

1 NICOLA T. HANNA  
 United States Attorney  
 2 BRANDON D. FOX  
 Assistant United States Attorney  
 3 Chief, Criminal Division  
 JULIAN L. ANDRÉ (Cal. Bar No. 251120)  
 4 Assistant United States Attorney  
 Major Frauds Section  
 5 1100 United States Courthouse  
 312 North Spring Street  
 6 Los Angeles, California 90012  
 Telephone: (213) 894-6683  
 7 Facsimile: (213) 894-6269  
 Email: [Julian.L.Andre@usdoj.gov](mailto:Julian.L.Andre@usdoj.gov)  
 8

BRETT A. SAGEL (Cal. Bar No. 243918)  
 9 Assistant United States Attorney  
 Ronald Reagan Federal Building  
 10 411 West Fourth Street, Suite 8000  
 Santa Ana, California 92701  
 Telephone: (714) 338-3598  
 11 Facsimile: (714) 338-3708  
 Email: [Brett.Sagel@usdoj.gov](mailto:Brett.Sagel@usdoj.gov)  
 12

13 Attorneys for Plaintiff  
 UNITED STATES OF AMERICA  
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15 UNITED STATES DISTRICT COURT  
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 17 SOUTHERN DIVISION

18 UNITED STATES OF AMERICA,  
 Plaintiff,  
 19 v.  
 20 MICHAEL JOHN AVENATTI,  
 21 Defendant.  
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SA CR No. 19-061-JVS

GOVERNMENT'S RESPONSE TO DEFENDANT  
 MICHAEL JOHN AVENATTI'S FOURTH EX  
 PARTE APPLICATION FOR BAIL PENDING  
 TRIAL; DECLARATION OF JULIAN L.  
 ANDRÉ

23 Plaintiff United States of America, by and through its counsel  
 24 of record, the United States Attorney for the Central District of  
 25 California and Assistant United States Attorneys Julian L. André and  
 26 Brett A. Sagel, hereby files its response to defendant MICHAEL JOHN  
 27 AVENATTI's fourth ex parte application for bail pending trial (CR  
 28 136).

1 This response is based upon the attached memorandum of points  
2 and authorities, the declaration of Julian L. André, the files and  
3 records in this case, and such further evidence and argument as the  
4 Court may permit. The government also incorporates by reference its  
5 oppositions (CR 120, CR 127, CR 131) to defendant's prior ex parte  
6 applications for bond pending trial.

7 Dated: April 5, 2020

Respectfully submitted,

8 NICOLA T. HANNA  
United States Attorney

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10 BRANDON D. FOX  
Assistant United States Attorney  
Chief, Criminal Division

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13 JULIAN L. ANDRÉ  
BRETT A. SAGEL  
Assistant United States Attorney

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15 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Defendant MICHAEL JOHN AVENATTI ("defendant") has filed a fourth  
3 ex parte application for bail pending trial in which defendant again  
4 seeks a "forthwith release." (CR 136.) During the March 31, 2020,  
5 telephonic status conference, this Court stated:

6 [T]he Court has not lost sight and neither should the  
7 parties of this Court's finding and the Ninth Circuit's  
8 affirmance, that Avenatti is a danger to the community. I'm  
looking for constructive ways to have him released, and  
these are my minimum terms to see that that's accomplished.

9 (CR 132 at 6:7-12 (emphasis added).) Crucially, defendant has again  
10 ignored or failed to comply with this Court's prior orders and  
11 directives regarding the "minimum terms" under which the Court would  
12 be willing to grant defendant a temporary release. As a result, the  
13 government continues to oppose defendant's request for temporary  
14 release under 18 U.S.C. § 3142(i).

15 On March 27, 2020, and March 31, 2020, this Court set forth in  
16 detail the minimum terms under which it would be willing to grant  
17 defendant temporary release under Section 3142(i), as well as the  
18 steps defendant would need to take before the Court could rule on  
19 defendant's request. (See CR 128 (Minute Order); CR 132  
20 (Transcript); CR 134 (Minute Order).) Defendant has failed to comply  
21 with the Court's prior orders and directions in numerous ways,  
22 including the following:

23 First, the Court has explicitly stated that, before the Court  
24 rules on defendant's request for temporary release, Pretrial Services  
25 will need to interview defendant's proposed surety, Hubert Bromma,  
26 and defendant's proposed custodian, Jay Manheimer, and prepare a  
27 report regarding their suitability. (CR 132 at 3:23-4:3; CR 134.)  
28 Only after Pretrial Services and the government indicate that

1 Mr. Bromma and Mr. Manheimer are acceptable would the Court "continue  
2 moving forward." (CR 132 at 7:15-17.) Defendant has largely ignored  
3 this requirement. Although defendant's counsel states that he  
4 provided Pretrial Services with the contact information for  
5 Mr. Bromma and Mr. Manheimer (CR 136 at 2), the ex parte application  
6 is silent on when defendant's counsel did so. More importantly, it  
7 does not appear that Pretrial Services has had an opportunity to  
8 interview them yet or prepare the required report regarding their  
9 suitability to serve as custodians.<sup>1</sup> Nor has defendant provided the  
10 government with any further information regarding these individuals  
11 so that it could conduct its own evaluation and, potentially,  
12 expedite the process.<sup>2</sup> (André Decl. ¶ 3.) As the Court and the  
13 government still do not have sufficient information to evaluate  
14 whether Mr. Bromma or Mr. Manheimer constitute appropriate surety  
15 and/or custodian under § 3142(i), defendant's application must again  
16 be denied.

17 Second, defendant also requests that he be immediately released  
18 from custody -- before the \$500,000 secured bond from Mr. Bromma has  
19 been approved and is in place. (CR 136 at 6.) The Court has already  
20 rejected this proposal, stating that any release order would be

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22 <sup>1</sup> The Proposed Order defendant submitted also does not provide  
23 any opportunity for the Court or the government to evaluate whether  
24 Mr. Bromma and Mr. Manheimer are appropriate custodians or sureties  
25 prior to defendant's release. (CR 136-1.) Instead, the Proposed  
26 Order indicates that defendant would be released immediately after  
27 Pretrial Services approves an unidentified surety. (CR 136-1, ¶ 1.)

28 <sup>2</sup> Based on the limited information available online, the  
government does have some preliminary concerns regarding Mr. Bromma's  
suitability to serve as a surety or custodian in this case. For  
example, Mr. Bromma appears to be the author of a book titled "How to  
Invest in Offshore Real Estate and Pay Little or No Taxes," available  
at [https://www.amazon.com/Invest-Offshore-Estate-Little-](https://www.amazon.com/Invest-Offshore-Estate-Little-Taxes/dp/0071470093)  
[Taxes/dp/0071470093](https://www.amazon.com/Invest-Offshore-Estate-Little-Taxes/dp/0071470093).

1 "contingent on the additional bonds being approved and in place prior  
2 to release." (CR 128 at 2 (emphasis in original).) Given this  
3 Court's prior finding that defendant is a danger to the community (CR  
4 128; CR 132 at 6:3-6:12), there is no basis for the Court to  
5 reconsider its prior ruling and allow defendant to be released before  
6 the secured bond is approved.<sup>3</sup> Nor can defendant credibly claim that  
7 immediate release is necessary because this process would take too  
8 long. (CR 136 at 8, ¶ 3.) Defendant has known since at least March  
9 27, 2020, that a secured bond may be required and would need to be in  
10 place "prior to release" (CR 127 at 20; CR 128 at 2), yet has waited  
11 until now to start making the necessary arrangements.

12 Third, this Court has twice ruled that defendant will need to be  
13 quarantined for fourteen days at the Metropolitan Correctional Center  
14 in New York ("MCC New York") prior to his temporary release. (CR  
15 128; CR 132; CR 134.) Most recently, the Court stated: "I see no  
16 point in releasing him to the public until we have some assurance  
17 that going out the door from MCC he is not infected." (CR 132 at  
18 4:4-7.) Despite these prior rulings, defendant again requests this  
19 Court release defendant immediately from MCC New York without  
20 undergoing any such quarantine. (CR 136 at 5.) Although defendant's  
21 application notes that additional individuals at MCC New York have  
22 tested positive for COVID-19 since his last application, the number  
23 of positive cases are increasing rapidly throughout the country, not  
24 just in BOP facilities. And, contrary to defendant's position, the

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26 <sup>3</sup> The government notes that defendant has not provided the Court  
27 or the government with any specific information regarding the  
28 property that Mr. Bromma intends to use for the \$500,000 secured  
portion of the \$1,000,000 bond. At this point, there is no evidence  
that such a property exists, let alone that there is sufficient  
equity in the property to support a \$500,000 secured bond.

1 fact that additional inmates at MCC New York have tested positive for  
2 COVID-19 actually supports this Court's ruling that defendant must be  
3 quarantined for fourteen days prior to release. Defendant should not  
4 be released from custody and allowed to travel across the country  
5 until BOP and the United States Marshals Service are confident  
6 defendant has not been infected with COVID-19.

7 Fourth, defense counsel made no effort to confer with the  
8 government regarding a proposed release order (André Decl. ¶ 5),  
9 despite being directed by the Court to do so (CR 132 at 7:7-10).  
10 As a result, the proposed order defendant has submitted (CR 136-1) is  
11 woefully deficient, and fails to include many of the conditions of  
12 temporary release that this Court previously indicated would be  
13 necessary. For example, among other things, the proposed order  
14 defendant submitted does not include the previously imposed  
15 conditions of release, does not include any "stated mechanism to  
16 enforce limitations on [defendant's] ability to make funds or asset  
17 transfers" (CR 128 at 2), does not "include the three conditions  
18 which the Government outline[d] in its [March 27, 2020] opposition"  
19 (id. (citing CR 127 at 22-23)), does not require defendant's  
20 custodian to "acknowledge the terms upon which the defendant is being  
21 released and acknowledge that if he observes any violation he assumes  
22 the obligation to promptly advise the pretrial services officer" (CR  
23 134), and does not state that the electronic monitoring is at  
24 defendant's expense.

25 Finally, although the Court found that there are "extraordinary  
26 circumstances here" and said that "neither side need to revisit that  
27 issue in any future court filing" (CR 134), defendant devotes the  
28 majority of his ex parte application doing exactly that (CR 136 at 2-

1 6). Defendant's generalized arguments regarding the conditions at  
2 MCC New York do not justify defendant's failure to comply with this  
3 Court's prior orders and have been rejected by a number of district  
4 judges in the Southern District of New York. Given the Court's prior  
5 order (CR 134), however, the government will not further respond to  
6 these arguments unless directed to do so.

7 This Court has repeatedly identified the terms and conditions  
8 upon which it would be willing to grant defendant a temporary  
9 release, and the specific additional steps defendant needs to take  
10 before any such release can be granted. Yet, despite this Court's  
11 prior orders, defendant insists that he should be granted a forthwith  
12 release -- before the Court or the government can evaluate whether  
13 Mr. Bromma and Mr. Manheimer constitute appropriate persons under  
14 Section 3142(i), before the required secured bond is in place,  
15 without any period of quarantine or evaluation to protect the public,  
16 and without many of the specific conditions of release the Court  
17 previously indicated would be necessary. Defendant and his counsel  
18 continue to demonstrate that they are either unable or unwilling to  
19 follow this Court's directions, thereby wasting valuable judicial and  
20 government resources during a time when such resources are already  
21 stretched thin. This Court should deny defendant's request.

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DECLARATION OF JULIAN L. ANDRÉ

I, Julian L. André, declare as follows:

1. I am an Assistant United States Attorney ("AUSA") in the United States Attorney's Office for the Central District of California. Together with AUSA Brett A. Sagel, I am assigned to represent the government in United States v. Michael John Avenatti, SA CR 19-61-JVS.

2. Since defendant filed his initial ex parte application for bond pending trial on March 18, 2020, defense counsel has never attempted to confer with the government regarding defendant MICHAEL JOHN AVENATTI's ("defendant's") request to be temporarily released.

3. To date, defense counsel has not provided me or AUSA Sagel with any information regarding defendant's proposed custodian, Jay Manheimer, or defendant's proposed surety, Hubert Bromma.

4. To date, defense counsel has not provided me or AUSA Sagel with any specific information regarding the property defendant claims that Mr. Bromma has agreed to use for the \$500,000 secured portion of defendant's bond.

5. At no point prior to the filing of defendant's fourth ex parte application, did defense counsel provide me or AUSA Sagel a copy of the proposed order defendant submitted, or seek to confer with us regarding what specific terms should be included in the proposed order. Indeed, government counsel first learned of defendant's instant ex parte application when the filing notification came through the Court's CM/ECF system.

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1 I declare under penalty of perjury under the laws of the United  
2 States of America that the foregoing is true and correct and that  
3 this declaration is executed at Los Angeles, California, on April 5,  
4 2020.

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6 JULIAN L. ANDRÉ

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