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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

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| **UNITED STATES OF AMERICA,**  **Plaintiff,**  **v.**  **,**  **Defendant.** | **Case No.**  **MOTION FOR REVIEW OF DETENTION** |

# **Introduction**

Defendant, [**Name**] through counsel, moves the Court for a review of detention hearing, pursuant to 18 U.S.C. § 3142, and an order granting his release on conditions. Defendant is currently detained pretrial at [**location**] and is within the group of people the Centers for Disease Control and Prevention have categorized as most-at-risk for contracting COVID-19, a dangerous and highly contagious coronavirus spreading rapidly across the world, and through Oregon. The Bail Reform Act expressly requires consideration of physical health as one of the factors in deciding whether detention is appropriate. 18 U.S.C. § 3142(g)(3)(A). Based on the new information of the national emergency resulting from the coronavirus pandemic, this Court should reconsider its detention order and grant conditional release based on the health risks posed by the conditions of pretrial confinement because of Defendant’s [**age/ physical condition**].

# **Factual Background**

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

On March 11, 2020, the World Health Organization officially classified the new strain of coronavirus that causes COVID-19as a pandemic.[[1]](#footnote-1) [**Insert current description of emergency using links below, which update regularly**] As of March 20, 2020, COVID-19 has infected at least 250,856 worldwide, leading to at least 10,389 deaths.[[2]](#footnote-2) In the United States, at least 14,250 have been infected. As of March 20, 2020, at least 205 deaths in the United States were attributable to COVID-19. These numbers almost certainly underrepresent the true scope of the crisis; test kits in the United States, and especially in Oregon, have been inadequate to meet demand.[[3]](#footnote-3) As of March 20, 2020, there were 88 cases in Oregon, out of 1,854 tested.[[4]](#footnote-4) Dr. Renee Edwards, chief medical officer at Oregon Health and Science University, estimates that the number of infected persons in Oregon will double every 6.2 days.[[5]](#footnote-5)

On March 13, 2020, after the initial detention hearing in this matter, the White House declared a national emergency, under Section 319 of the Public Health Service Act (42 U.S.C. § 247(d)).[[6]](#footnote-6) On March 16, 2020, a week after declaring a state of emergency, Governor Kate Brown banned gatherings of more than 25 people and shuttered restaurants in order to require social distancing to slow the spread of the coronavirus.[[7]](#footnote-7) Also on March 16, 2020, the White House issued guidance recommending that, for the next eight weeks, gatherings of ten persons or more be canceled or postponed.[[8]](#footnote-8) On March 19, 2020, California Governor Gavin Newsom issued a statewide mandatory shelter-in-place order, affecting 40 million residents.[[9]](#footnote-9) These drastic measures followed issuance of a report by British researchers concluding that 2.2 million Americans could die without drastic intervention to slow the spread of the deadly illness. *Id*.

The Centers for Disease Control also have issued guidance that individuals at higher risk of contracting COVID-19—adults over 60 years old and people with chronic medical conditions such as lung disease, heart disease, and diabetes—take immediate preventative actions, including avoiding crowded areas and staying home as much as possible.[[10]](#footnote-10) With numerous confirmed cases in Oregon and a fast-developing crisis in Washington State that indicate pervasive community spread, Defendant’s physical health, which is a required factor for consideration under the Bail Reform Act, as well as the welfare of the community at large, militate strongly in favor of authorizing release on conditions.

***Conditions of Confinement and Spread of Coronavirus***

Conditions of pretrial confinement create an optimal environment for the transmission of contagious disease.[[11]](#footnote-11) Inmates cycle in and out of BOP pretrial facilities and local jails from all over the world and the country, and people who work in the facilities leave and return daily, without screening. Public health experts believe that 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.”[[12]](#footnote-12)

The social distancing that public health officials advocate as essential to limiting the spread of COVID-19 is simply impossible in jail and prison facilities. Crowding, inadequate ventilation, and security issues all contribute to the spread of infectious disease.[[13]](#footnote-13) Hand sanitizer, an effective disinfectant recommended by the Centers for Disease Control to reduce transmission rates, is contraband in jails and prisons because of its alcohol content.[[14]](#footnote-14) Correctional health experts worry that, if jails and prisons are complacent about the coronavirus, these facilities may become incubators for the disease. *Id*.

During the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases because they could not maintain the level of separation and sanitation necessary to prevent widespread infection.[[15]](#footnote-15) In China, officials confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases as of February 21, 2020.[[16]](#footnote-16) In the Daenam inpatient psychiatric ward in South Korea, where conditions of confinement are similar to those at an American jail, 101 out of 103 inmates became infected with COVID-19, and, as of February 29, 2020, seven patients had died of complications from the disease.[[17]](#footnote-17) The Prison Policy Initiative has called on American jails and prisons to release medically fragile and older adults, noting that these persons are at high risk for serious complications from COVID-19.[[18]](#footnote-18)

Incarcerated people tend to be in poorer health than the general population, and, even at the best of times, medical care is limited in federal pretrial detention centers.[[19]](#footnote-19) According to a recent Bureau of Justice Statistics study, approximately half of state and federal prisoners and jail inmates have chronic conditions such as cancer, high blood pressure, diabetes, cirrhosis of the liver, heart-related problems, and asthma.[[20]](#footnote-20) At least a fifth have infectious diseases, such as tuberculosis, hepatitis B and C, and HIV. These conditions make inmates especially susceptible to serious complications from COVID-19. These circumstances also mean that, in the event of an outbreak, jail health systems will quickly become overwhelmed. The inmate population in local facilities and the conditions within the facilities render vulnerable inmates particularly susceptible to developing a critical infection or even perishing if they contract COVID-19. Accordingly, as argued below, this Court should authorize Defendant’s conditional release.

# **The Bail Reform Act Requires Defendant’s Release**

A defendant who is confined pending trial suffers a significant loss of liberty implicating the Due Process Clause of the Fifth Amendment and the Excessive Bail Clause of the Eighth Amendment. *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985). “[D]etention prior to trial … is the carefully limited exception” to liberty before trial. *United States v. Salerno*, 481 U.S. 739, 755 (1987). Thus, under the Bail Reform Act, person facing trial should be released if some “condition, or combination of conditions ... [can] reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(c).

Pretrial release “should be denied only for the strongest reasons.” *Motamedi*, 767 F.2d at 1407. “Doubts regarding the propriety of release should be resolved in favor of the defendant.” *Id*. (citations omitted). Tipping the balance in favor of the defendant derives from “the presumption of innocence and its corollary that the right to bail should be denied for only the strongest reasons.” *Id*.

A person’s physical and mental condition is a mandatory consideration in assessing the suitability of release under the Bail Reform Act. 18 U.S.C. § 3142(g)(3)(A). Further, a serious deterioration in health while incarcerated may constitute a special circumstance militating in favor of release even in cases involving a presumption of detention. *Salerno v. United States*, 878 F.2d 317, 317 (9th Cir. 1989). And, even when a court has already determined that pretrial detention is appropriate, a change in circumstances will warrant review of a pretrial detention order. 18 U.S.C. § 3142(f)(2)(B).

The circumstances that existed when Defendant was ordered detained have now changed dramatically. There is a global pandemic that poses an immediate, non-speculative, and potentially lethal risk to Defendant’s health. Defendant is particularly vulnerable to serious complications from COVID-19 because **she/he** is **[fill in facts: over the age of 60/has a serious medical condition.]** Because of Defendant’s compromised health, under the guidance of the Centers for Disease Control, **she/he** should be isolated from potential vectors of disease transmission. Without release, effective isolation is a practical impossibility.

# **Conditions of Release Can Be Fashioned That Allow Defendant To Be Treated Humanely While Also Reasonably Assuring The Safety Of The Community**

***Proposed Release Plan***

**[Outline Proposed Release Plan]**

***The Proposed Conditions Of Release Will Reasonably Assure The Community’s Safety***

***While Also Ensuring Defendant Is Not Exposed To Infection In Custody***

Continued detention is not necessary to ensure the primary goals of pretrial detention—appearance in court and community safety. Statistics demonstrate that nearly everyone on pretrial release in the federal system appears in court and does not reoffend. In 2019, fully 99% of released federal defendants nationwide appeared for court, and over 98% did not commit new offenses while on bond.[[21]](#footnote-21) Since 2009, Pretrial Services’ data has found that only 2.9% of defendants in the highest risk category were re-arrested for a violent crime while on release.[[22]](#footnote-22)



Moreover, this near-perfect compliance rate is seen equally in federal districts with very high release rates (~70%) and those with very low release rates (~24%).[[23]](#footnote-23) The below chart reflects this data:



Because Defendant’s life is on the line, **she/he** has a powerful incentive to abide by any release conditions the Court may impose to remain on conditional release. This additional factor changes the calculus that initially led to the denial of bail in this case, as does the societal benefit of having fewer people in the already close confinement of jail. **[address specific concerns that led client to be detained]** 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. This Court should authorize Defendant’s conditional release.

# **Conclusion**

Defendant is among the vulnerable population at heightened risk of getting very sick or even dying from COVID-19. Despite good-faith efforts to minimize transmission risk within pretrial detention, jails and detention facilities inherently cannot effectively contain the spread of infectious disease. Thus, for all of the above reasons, Defendant should be granted release on conditions.

RESPECTFULLY submitted this \* day of \*, 2020.

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Name of Attorney

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2. *Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University*, *at* <https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6> (updating regularly). [↑](#footnote-ref-2)
3. The Oregonian/OregonLive, *Coronavirus in Oregon (March 17): More Nursing Home Residents Test Positive for the Disease* (March 17, 2020) <https://www.oregonlive.com/coronavirus/2020/03/coronavirus-in-oregon-march-17-1-in-3-counties-record-covid-19-case.html> [↑](#footnote-ref-3)
4. Oregon Health Authority, *COVID-19 Cases in Oregon* <https://www.oregon.gov/oha/PH/DISEASESCONDITIONS/DISEASESAZ/Pages/emerging-respiratory-infections.aspx> (updating regularly). [↑](#footnote-ref-4)
5. *See supra* n. 3. [↑](#footnote-ref-5)
6. The White House, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020).

   <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>. [↑](#footnote-ref-6)
7. Governor’s Office, *Governor Kate Brown Announces New State-Wide Action on COVID-19* (March 16, 2020) <https://www.oregon.gov/thnewsroom/Pages/NewsDetail.aspx?newsid=36192>. [↑](#footnote-ref-7)
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9. Peter Arcuni & Molly Stryker, *California Gov. Gavin Newsom Issues Statewide Shelter-in-Place Order*, KQED.org (March 19, 2020) <https://www.kqed.org/science/1959566/california-gov-gavin-newsom-orders-state-to-shelter-in-place> [↑](#footnote-ref-9)
10. *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) *at* <https://bit.ly/2vgUt1P>. [↑](#footnote-ref-10)
11. 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-11)
12. “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-12)
13. Michael Kaste, *Prisons and Jails Worry About Becoming Coronavirus ‘Incubators’*, NPR (March 13, 2020) <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators>. [↑](#footnote-ref-13)
14. Keri Blakinger & Beth Schwarzapfel, *How Can Prisons Contain Coronavirus When Purell is a Contraband?*, ABA Journal (March 13, 2020) <https://www.abajournal.com/news/article/when-purell-is-contraband-how-can-prisons-contain-coronavirus>. [↑](#footnote-ref-14)
15. *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) <https://bit.ly/2TNcNZY>. [↑](#footnote-ref-15)
16. 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-16)
17. Min Joo Kim, *How a South Korean Psychiatric Ward Became a ‘Medical Disaster’ When Coronavirus Hit*, The Washington Post (February 29, 2020) <https://www.washingtonpost.com/world/asia_pacific/how-a-south-korean-psychiatric-ward-became-a-medical-disaster-when-coronavirus-hit/2020/02/29/fe8f6e40-5897-11ea-8efd-0f904bdd8057_story.html>. [↑](#footnote-ref-17)
18. Peter Wagner & Emily Widra*, No Need to Wait For Pandemics: The Public Health Case for Criminal Justice Reform*, Prison Policy Initiative (March 6, 2020) <https://www.prisonpolicy.org/blog/2020/03/06/pandemic/>. [↑](#footnote-ref-18)
19. 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-19)
20. *Id*. [↑](#footnote-ref-20)
21. *See* AO Table H-15, <http://jnet.ao.dcn/sites/default/files/pdf/H15_Ending12312019.pdf> (showing a nationwide failure to appear rate of 1.1% and a rearrest rate of 1.8% in 2019). [↑](#footnote-ref-21)
22. 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>. [↑](#footnote-ref-22)
23. The six federal districts with the lowest release rates (average 24.37%) have an average failure to appear rate of 1.78%, while the six districts with the highest release rates (average 69.08%) have an even lower failure to appear rate of 0.42%. *See* AO Table H-15; Table H-14A, <https://www.uscourts.gov/sites/default/files/data_tables/jb_h14a_0930.2019.pdf>. The six districts with the lowest release rates have an average re-arrest rate of 1.10%, while the six districts with the highest release rates have an average re-arrest rate of 0.91%. *See* Table H-15. (The districts with the lowest release rates are D. Utah, E.D. Oklahoma, W.D. Arkansas, S.D. Texas, E.D. Tennessee, and S.D. California; the districts with the highest release rates are D. Guam, D. Northern Mariana Islands, W.D. Washington, D. Connecticut, D. Maine, and D. Hawaii. *See* Table H-14A.) [↑](#footnote-ref-23)