

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

BRYNEE BAYLOR

Defendant.

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: **Case No.: 16-cr-180 (ESH)**
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**EMERGENCY MOTION FOR RELEASE FROM CUSTODY DUE TO
THE BUREAU OF PRISON’S FAILURE TO PROVIDE DEFENDANT
WITH ADEQUATE MEDICAL CARE THAT NOW HAS CREATED
AN IMMINENT THREAT TO HER POSED BY THE COVID-19 PANDEMIC**

Brynee Baylor, by and through undersigned counsel, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), respectfully moves the Court to modify her term of imprisonment to impose a special condition that she serve the balance of her sentence in home detention. Such a modification will effectively allow Ms. Baylor to finish the remaining portion of her prison sentence and to obtain necessary acute medical care that the Bureau of Prisons (“BOP”) has been unable to provide her and that now unreasonably exposes her to the risk of infection by COVID-19.

This modification will shelter Ms. Baylor in place at her residence and allow her to protect herself from the spread of the novel coronavirus 2019 (“COVID-19”) which, due to her underlying medical problems, place her in the COVID-19 high-risk category. In support of this motion counsel states the following:

1. On April 29, 2019, a jury found Ms. Baylor guilty of Counts 1 through 6 and Count 8 of the Indictment, respectively: one (1) count of conspiracy to commit securities fraud; one (1) count of securities fraud; and five (5) counts of fraud in the first degree. She was acquitted of Count 9 of the Indictment. The jury could not reach a decision with respect to Count 7-fraud in the first degree.

2. On September 12, 2019, Ms. Baylor was sentenced to twenty-five (25) months incarceration on Counts 1 and 2 and twelve (12) months of incarceration on Counts 3-6, 8, and 10, with all terms of incarceration to run concurrently.

3. On October 1, 2019, Ms. Baylor timely noted her appeal.

4. Ms. Baylor began serving her sentence on January 17, 2020 with a release date of October 26, 2021.

5. Ms. Baylor suffers from a long-standing, documented serious medical conditions related to her kidneys.¹ She also suffers from documented hypertension.

6. These conditions now pose a serious medical risk for her and place her at a high risk of contracting the COVID-19 virus.

Discussion

Since her arrival at FCI Alderson, the facility's medical team has been unable to control Ms. Baylor's blood pressure because the BOP has refused to provide her with the same hypertension medications that had been prescribed for her prior to her incarceration – apparently because her prior medications are not included in the BOP formulary for treatment of hypertension due to their cost. Due to this failure on the part of the BOP, Ms. Baylor's high blood pressure has now produced a condition where she is bleeding directly into her kidneys, which further complicates her pre-existing kidney problems. Ms. Baylor was taken to a nephrologist several weeks ago to be examined regarding these conditions. As of the filing of this Motion she has received no report regarding her visit and no follow-up treatment to correct the now worsening problem. Ms. Baylor's efforts to obtain the results of her examination and to obtain the necessary treatment for her condition now pose a serious risk to her life.

¹ See Exhibit A – Medical Records.

Changed Circumstances: COVID-19 Outbreak

Additionally, on March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.² As of March 23, 2020, the new strain of coronavirus which causes COVID-19 has infected over 340,000 people, leading to at least 15,187 deaths worldwide.³ The United States has identified over 33,000 cases including 428 deaths to date. *Id.* Governors of several states and mayors of several cities have declared a states of emergency. And courts across the county, including this Court, have severely restricted operations. The Center for Disease Control (“CDC”) has issued guidance that individuals at higher risk of contracting COVID-19—adults over 60 years old and people with chronic medical conditions- take immediate preventative actions, including avoiding crowded areas and staying home as much as possible.⁴

Conditions of Confinement and Spread of Coronavirus

Conditions of incarceration create the ideal environment for the transmission of contagious disease.⁵ Inmates cycle in and out of BOP facilities from all over the world and the country, and people who work in the facilities leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times,

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

³ *Coronavirus Map: Tracking the Spread of the Outbreak*, The New York Times (March 23, 2020), at <https://nyti.ms/2U4kmud> (updating regularly).

⁴ *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at <https://bit.ly/2vgUt1P>.

⁵ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

medical care is limited in federal detention centers.⁶ Many people who are incarcerated also have chronic conditions, 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.”⁷ Outbreaks of the flu regularly occur in jails.⁸ In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.⁹ 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.”¹⁰ Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.¹¹ President

⁶ 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/mpsfpi1112.pdf>

⁷ “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>.

⁸ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at <https://bit.ly/2TNcNZY>.

⁹ 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>.

¹⁰ 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>.

¹¹ Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press (Mar. 7, 2020) at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

Trump stated on March 22, 2020, that he is considering an Executive Order releasing certain non-violent offenders from federal prisons.¹²

Moreover, the elementary, essential steps prescribed by the CDC to slow down the spread of the virus are virtually impossible for those, like Ms. Baylor, who are incarcerated in large federal facilities. Incarcerated individuals face the following conditions—with no ability to choose otherwise:

- They typically live in cells or dormitories with at least one other person, in close quarters;
- They are regularly in communal spaces, such as eating areas, bathrooms, and cells or holding areas;¹³
- They live in spaces with open toilets within a few feet of their beds, and unable to access a closed toilet that would not aerosolize bodily fluids into their living spaces;
- They are nearly always “close contact” with others, nearly all of whom have not been tested for COVID-19;
- They are frequently in actual physical contact with others, such as correctional officers, kitchen staff, and medical staff, many, if not all, of whom have not been tested for COVID-19;
- They are regularly subject to intimate physical contact, including in searches of mouths and body cavities;
- They lack regular, uninhibited access to soap, water, tissues and paper towels;
- They lack access to CDC - compliant hand sanitizer.

Finally, COVID-19 makes steps like isolation, segregation, and lockdowns all but futile.

COVID-19 can survive in the air, so separation in a facility where there is movement and interaction will not contain it. Surfaces are still touched—inside cells, in bathrooms, and in

¹² See <https://www.businessinsider.com/trump-consider-coronavirus-executive-order-federal-prisons2020-3>.

¹³ It is counsel’s understanding that at Alderson FCI, where Ms. Baylor is held, as many as 135 inmates are commonly put together in a large communal room for several hours at a time.

transport, at the very least. Contact with others—including correction officers, kitchen staff, and medical personnel—is inevitable. Meanwhile, solitary confinement causes severe, long-term damage to the brain, and replaces one acute health threat with another.¹⁴ These circumstances make prisoners especially likely to contract COVID-19, get sick from it, and die from it. And there is little hope of preventing this result—given the number of new detainees, employees, and others entering and exiting any particular facility every day.¹⁵

Conclusion

As this Court is well aware, Ms. Baylor poses neither a flight risk nor a danger to society. The offenses for which she has been found guilty and for which she is serving her sentences are non-violent crimes. In sum, Ms. Baylor’s severe, untreated kidney problems compounded by her high blood pressure make her highly susceptible to contracting COVID-19. In light of the aggressive spread of COVID-19—and the growing risk that the spread, if not slowed, will overwhelm the BOP’s health care system and cause countless more deaths—Ms. Baylor should be immediately released to home detention with whatever conditions this Court may determine.

¹⁴ See, e.g., Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, *Sci. Am.* (Nov. 9, 2018), <https://tinyurl.com/y99t2p98>.

¹⁵ See Peter Wagner & Emily Widra, *No Need To Wait for Pandemics: The Public Health Case for Criminal Justice Reform*, Prison Policy Initiative (Mar. 6, 2020), <https://tinyurl.com/sdl2x7n>.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendant's Emergency Motion for Release from Custody Due the BOP's Failure to Provide the Defendant with Adequate Medical Care That Has Now Created An Imminent Threat to Her Posed By The COVID-19 Pandemic, has been served, via CM/ECF, upon the parties in this matter on this 23rd day of March, 2020.

_____/s/_____
David Benowitz