

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)
)
) **Case No. 17 CR 787**
)
 v.) **The Honorable John R. Blakey**
)
 SHAWN BALDWIN)

**DEFENDANT SHAWN BALDWIN’S EMERGENCY MOTION FOR
IMMEDIATE RELEASE TO HOME CONFINEMENT PENDING
SENTENCING**

Now comes the Defendant Shawn Baldwin, by and through his attorneys, filing this emergency motion for immediate release from custody at the Metropolitan Correctional Center (“MCC”) in light of the ongoing COVID-19 public health crisis. In addition to serious risks to Baldwin’s health resulting from his confinement to the MCC during this crisis, the COVID-19 pandemic has resulted in the lockdown of the MCC and has thus prevented Baldwin from meeting with counsel to adequately prepare for his sentencing hearing. Baldwin thus requests that he be committed to home confinement pending his sentencing, which is currently scheduled to occur on May 5, 2020. In support of this motion, Baldwin states as follows:

SUMMARY AND BACKGROUND

Although Baldwin was at liberty during the period following his indictment and through trial, he was denied a continuation of his bond post-verdict and has been incarcerated, pending his sentence, since February 26, 2019. Baldwin is currently 54-years old. Since February 26, 2019, he has been unable to have contact with his personal health care providers. He has been under

constant and enormous stress attendant to his conviction and the significant advisory guideline range of 262 months projected by the Probation Office and the government. His in-person access to the undersigned sentencing counsel has been limited and, as of early March when the MCC was locked down to all visits including attorney visits, non-existent.

Baldwin has a home where is able to be placed on home confinement. If released from the MCC, Baldwin would move in with his former wife Phyllis Baldwin and his 15-year old daughter at their residence in Flossmoor, Illinois. The residence is sufficiently large that Baldwin would be able to self-quarantine in the home, keeping Phyllis and her daughter safe during a two-week period in which Baldwin would assure himself that he does not already carry the COVID-19 virus. Mrs. Baldwin is willing to act as a guardian subject to whatever conditions the Court deems appropriate.

The world has changed significantly since the Court's February 26, 2019 detention order. On March 11, 2020, the World Health Organization (WHO) officially classified COVID-19 as a pandemic. *See*, WHO Characterizes COVID-19 as a Pandemic, World Health Organization (March 11, 2020), available at <https://bit.ly/2W8dwpS>. The President has declared a national public health emergency. *See*, Proclamation on Declaring a National Health Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, <https://www.whitehouse.gov/presidential-actions> (March 13, 2020), and the Governor of the State of Illinois declared a disaster emergency throughout the state on March 9, 2020 after which he signed an Executive Order, dated March 26, 2020, restricting the admissions of inmates to the Illinois Department of Correction because of the inability of the prison system to handle the health crisis. *See*, Executive Order 13, available at <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-13.aspx>. The BOP website with COVID-19 updates states that as of

April 1, 2020, there were two Chicago staff members that had tested positive for the virus. As the MCC is the only Chicago BOP facility, it is reasonable to assume the staff members were from the MCC.

Due to the rapid spread of the coronavirus in the State of Illinois, and in particular Chicago, the Chicago Metro area, where the MCC is located, is currently under “Stay at Home” restrictions. These restrictions, along with the Guidelines issued by Attorney General Barr,¹ have significantly impacted the federal criminal justice system in the Northern District of Illinois, where inmates are now prohibited from having physical access to their attorneys. Specifically, the MCC has declared that “[a]ll visiting at this facility has been suspended until further notice.” Thus, while Baldwin’s sentencing is currently set for May 5, 2020, counsel will not be able to meet with Baldwin in person to adequately prepare him for his sentencing hearing.

Worse, conditions of confinement create the ideal environment for the transmission of contagious diseases. Joseph A. Bick (2007), *Infection Control in Jails and Prisons*, *Clinical Infectious Diseases*, at <http://doi.org/10.1086/521910>. 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 alive.” *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>.

¹ In a recent press conference at the Justice Department, Attorney General Barr said that of the 146,000 inmates currently serving time in federal prison facilities, one third are believed to have preexisting medical conditions and roughly 10,000 are over the age of 60. Barr stated, “you want to make sure that our institutions don’t become petri dishes and it spreads rapidly through a particular institution.” He added that “one of the tools will be identifying vulnerable prisoners who would make more sense to allow to go home to finish their confinement.” See, <https://abcnews.go.com/Politics/ag-william-barr-pushes-expansion-home-confinement-reduce/story?id=69816504>.

In response to the warnings of public health experts, detention facilities around the nation have begun emergency release measures of defendants to insure the health and safety of the inmate population. See, e.g., <https://www1nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-20%Board%20of%20Correction%20Statement%20re%20Re%20Release.pdf> (New York City Board of Corrections urges emergency release of jail inmates, especially those with underlying conditions, such as heart disease or diabetes). The New York Courts, in line with the NYC Board of Corrections, declared that “[t]hose detained in jails and prisons face particularly grave danger.” *United States v. Nkanga Nkanga*, Case No. 18-CR-713, Memorandum Opinion and Order dated March 31, 2020 (S.D.N.Y) at 1 (a copy of which is attached as Exhibit A), *citing* Interim Guidance on Mgmt. of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Ctr. for Disease Control, at 2 (Mar. 23, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (hereinafter “CDC Guidance”). The *Nkanga* Court went on to state that “[r]ealistically, the best — perhaps the only — way to mitigate the damage and reduce the death toll is to decrease the jail and prison population by releasing as many people as possible.” (Exhibit A at 1). Significantly, in the *Nkanga* case, Judge Furman expressed regret that the post-sentencing posture of the case prevented him from ordering the appropriate relief based on the current pandemic. These concerns are not present in Baldwin’s case and he is eligible for the very relief that Judge Furman regretted not being able to provide.

In Brooklyn, District Attorney Eric Gonzales, joined by public health experts, has asked Governor Cuomo to grant emergency clemencies to elderly and sick prisoners.² Officials in Cuyahoga County, Ohio have released hundreds of inmates out of concern they might contract the

² Sarah Lustbader, *Coronavirus: Sentenced to COVID-19*, The Daily Mail (March 12, 2020) at <https://theappeal.org/sentenced-to-covid-19/>.

coronavirus if it spread throughout the jail.³ Other states, such as Michigan and California, where the outbreak is significant, have followed suit.

Chicago is unfortunately becoming another epicenter of the coronavirus outbreak. The risk of an MCC internal pandemic is great. As stated above, information from the BOP website regarding the pandemic suggests that 2 MCC staff members have contracted the virus. The MCC is a large pretrial detention facility housing approximately 700 people. The majority of inmates are housed in small two-man cells with a shared toilet and a sink, with day rooms where inmates spend the majority of their time. As the BOP has recognized, “the population density of prisons creates a risk of infection and transmissions for inmates and staff.”⁴ Because of living conditions at the MCC and the interactions between inmates and staff, social distancing measures are not possible.

Although the MCC has closed itself to visitors and legal counsel, the in-and-out-flow of staff and corrections officers, the transfer of prisoners and the inflow of new arrests, will undermine any purported efforts to protect inmates from the internal spread of the virus. Indeed, given the nationwide shortage of test kits for the coronavirus, there is no reason to believe that the MCC is testing its staff or can prevent asymptomatic staff, corrections officers and arrestees from spreading the virus in the facility. Indeed, prior to the cessation of visits, per the observations of multiple attorneys, MCC staff were not wearing masks and only a few officers were wearing gloves. The BOP’s overview of the COVID-19 response concedes that it conducted an assessment of Personal Protective Equipment (PPE) stores and is in the process of obtaining bulk purchases

³ Ohio Jail Releases Hundreds Of Inmates Due To Coronavirus Concerns, Nextar Media Wire (March 16, 2020) at <https://kfor.com/health/coronavirus/ohio-jail-releases-hundreds-of-inmates-due-to-coronavirus-concerns/>.

⁴ AP Exclusive: Visits to Federal Inmates Halted Over Virus, Associated Press, at <https://www.nytimes.com/aponline/2020/03/13/us/politics/ap-us-virus-outbreak-federal-prisons.html>.

of PPE, which is indicative of the current lack of PPE at federal facilities such as the MCC. While the facility does have hand sanitizer available on the visiting floor, the single bottle had a sign that says “Staff Only” on it. Regardless, alcohol based hand sanitizer is considered to be contraband and is thus unavailable to prison populations.⁵ Upon information and belief, inmates at the MCC do not have access to items needed to take preventive measures, including hand-sanitizer, PPE or basic nutritional supplements, such as Zinc, that many Americans are using to boost their immune system. Indeed, the MCC doesn’t even provide antibacterial soap free of charge and thus only inmates who have money for commissary will be able to buy soap. *See*, MCC Commissary List, <https://www.bop.gov.locations/institutions/ccc/CCC-commlists040318.pdf>.

Should an outbreak occur at the MCC, the MCC does not have the ability to provide the hospital care that would become necessary. Studies have indicated that 15-20% of the people who test positive for COVID-19 require hospitalization.⁶ Thus, in the case of an outbreak, due to the limited medical facilities at the MCC, the medical ward would be quickly overwhelmed. Simply put, the MCC is a dangerous place to be in the current climate.

ARGUMENT

A. The Bail Reform Act Supports Baldwin’s Presentencing Release Under These Circumstances.

Under the Bail Reform Act, a Court may order the “temporary release” of a person in custody “to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or for another compelling reason.” 18 U.S.C. § 3142(i).

⁵ *How Can Prisons Contain Coronavirus When Purell Is A Contraband?*, ABA Journal (March 13, 2020).

⁶ Wu Z, McGoogan JM. Characteristics of and Important Lessons From the Coronavirus Disease 2019 (COVID-19) Outbreak in China: Summary of a Report of 72,314 Cases From the Chinese Center for Disease Control and Prevention. JAMA. Published online, February 24, 2020, at <https://jamanetwork.com/journals/jama/fullarticle/2762130>.

The courts have long recognized that there is no greater necessity than keeping a defendant alive, no matter the charge. As Judge Weinstein held. “[w]e do not punish those who have not been proven guilty. When we do punish, we do not act cruelly....” *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 at the MCC.”).

This Court should consider the “total harm and benefits to prisoner and society” that the continued pre-sentencing incarceration of Baldwin will yield, relative to the heightened health risks he faces at the MCC and his need to be adequately prepared for his sentencing hearing, during this rapidly growing pandemic. *See, United States v. D.W.*, 198 F. Supp. 3d 18, 23 (E.D.N.Y. 2016); *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). Based on these factors, the harm that will result from Baldwin’s continued incarceration is great; whereas, there is no harm to society, that will result from his home incarceration or from enabling Baldwin to have access to counsel.

Baldwin is a first-time non-violent offender. The offenses for which he was convicted are economic crimes and, as discussed in detail in the sentencing memorandum submitted on Baldwin’s behalf in this case, (Dkt. 155 p. 41-42) calculated correctly, the amount of guideline loss is more commensurate with a single digit moderate sentence than the 262-month sentence set forth in the government’s sentencing submission. Baldwin has zero intention of working in the area of investments again. And the high-profile nature of his case and trial and voluminous public information available would dictate that even if he had any ambition in this sphere, it would be a practical impossibility for him. Baldwin has had an exemplary behavioral record in the 13-months he has already been incarcerated at the MCC post-conviction and pre-sentencing. He has led a

prayer group and taught numerous classes to other inmates. In addition, during this period of temporary release, Baldwin would be on home confinement with family, where he can be electronically monitored and supervised in any manner that the Court and Probation Office deems appropriate.

Baldwin falls squarely within the catch-all powers of the Court. Because of the crisis, not only is Baldwin's health in jeopardy due to the conditions of his incarceration; but he cannot adequately assist in the preparation of his defense for the upcoming sentencing hearing. The visitation restrictions at the MCC have no known end date. In light of public health expert's predictions regarding the inevitable rise of infections throughout the community, it is unlikely that this will change in the coming weeks, at any time before the currently scheduled May 5, 2020 sentencing hearing, or in the foreseeable future.

While preparation by phone or video might be workable in other circumstances, they are not in this case. For one thing, the MCC has given all inmates hundreds of additional hours of phone time to compensate for the cessation of visitation such that getting phone time at the MCC has become an impossibility. Second, as it must be no secret to the Court or to the government, Baldwin has detailed and specific ideas about the manner in which the evidence was presented in this case. Squaring his opinions with the need to focus on the mitigation themes in this case is a matter that will require substantial discussions between Baldwin and sentencing counsel. Neither is it a viable option to just continue extending Baldwin's sentencing date. Thirteen months is an extremely long period of time for a defendant to be incarcerated post-conviction and pre-sentencing. The conditions at MCC are significantly more restrictive and dangerous than at long-term BOP facilities that do not contend with the influx of prisoners of all different security levels.

In short, MCC is among the worst possible places that Baldwin could be while awaiting sentencing, particularly in the current pandemic environment.

Based on the foregoing, it is in the interest of justice to permit Baldwin to reside at home with his family, subject to strict conditions of home confinement, where he can not only engage in measures to try and avoid any infection; but will be able to participate in the preparations for his upcoming sentencing hearing.

Respectfully submitted,

By: /s/ Carolyn Pelling Gurland

CAROLYN PELLING GURLAND
THOMAS CULL
CHRIS JESKE
WHITE & CASE LLP
111 South Wacker Drive
Suite 5100
Chicago, IL 60606
(312) 237-0136
Attorneys for Defendant Shawn Baldwin

CERTIFICATE OF SERVICE

I, Carolyn Pelling Gurland, attorney for Defendant, Shawn Baldwin, hereby certify that on this, the 2nd day of April, 2020, I caused the above-described document to be filed on the CM/ECF system of the United States District Court for the Northern District of Illinois, which constitutes service of the same.

/s/ Carolyn P. Gurland

CAROLYN PELLING GURLAND
WHITE & CASE LLP
111 South Wacker Drive
Suite 5100
Chicago, IL 60606
(312) 237-0136
carolyn.gurland@whitecase.com