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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 MICHAEL JOHN AVENATTI,
14 Defendant.

15 SA CR No. 19-061-JVS
16 DEFENDANT’S EX PARTE
17 APPLICATION FOR AN ORDER
18 EXTENDING DEFENDANT’S
19 TEMPORARY RELEASE

20 Defendant MICHAEL JOHN AVENATTI (“Mr. Avenatti”) by and through his
21 counsel of record, H. Dean Steward, hereby files this *Ex Parte* Application for an Order
22 Extending Defendant’s Temporary Release for 28 days.

23 Dated: October 14, 2020

24 Respectfully submitted,

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

27 Attorney for Defendant
28 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 on Tuesday, October 20, 2020.

11 A comparison of the data from March/April, when Mr. Avenatti was ordered
12 released to home confinement, and today demonstrates that the current risks and
13 fallout from the COVID-19 pandemic are far greater now in the Central District.
14 *See, e.g.*, Exhibit A to Docket No. 271 (extensive comparison of the data and citing
15 to multiple sources). The rate of infection is higher; the rate of death is higher; the
16 rate of hospitalization is higher; the number of cases has exploded; and the number
17 of deaths is far greater. According to Johns Hopkins University, California has
18 now surpassed 858,000 confirmed cases statewide – the most in the nation (a
19 18,650% increase over when Mr. Avenatti was ordered released and California had
20 4,600 cases in total). Over 16,600 deaths have also been recorded in the state (a
21 15,000% increase over when Mr. Avenatti was ordered released and California had
22 110 deaths in total). Further, when Mr. Avenatti was ordered released, Orange
23 County had a total of 3 deaths and 321 cases – those numbers are now routinely
24 matched or exceeded *every two days at most* and the county has now recorded over
25 1,340 deaths and 55,900 cases according to the Orange County Health Department,
26 an over 44,600% and 17,400% increase, respectively. Comparing the March/April
27 data for Los Angeles County to today is even more stark.

1 There is nothing indicating that the risks associated with the pandemic are
2 presently declining in Los Angeles and Orange County. And virtually no non-
3 political experts are predicting a further decline in cases and deaths, or a return to
4 normalcy in Los Angeles and Orange counties, in the coming weeks. In fact, case
5 numbers in the counties appear to be rising again after starting to decline this past
6 Summer and are recording numbers not seen since August. This past Sunday,
7 Orange County registered 244 new cases and last Saturday, the county reported 24
8 COVID-19 deaths. Neither Orange County nor Los Angeles County is on pace to
9 qualify for a less restrictive tier. Recently, California's Health and Human
10 Services Secretary, Dr. Mark Ghaly, announced that he expects hospitalizations to
11 increase in the state 89% by mid-November. *He also stated yesterday in the Los*
12 *Angeles Times that California was getting ready to "go into what is going to be*
13 *hard time with COVID, given flu, given cooler weather and much of the increased*
14 *spread that we're seeing across the nation and the globe."*

15 Meanwhile, medical expert after medical expert is predicting a second wave
16 that will likely be far more deadly and pervasive than the first wave, including in
17 California and in the Central District. Each day brings a slew of experts who are
18 predicting serious problems in the weeks and months ahead. Dr. Anthony Fauci
19 warned on Monday afternoon that the situation with the current data and flu season
20 approaching was alarming: "I hope these numbers . . . jolt the American public
21 into the realization that we really cannot let this happen - because it's on a
22 trajectory of getting worse and worse. And that's the worst possible thing that can
23 happen as we get into the cooler months." He added on Monday evening, "We're
24 in a bad place now, we've got to turn this around." As of Monday, 31 states had
25 reported more new COVID-19 cases this past week compared to the previous week
26 according to Johns Hopkins University. Nine states reported record-high COVID-
27 19 hospitalizations on Sunday. In more than 15 states, the test positivity rate is
28

1 over 10%. The latest forecast of a widely used model (the University of
2 Washington) projects *another* 181,000 deaths in the United States by February.
3 Approximately 50,000 new infections are now being reported on a regular daily
4 basis across the nation and the 7-day moving averages for the nation, California,
5 and Orange and Los Angeles counties are still far higher than when Mr. Avenatti
6 was released (and are getting worse). Over 57,000 cases were reported nationwide
7 last Friday, a nearly two-month high. New York (the venue of Mr. Avenatti's
8 other two criminal matters) is also experiencing a resurgence, with some areas
9 being placed under severe restrictions in the last week. And the first case of re-
10 infection was just discovered (involving a 25-year-old Nevada male who got much
11 sicker the second time around).

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

CERTIFICATE OF SERVICE

I, H. Dean Steward, am a citizen of the United States, and am at least 18 years of age. My business address is 107 Avenida Miramar, Ste. C, San Clemente, CA 92672. I am not a party to the above-entitled action. I have caused, on October 14, 2020, service of the defendant's:

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

AUSA BRETT SAGEL AND AUSA JULIAN ANDRE

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

Executed on October 14, 2020

/s/ H. Dean Steward

H. Dean Steward