview by PD  Jennifer Burrill of Santa Fe, NM, who has tested positive. (See March 27, 2020 Santa Fe Reporter Article, [https://www.sfreporter.com/news/2020/03/25/high-risk-and-confirmed-positive/](https://www.sfreporter.com/news/2020/03/25/high-risk-and-confirmed-positive/" \t "_blank" \o "https://www.sfreporter.com/news/2020/03/25/high-risk-and-confirmed-positive/), marked as Exhibit “E”.)

5. Most critically we know from the statistics, we are approximately some 10-14 days or so behind the curve of Italy, so we can anticipate an explosive number of cases and deaths. There are predictions of a virtual tsunami of cases. (See March 27, 2020 CBS Philly article,

<https://philadelphia.cbslocal.com/2020/03/26/coronavirus-latest-penn-medicine-model-warns-of-coronavirus-tsunami-to-hit-philadelphia-in-may/>, marked as Exhibit “F”.)

6. At the time of sentencing, defendant was suffering from numerous serious and

debilitating medical conditions including a serious and debilitating heart condition and dizziness and fainting for which he has repeatedly been hospitalized. (See attached medical records marked as Exhibit “G”.) Due to his advanced age, frail and deteriorating medical and mental health, Mr D exhibits numerous of the COVID-19 risk factors, making him more likely to **contract and to die** as a result of those numerous conditions. D suffers from cardiac myocardial infarction, arrhythmia, atrial fibrillation, intracranial atherosclerosis, mild to moderate cerebral volume loss, coronary artery disease, neuropathies of the extremities, hyperlipidemia, enlarged right ventricle, moderate aortic valve sclerosis, increased chronic urinary frequency, moderate tricuspid regurgitation, degenerative mitral valve. At re-sentencing, this Court was also provided additional medical records from S.C.I. Z and X Facility, documenting Mr. D’s significant, more recent health decline. Each of these conditions, combined with the current COVID-19 crisis, make Mr. D highly susceptible to contracting and spreading this virus to staff and inmates.

7. Defendant has been incarcerated from October 27, 2016 to the presentatSCI

Z and at the X Facility. He is presently temporarily, incarcerated at the X Facility.

**I. Changed Circumstances: COVID-19 Outbreak**

8. Defendant moves the Court for a bail hearing and an order granting his release, by reinstatement of his cash bail as previously set in February 2016 ($100,000 at 10%) (where he was in full compliance), and/or imposition of reasonable meetable conditions and/or if needed cash bail , where he is neither a risk of flight or danger to the community given his advanced age and numerous medical factors including COVID-19 risk factors. Mr. D likely presents one of if not the greatest risks to die of any inmate given his age and Covid-19 medically compromised condition. As such, it should not matter whether he is sentenced or not given that he is neither a danger or risk of flight and poses no danger or risk of flight.

9. Defendant, D is temporarily detained at the Z Facility, Inmate No. BLANK , and is among the group of people the Centers for Disease Control and Prevention (“CDC”) has categorized as most-at-risk for contracting and spreading COVID-19, a dangerous illness spreading rapidly across the world and through Philadelphia, Pennsylvania.

10. The Z facility will not be able to care for Mr. D, and associated medical and hospitalization costs will be enormous, nor are they equipped to protect their own staff and other inmates from Mr. D, once he is contaminated.

11. The health risk to Defendant, D and everyone at Z, is heightened because of Mr. D’s age, 87 years old, and given the conditions at the Z Facility described in detail below, necessitates temporary release until this pandemic has ended. See attached medical records and letters from Q, PhD, Q1 , PhD, Q2, MD, Q3, MD, Q4, Esquire, Q5, M.D, Article from the Office of the Inspector General, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons,* Revised February 2016, and updated Prison Medical Records from the Z Facility, documenting Mr. D’s various medical issues, marked as Exhibit “G”. See attached Order dated March 19, 2020, from President Judge X of the Court of Common Pleas of Delaware County, marked as Exhibit “H”.

12. During the period of release, Defendant will reside at BLANK . Undersigned can provide a fool proof reliable out of state monitoring system (through cell phone) that has been used nationally by reliable third party with the ability to provide instantaneous information as to the whereabouts of the individual. A redacted copy of letter from Michael Kingery, of Outreach Smartphone, which identifies this service. (See attached letter, brochure and link to relevant website, [*www.osmnow.com*](http://www.osmnow.com), marked as Exhibit” “I.)

**II. Conditions of Confinement and Spread of Coronavirus**

13. Conditions of confinement create the ideal environment for the

transmission of contagious disease.[[1]](#footnote-1) Inmates cycle in and out of detention facilities from all over the world and the country, 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. [[2]](#footnote-2) Many people who are incarcerated also have chronic conditions, like 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.”[[3]](#footnote-3) 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.[[4]](#footnote-4) In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.[[5]](#footnote-5) Secretary of State Mike 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.”[[6]](#footnote-6) Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.[[7]](#footnote-7) In the U.S. steps are already being taken in some jurisdictions to facilitate the release of elderly and sick prisoners and to reduce jail populations.

14. Attached please find a compilation of articles addressing the severe problems posed for incarcerated defendants during this Covid-19 crisis, attached as Exhibit “L”.

**III. Specific Conditions at the Z Facility**

15. During prior outbreaks of communicable disease such as MRSA, H1N1 flu, or

Tuberculosis, the prison maintained a daily average of 1862 inmates. We recognize due to COVID-19 crisis the prison is seeking to reduce its population now alleged to be at 1387.

16. Currently, the County of Delaware is experiencing a COVID-19 outbreak via

community transmission. An outbreak is when a large number of people suddenly get sick. The Governor of Pennsylvania has declared a State of Emergency and Public health officials recommend community actions to reduce people’s risk of being exposed to COVID-19. (See Governor Tom Wolf’s Order dated March 19, 2020, marked as Exhibit “J”.)

17. As of early January 2020, the County of Delaware has been monitoring the

COVID—19 epidemic and has implemented aggressive recommendations for the County of Delaware to reduce the spread of COVID-19 Coronavirus, including social distancing and that people over 60 or with underlying health conditions stay at home as much as possible.

18. As of this writing, Delaware County is experiencing the third highest number of COVID-19 cases. Significantly it is third, following the first two highest counties in the Commonwealth, that of Philadelphia and Montgomery County. Compounding the problem both

adjacent counties. See The Pennsylvania Department of Health COVID-19 cases in Pennsylvania, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>,

marked as Exhibit “K”.)

19. The County of Delaware continues to issue [guidance and resources](https://www.phila.gov/documents/coronavirus-covid-19-resources/) to the general

public, businesses, and health care providers on what they can do to limit the spread of the virus and protect vulnerable people.

20. With confirmed cases that indicate community spread, the time is now to take action to protect vulnerable populations and the community at large. According to the Centers for Disease Controls and Prevention, the people at higher risk of getting very sick from this illness include: (1) adults over the age of 60 and (2) people who have serious chronic medical conditions like heart disease, diabetes and lung disease. The County of Delaware Department of Public Health included people with weakened immunesystems in its definition of “vulnerable populations”.

21. People regularly cycle in and out of jails and prisons, people who work in them leave

and return daily and visitors regularly stream through. Viruses of all kinds have multiple entry points and those that enter tend to spread fast. 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. Many people who are incarcerated also have chronic conditions like diabetes or HIV, which makes them vulnerable to severe forms of COVID-19. When Coronavirus suddenly exploded in China’s prison, there were reports of more than 500 cases spreading across five facilities in three provinces. In Iran, 54,000 inmates were temporarily released back into the country. amid virus fears.

22. The Z Facility lacks the resources necessary to engage

in screening and testing of inmates, correctional staff, law enforcement officers and other care and service providers who enter the facility.

23. As additional people are arrested who have been out in the community as the

coronavirus spreads, if they are not symptomatic, they will be brought into the Z Facility and held with the existing population, potentially bringing COVID-19 into this population held in large numbers, close quarters, and low sanitary conditions.

24. The circumstances that existed when Defendant D was

sentenced have changed. There is a pandemic that poses a direct risk that is far greater if Defendant D continues to be detained during this public health crisis.

25. Defendant D is vulnerable because of the following debilitating medical conditions including cardiac myocardial infarction, arrhythmia, atrial fibrillation, intracranial atherosclerosis, mild to moderate cerebral volume loss, coronary artery disease, neuropathies of the extremities, hyperlipidemia, enlarged right ventricle, moderate aortic valve sclerosis, increased chronic urinary frequency, moderate tricuspid regurgitation, degenerative mitral valve.

At re-sentencing, this Court was provided additional medical records from S.C.I. Z and Z Facility, documenting Mr. D’s significant, further health decline. Each of these conditions, combined with the current COVID-19 crisis, makes Mr. D, highly susceptible to contracting and spreading this virus to staff and inmates.

26. Liberty is the norm and “detention prior to trial or without trials is the carefully

limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). One charged with a crime is, after all, presumed innocent. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). A single individual unnecessarily detained before trial is one individual too many, and the increasing use of the practice places tremendous wear on our constitutional system. *United States v. Montalvo-Murillo*, 495 U.S. 711, 723–24 (1990) (Stevens, J., dissenting, joined by Brennan and Marshall, JJ.). Due to the crucial interests involved, it follows that a “case-by-case” approach is required at

any stage of the case in assessing the propriety of pretrial detention. *See United States v. Gonzales Claudio*, 806 F.2d 334, 340 (2d Cir. 1986) (discussing due process analysis for evaluating propriety of prolonged pretrial detention, and the interests at stake) (citations omitted), *cert. dismissed sub nom.*, *Melendez-Carrion v. United States*, 479 U.S. 978 (1986).

27. The courts have long recognized that there is no greater necessity than keeping a

defendant alive, no matter the charge. As Judge Weinstein held, “We do not punish those who have not been proven guilty. When we do punish, we do not act cruelly. Continued incarceration of this terminally ill defendant threatens both of these fundamental characteristics of our democracy.” *United States v. Scarpa*, 815 F.Supp.88 (E.D.N.Y. 1993) (pretrial defendant with AIDS facing murder charges released on bail because of the “unacceptably high risk of infection and death on a daily basis inside the MCC”).

28. This Court should consider the “total harm and benefits to prisoner and society”

that continued pretrial imprisonment Defendant D will yield, relative to the heightened health risks posed to Defendant D during this rapidly encroaching pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (calling for heightened judicial scrutiny of the projected impact of jail and prison conditions on a defendant); *United States v. Mateo*, 299 F. Supp. 2d 201, 212 (S.D.N.Y. 2004) (reducing sentence where defendant’s pretrial conditions were “qualitatively more severe in kind and degree than the prospect of such experiences reasonably foreseeable in the ordinary case”).

**IV. Conditions of Release Are Available That Allow Defendant D To Be Treated Humanely While Also Ameliorating Any Danger To The Community**

29. From Defendant D perspective, his life—not only his liberty—

is on the line, creating a powerful incentive to abide by any release conditions the Court

may impose and changing the calculus that initially led to the denial of bail in this case.

**V. Conditions Under Which Client Will Be Released**

30. During the period of release Defendant will reside BLANK and will include Electronic Monitoring and House Arrest. See, letter referenced in paragraph #12 by Outreach Smartphone Monitoring, at Mr. D’s cost. See, Exhibit “I”.

31. The elderly and chronically ill, no matter what crime they are accused of, pose a lower risk of violating supervision, particularly during a global pandemic during which even leaving the house will endanger their lives.

**VII.** **Defendant Is Particularly Vulnerable**

32. Defendant, D is vulnerable because he has significant health

issues and needs to receive treatment. (See attached medical reports, marked as Exhibit “G”.)

33. Defendant D moves the Court for Order granting his immediate release by reinstatement of his pretrial cash bail or such or other alternatives permitting his release as discussed above or in the alternative a bail hearing.

34. Because Defendant is among the vulnerable population at higher risk of getting very sick from this illness he should not be incarcerated. This Court must order release on conditions narrowly tailored to the government’s interest in court appearance and public safety.

35. The crimes are alleged to have occurred over 27 years ago. There has been no reoccurrence. Mr. D previously satisfied a full term of 5 years probation without incident – from 2001 to 2006. Since completing probation, he has continued living a crime free existence for the last 20 years, a sign of his rehabilitation.

36. Petitioner has never made any effort to flee or avoid justice.

37. Petitioner’s actions consistently show that he is not a flight risk. Petitioner is not flight risk nor a danger to the community given his age and long time 27 years without any violation of the law, including 5 years of probation in 2001, without incident, for actions which were also from almost 30 ago.

38. Petitioner has been incarcerated since October 27, 2016.

39. Petitioner will comply with all of his bail conditions.

40. The Petitioner is not a flight risk and will not cause any harm to any member of the

community if released on bail.

41. For these reasons, Defendant Petitioner is requesting he be released to house arrest.

**VIII. Conclusion**

42. Defendant D is among the vulnerable population at heightened

risk of getting very sick from this illness, and most likely if he contracts COVID-19, he will die.

43. For all of the above reasons, Defendant should be granted release on cash bail.

WHEREFORE, it is respectfully requested that this Honorable Court release

Defendant by reinstating his original pre-trial bail, or permitting his release on reasonable meetable conditions, and/or on cash bail.

1. Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, *at* <https://doi.org/10.1086/521910>. [↑](#footnote-ref-1)
2. Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, *at* <https://www.bjs.gov/content/pub/pdf/mpsfpji1112.pdf> [↑](#footnote-ref-2)
3. “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>. [↑](#footnote-ref-3)
4. *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) *at* <https://bit.ly/2TNcNZY>. [↑](#footnote-ref-4)
5. 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>. [↑](#footnote-ref-5)
6. Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020) *at*  https://cnn.it/2W4OpV7. [↑](#footnote-ref-6)
7. Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press (Mar. 7, 2020) *at* <https://apnews.com/af98b0a38aaabedbcb059092db356697>. [↑](#footnote-ref-7)