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6 Attorney for Defendant
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8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MICHAEL JOHN AVENATTI,

15 Defendant.

16 SA CR No. 19-061-JVS

17 DEFENDANT'S EX PARTE
18 APPLICATION FOR AN ORDER
19 EXTENDING DEFENDANT'S
20 TEMPORARY RELEASE

21 Defendant MICHAEL JOHN AVENATTI ("Mr. Avenatti") by and through his
22 counsel of record, H. Dean Steward, hereby files this *Ex Parte* Application for an Order
23 Extending Defendant's Temporary Release for 14 days.

24 Dated: September 29, 2020

25 Respectfully submitted,

26 /s/ H. Dean Steward
27 H. DEAN STEWARD

28 Attorney for Defendant
MICHAEL JOHN AVENATTI

1 Pursuant to this Court's prior Orders, Defendant Michael John Avenatti
2 ("Mr. Avenatti") is presently on temporary release and home confinement in
3 Venice, California. If necessary, the defense is prepared to file a formal noticed
4 motion to extend Mr. Avenatti's temporary release for sixty (60) days for the
5 reasons set forth in (a) the Opposition [Docket No. 271] to the Government's
6 Motion to Terminate and Not Further Extend Defendant Michael John Avenatti's
7 Temporary Release, which is pending, and (b) the accompanying declarations filed
8 with the Opposition, including that of board-certified infectious disease specialist
9 Dr. F. Ramzi Asfour (under seal) [Docket No. 280]. Absent a further extension,
10 Mr. Avenatti will be required to self-surrender next Tuesday, October 6, 2020.

11 Any comparison between the data from March/April and today demonstrates
12 that the current risks and fallout from the COVID-19 pandemic are exponentially
13 greater now in the Central District than in March/April, when Mr. Avenatti was
14 ordered released to home confinement. *See, e.g.*, Exhibit A to Docket No. 271
15 (extensive comparison of the data and citing to multiple sources). The rate of
16 infection is far higher; the rate of death is far higher; the rate of hospitalization is
17 far higher; the number of cases has exploded; and the number of deaths is far
18 greater. According to Johns Hopkins University, California surpassed 813,000
19 confirmed cases statewide today – the most in the nation (a 17,600% increase over
20 when Mr. Avenatti was ordered released and California had 4,600 cases in total).
21 Over 15,600 deaths have also been recorded in the state (a 14,100% increase over
22 when Mr. Avenatti was ordered released and California had 110 deaths in total).
23 Further, when Mr. Avenatti was ordered released, Orange County had a total of 3
24 deaths and 321 cases – those numbers are now routinely being matched or
25 exceeded *every two days at most* and the county has now recorded over 1,215
26 deaths and 53,400 cases, an over 40,500% and 16,600% increase, respectively,
27 compared to the numbers when Mr. Avenatti was ordered released on March 27.

1 A comparison of the March/April data to the data today for Los Angeles County is
2 even more stark.

3 Cases and deaths in Los Angeles County and Orange County are not
4 continuing to decline from their July peak at the same rate they were a few weeks
5 ago and appear to be rising again. According to the health department, on Sunday,
6 Orange County recorded its highest number of new cases (246) in the past five
7 weeks (since August 21). Hospitalizations are expected to increase in the state
8 89% in the next 30 days according to statements made last Friday by Dr. Mark
9 Ghaly, California's health and human services secretary. And officials from both
10 Orange and Los Angeles counties have stated in the last 24 hours that they have
11 failed to qualify for less restrictive tiers; the next opportunity for them to do so will
12 not be until mid-October (depending on the data).

13 Meanwhile, medical expert after medical expert is predicting a second wave
14 that will likely be far more deadly and pervasive than the first wave, including in
15 California and in the Central District. Dr. Anthony Fauci warned yesterday on
16 ABC that "we're not in a good place" with flu season fast approaching and cases
17 beginning to rise, and that the United States needed to "double down" now on
18 protective measures. 55,000 new infections across the nation were reported last
19 Friday alone (the highest rate in six weeks) and cases are rising in 33 states, with
20 some states experiencing spikes over 75%. The 7-day moving average is still far
21 higher than when Mr. Avenatti was released and is getting worse. Even Vice-
22 President Mike Pence, who is also the Chair of The White House Coronavirus
23 Task Force and has repeatedly downplayed the virus for months, warned yesterday
24 at a White House press conference that "The American people should anticipate
25 that cases will rise in the days ahead."

26 Virtually no experts are predicting a further decline in cases and deaths, or a
27 return to normalcy in Los Angeles and Orange counties, in the coming weeks.

1 New York (the venue of Mr. Avenatti's other two criminal matters) is experiencing
2 a resurgence. And a well-respected University of Washington model projects that
3 the U.S. Death rate with quadruple over the next few months, with the U.S.
4 experiencing 3,059 deaths *per day* by January.

5 In addition, the risks to Mr. Avenatti were he to contract the virus remain
6 significant according to expert Dr. F. Ramzi Asfour. *See* Declaration of Dr. F.
7 Ramzi Asfour (under seal) and attached report (attesting to the risks to Mr.
8 Avenatti's health conditions and the risks to him were he to be remanded) [Docket
9 No. 280]. In July, the American Medical Association confirmed that "COVID-19
10 case rates have been substantially higher and escalating much more rapidly in
11 prisons than in the U.S. population." The Journal article further provides a telling
12 chart on the rate of coronavirus infection in prisons versus the wider population,
13 and there can be no dispute – prisons and jails are vastly more dangerous. *See* B.
14 Saloner, Ph D., et al., *Covid-19 Cases and Deaths in Federal & State Prisons*, J.
15 Am. Med. Assoc. (July 8, 2020). The researchers found that the infection rate for
16 prisoners was 5.5 times higher than the U.S. population and the death rate in the
17 prison population was 3.0 times higher. Other data shows that the risk remains
18 exceedingly high in jails and prisons. *See, e.g.*, charts at end of Exhibit A to
19 Docket No. 271.

20 Accordingly, in order provide additional time for the Court to rule on the
21 government's pending motion and for the Court and the parties to address any
22 further motion by the defense (to be filed if necessary), as well as examine the
23 pandemic data relating to the virus in the interim time period (which has an
24 obvious impact on Mr. Avenatti's release), defendant respectfully requests that the
25 Court extend his temporary release to October 20, 2020 under the same conditions
26 previously ordered.

1 Counsel for the defendant and the government conferred and the
2 government's position is that their position regarding Mr. Avenatti's temporary
3 release is set forth in their briefing on the pending motion and they will defer to the
4 Court on whether it needs additional time to rule on the motion.

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6 Dated: September 29, 2020

Respectfully submitted,

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8 /s/ H. Dean Steward
H. DEAN STEWARD

9 Attorney for Defendant
10 MICHAEL JOHN AVENATTI
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CERTIFICATE OF SERVICE

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2 I, H. Dean Steward, am a citizen of the United States, and am at least 18 years
3 of age. My business address is 107 Avenida Miramar, Ste. C, San Clemente, CA
4 92672. I am not a party to the above-entitled action. I have caused, on September
5 29, 2020, service of the defendant's:

6
7 EX PARTE APPLICATION FOR AN ORDER EXTENDING DEFENDANT'S
8
9 TEMPORARY RELEASE

10 on the following party, using the Court's ECF system:

11 AUSA BRETT SAGEL AND AUSA JULIAN ANDRE

12
13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on September 29, 2020

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16 /s/ H. Dean Steward

17 H. Dean Steward
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