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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

GOVERNMENT'S OPPOSITION TO
 DEFENDANT'S EX PARTE APPLICATION
 FOR AN ORDER EXTENDING DEFENDANT'S
 TEMPORARY RELEASE; DECLARATION OF
 BRETT A. SAGEL, EXHIBIT A

22
 23 Plaintiff United States of America, by and through its counsel
 24 of record, the Acting United States Attorney for the Central District
 25 of California and Assistant United States Attorneys Brett A. Sagel
 26 and Alexander C.K. Wyman, hereby files its Opposition to defendant
 27 MICHAEL JOHN AVENATTI's Ex Parte Application for an Order Extending
 28 Defendant's Temporary Release (CR 420).

1 This Opposition is based upon the attached memorandum of points
2 and authorities, the attached Declaration of Brett A. Sagel and
3 accompanying exhibit, the files and records in this case, and such
4 further evidence and argument as the Court may permit.

5 Dated: March 15, 2021

Respectfully submitted,

6 TRACY L. WILKISON
Acting United States Attorney

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

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10 /s/

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BRETT A. SAGEL
ALEXANDER C.K. WYMAN
Assistant United States Attorneys

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13 Attorneys for Plaintiff
UNITED STATES OF AMERICA

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 In March 2020, the Court temporarily released defendant MICHAEL
3 JOHN AVENATTI from custody for 90 days due to the COVID-19 pandemic,
4 its effects in the "greater New York City" area, and defendant's
5 alleged health concerns. (CR 128.) The Court has subsequently
6 extended defendant's release until March 31, 2021. In doing so, the
7 Court, each time, has expressly reserved the right to revoke
8 defendant's temporary release based on any "changed circumstances"
9 after notice to the parties. (CR 128 at 2, ¶ 8; CR 140 at 7, ¶ 25;
10 see also 7/6/2020 RT 10:25-11:8.) Circumstances have now changed.

11 As of today, March 15, 2021, defendant is eligible to receive a
12 COVID-19 vaccination based on his alleged health conditions. Indeed,
13 the government alerted defense counsel to that fact by email on March
14 8, 2021, and agreed to stipulate to a modification of defendant's
15 bail conditions to permit him to leave his third-party custodian's
16 residence in order to receive the vaccination. (Sagel Decl. Ex. 1.)
17 The government also provided defense counsel with a link to
18 California's vaccination website (<https://covid19.ca.gov/vaccines/>),
19 which lists "five ways [people with high-risk medical conditions] may
20 be able to find an appointment after March 15," including by visiting
21 a healthcare provider or scheduling an appointment at a local
22 pharmacy. Moreover, in addition to the two-shot options that have
23 been available for months from Pfizer-BioNTech and Moderna, there are
24 now supplies of the one-shot vaccine from Johnson & Johnson/Janssen.

25 Due in large part to these effective vaccines and their
26 increasing availability to the general population, COVID-19 numbers,
27 while still very concerning, are rapidly trending downward. See,
28 e.g., Bettina Boxall, "COVID-19 Hospitalizations and Deaths Continue

1 to Decline," Los Angeles Times (Mar. 13, 2021), available at
2 [https://www.latimes.com/california/story/2021-03-13/los-angeles-
4 county-covid-19-hospitalizations-continue-to-decline](https://www.latimes.com/california/story/2021-03-13/los-angeles-
3 county-covid-19-hospitalizations-continue-to-decline). Indeed, both
5 Los Angeles County and Orange County recently entered the less
6 restrictive "red tier," and the government understands that based on
7 the current trend the Central District of California will begin
8 holding jury trials as early as the end of May 2021. The pandemic
9 continues to pose serious risks to the entire population, but the
10 risk landscape is now vastly different thanks to the vaccines that
11 have become available to a subset of that population, such as
12 defendant.

13 These vaccines are also not limited to individuals out of
14 custody. The Bureau of Prisons ("BOP") has been vaccinating inmates
15 at all of its many facilities across the country. As of February 22,
16 2021, all BOP facilities have received some doses of a vaccine.
17 https://www.bop.gov/resources/news/20210223_vaccination_status.jsp.
18 The first priority is to vaccinate staff to prevent transmission in
19 and out of facilities, but inmates are also being vaccinated. See
20 [https://www.bop.gov/resources/news/20210116_covid_vaccine_efforts_com
22 mended.jsp](https://www.bop.gov/resources/news/20210116_covid_vaccine_efforts_com
21 mended.jsp). As of today, the BOP has administered 79,676 doses of
23 COVID-19 vaccines, and a total of 110 inmates at the Los Angeles
24 Metropolitan Detention Center have been fully vaccinated (i.e.,
25 received both doses of either the Pfizer-BioNTech or Moderna
26 vaccine). See <https://www.bop.gov/coronavirus/>.

27 In short, the circumstances giving rise to defendant's temporary
28 release -- and which justified his continued release -- have changed.
He is now eligible to receive any one of three vaccines that would
nearly eliminate the health risks that he has relied upon in seeking

1 release from custody. What has not changed, and will not change, is
2 that defendant "is a danger to the community." (CR 128 at 2.) The
3 government has also proven by clear and convincing evidence that he
4 violated the conditions of his temporary release by using a computer
5 that offers internet access to draft pleadings in this case and that
6 he intentionally misled the Court on numerous occasions. (CR 262; CR
7 296.) As the party seeking an extension of his temporary release
8 under 18 U.S.C. § 3142(i), defendant bears the burden to show that
9 temporary release remains "necessary" under that provision. See
10 United States v. Dupree, 833 F. Supp. 2d 241, 246 (E.D.N.Y. 2011).
11 That he cannot do.

12 The government alerted defense counsel of defendant's impending
13 eligibility for a vaccine a week before his eligibility date, which
14 gave him ample time to secure an appointment to receive his first
15 vaccination dose this week. Any delay at this point in securing
16 protection against the virus justifying his release is entirely of
17 his own creation, and it should not justify his continued release.
18 This Court should deny defendant's ex parte application, grant the
19 government's pending motion to revoke defendant's bond (CR 262)
20 and/or not further extend the temporary release, and remand him into
21 custody.

22 Alternatively, if this Court is inclined to extend defendant's
23 release based on his current application, there appears no further
24 basis to extend defendant's release after these additional sixty
25 days. Defendant himself states that he "expects to be able to begin
26 and complete the vaccination process" during his requested 60-day
27 extension, which will "permit [defendant] adequate time to be fully
28 vaccinated and acquire immunity." (App. at 6.) Barring a change in

1 the direction of the COVID-19 numbers, defendant will have no basis
2 to continue his release beyond these sixty-days -- and further delay
3 in scheduling his vaccine should not be a basis.

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Sagel, Brett (USACAC)

From: Dean Steward <deansteward7777@gmail.com>
Sent: Wednesday, March 10, 2021 9:37 AM
To: Sagel, Brett (USACAC)
Subject: Re: COVID Vaccination

Brett:

Thank you for the email. We will let you know when and if we need any modifications of my client's bail conditions relating to the vaccine.

Dean

On Mon, Mar 8, 2021 at 6:35 PM Sagel, Brett (USACAC) <Brett.Sagel@usdoj.gov> wrote:

Dean-

According to the California COVID-19 website (link below), beginning March 15, healthcare providers such as your client's doctor, Dr. Asfour, at their discretion and clinical judgment, can vaccinate individuals deemed to be high risk from getting very sick from COVID-19 if they were to contract it (there may be other bases for which your client would be eligible of vaccines as well). The government is willing to stipulate to a modification of your client's bail conditions to permit him to leave his third-party custodian's residence to receive vaccinations as long as he's accompanied by yourself or his third-party custodian, Jay Manheimer. This would basically be an agreement to modify paragraph 10 in the bail conditions (CR 154). Let me know if you have any questions or wish to discuss this further. Thanks,

Brett

<https://covid19.ca.gov/vaccines/>

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