

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

No. [REDACTED]

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S

**OBJECTION TO MAGISTRATE JUDGE'S ORDER DENYING DEFENDANT'S MOTION
FOR TEMPORARY RELEASE; REQUEST FOR REVIEW**

FACTS AND PROCEDURAL HISTORY

On June 12, 2019, the government obtained a complaint charging Mr. [REDACTED] with possession with intent to distribute fentanyl (400 grams or more), based on the Government's allegation that he served as a one-time courier in a five-kilo fentanyl delivery.

Following a detention hearing, Magistrate Judge Boal entered an Order on June 26, 2019, which granted the Government's motion for pretrial detention pursuant to 18 U.S.C. § 3142(e). See Paper 17, Order on Government's Motion for Detention, attached hereto as Exhibit 1. The District Court, the Honorable Justice F. Dennis Saylor, IV affirmed the Magistrate Judge's ruling on October 9, 2019. Paper No. 37, attached hereto as Exhibit 2. Mr. [REDACTED] appealed that Order, which the First Circuit Court of Appeals affirmed in a rescript dated February 25, 2020. Paper No. 46.

On April 3, 2020, Mr. [REDACTED] filed a motion for temporary release, Paper Nos. 56, 57, to which the Government Objected on April 8, 2020. Paper No. 61. The Magistrate Judge considered the matter on April 13, 2020, then issued an Order dated April 20, 2020 denying Mr. [REDACTED]' request. Paper No. 64, attached hereto as Exhibit 3.

Mr. [REDACTED] is charged with a single delivery of narcotics. The evidence shows that he was only a mule. There is no evidence of any other drug involvement or prior transactions of any kind beyond the single delivery here at issue. Mr. [REDACTED] had no role in arranging the shipment and had no ownership interest in the drugs. Rather, he was recruited as a last-minute substitute driver after an initial attempted shipment was intercepted. The evidence shows that all parties to the transaction intended to sever contact with Mr. [REDACTED] after he consummated the delivery.

These circumstances preview his qualification for a role in the offense reduction as a minimal participant.

Mr. [REDACTED] was fully compliant with police following his arrest. Although he lawfully owned a gun, he did not take it with him to the deal.

The instant case is expected to resolve by way of a change of plea. The parties agree that, following his arrest, Mr. [REDACTED] satisfied the fifth prong of the criteria set forth

in USSG §5C1.2. The parties also agree that Mr. [REDACTED] appears to meet all other criteria for relief from the statutory minimum-mandatory set forth in that section.

Mr. [REDACTED] is 44 years old. He has no criminal record at all. He is not a United States Citizen but has a green card. He has lived in Pennsylvania since 2003. He is married with six children.

Prior to his arrest, he lived with his wife, mother, and all six children. He has four siblings, two in Pennsylvania and two in Massachusetts. He jointly owns a garage in Philadelphia with his siblings. His wife co-owns the family home in Philadelphia. All titleholders have committed to putting up those properties, each of which bear substantial equity, as surety in the event of Mr. [REDACTED]' release.

Mr. [REDACTED] has strong community support. He is active in his local church and recreational softball league.

STANDARD OF REVIEW

Pursuant to 18 U.S.C. §3142(i), the Court may order temporary release "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."

In reviewing a Magistrate Judge's pretrial detention orders pursuant to 18 U.S.C. § 3145(b), the District Court must "engage

in de novo review of the contested order." United States v. Tortora, 922 F.2d 880, 883 n. 4 (1st Cir. 1990).¹

ARGUMENT

Although on October 9, 2019 the District Judge affirmed the Magistrate Judge's initial Order of detention, the Court acknowledged that "the issue is not free from doubt." See Exhibit 2.

Mr. [REDACTED] now asks this Court to consider whether, in light of the health risks arising from the COVID-19 epidemic, the doubt which the Court acknowledged last year now tilts the balance in favor of release.

COVID-19 constitutes a potential threat to Mr. [REDACTED]'s life. The scope of that threat remains unknown because, although more is learned every day, current medical science has not yet developed a full understanding of how the virus spreads, who may become sick, and who may die.

Recently, CNN reported on the deaths of young, healthy persons caused by coronavirus.² Although undersigned has not

¹ Mr. [REDACTED] contends that the Magistrate Judge's denial of his motion for temporary release pursuant to 18 U.S.C. § 3142(i) constituted an order of detention within the meaning of 18 U.S.C. § 3145(b). However, if the District Court determines that § 3145(b) does not govern that Order, the Court must apply the standard set forth in Fed. R. Crim. P. 59(a), which requires consideration of whether the Magistrate Judge's ruling was contrary to law or clearly erroneous. Either standard is met here.

² <https://www.cnn.com/2020/04/05/health/young-people-dying-coronavirus-sanjay-gupta/index.html>

located national findings, data compiled by the City of New York reveals that as of April 20, 2020, the virus has killed 391 individuals between the ages of 18 and 64 in that city, despite having no known underlying conditions which the CDC has associated with higher vulnerability to the virus.³ "It has become clear that the young and healthy are by no means immune to this infection[.]" Id. In fact, CNN reported that doctors have identified a frightening new strain of the virus which "appears to be causing sudden strokes in adults in their 30s and 40s who are not otherwise terribly ill[.]"⁴ In that article, Dr. Thomas Oxley, a neurosurgeon at Mount Sinai Health System in New York, reported "a seven-fold increase in incidence of sudden stroke in young patients during the past two weeks. Most of these patients have no past medical history and were at home with either mild symptoms (or in two cases, no symptoms) of Covid[.]" Id.

To whatever extent, then, that the Government claims that the virus only threatens a certain class of people, the loved ones of the healthy young people who have succumbed to COVID-19 will disagree.

³ <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-daily-data-summary-deaths-04212020-1.pdf>

⁴ <https://www.cnn.com/2020/04/22/health/strokes-coronavirus-young-adults/index.html>

State and federal court systems throughout the country have recognized the danger caused by this virus, cancelling all but emergency court events and restricting access to courthouses. The courts are closed for everyone - not just for those who are over sixty years old or have medical conditions elevating their risk of death from the virus. It is not just the courts that are closed; almost every brick and mortar space in the state is closed, because the government has determined distance is necessary to prevent serious illness and death.

The unprecedented shuttering of this country follows a consensus that the virus presents an enormous risk for everyone, not just the elderly or sick. It follows a consensus that the steps necessary to prevent the spread of the virus requires the participation of everyone, not just the elderly or sick.

Mr. [REDACTED] is a pretrial detainee at the Plymouth County House of Correction, where the consequences of an outbreak would "extend far beyond those who are incarcerated [and] threaten the larger public, as ... correctional, medical and other staff interact with the incarcerated population and circulate back into communities."⁵

⁵ The Justice Collaborative, Explainer: Prisons and Jails are Particularly Vulnerable to COVID-19 Outbreaks, (emphasis removed) <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf>.

At least one employee at the facility has tested positive for the virus,⁶ though Plymouth County Sheriff Joseph McDonald stated earlier this week that the infection had not spread further.⁷ Still, it may not yet be time to hang a victory banner on the aircraft carrier.

While Sheriff McDonald highlights that no further confirmed cases have surfaced, what he chose not to emphasize is that his staff has tested only four of the between 755 and 799 inmates in its care. See Brien T. O'Connor: Special Master's Weekly Report (April 12, 2020).⁸ Less than 0.7% of inmates have been tested for the virus. The near-total lack of testing reveals that Sheriff McDonald's press commentary gives no meaningful insight into how many people under his care actually carry the virus. This is so because many carriers of the virus are asymptomatic. See WBUR.org, Testing Reveals 'Stunning' Asymptomatic Coronavirus Spread Among Boston's Homeless (April 14, 2020) (146 out of 397 homeless at Boston's Pine Street Inn tested positive

⁶ <https://www.wbur.org/commonhealth/2020/04/01/mass-prisons-jails-coronavirus>.

⁷ Rich Harbert, the Patriot Ledger: No new cases of coronavirus in Plymouth County jail (April 20, 2020) available at <https://www.patriotledger.com/news/20200420/no-new-cases-of-coronavirus-in-plymouth-county-jail>.

⁸ The Massachusetts SJC directed a special master to publish weekly reports regarding COVID-19 data in the Commonwealth's facilities: <https://www.mass.gov/doc/sjc-12926-special-masters-weekly-report-4132020/download>

for the virus despite the absence of any detectable symptoms).⁹

If his facility remains infected, there is little Sheriff McDonald can do to stop the spread of the virus,¹⁰ considering that 49.2% of inmates still sleep within six feet of one another and 56.72% of inmates still eat within six feet of one another. Exhibit 4, post-argument letter of Patrick Lee, General Counsel to Sheriff Joseph D. McDonald, Jr., to Massachusetts Supreme Judicial Court (April 2, 2020).¹¹

In sum, even if he were a perfectly healthy male, Mr. [REDACTED] would be at risk of serious illness or death, which risk is elevated as a result of his confinement in conditions in which necessary preventative measures are impossible.

But Mr. [REDACTED] is not a perfectly healthy male. He has a medical history which may place him at higher risk of harm. According to his attached medical records, Mr. [REDACTED] suffers from three chronic health conditions: mixed

⁹ <https://www.wbur.org/commonhealth/2020/04/14/coronavirus-boston-homeless-testing>

¹⁰ If the Plymouth County House of Correction follows the pattern set by the Bridgewater Treatment Center, we should expect the number of infected to increase exponentially. We should expect deaths. On March 24, 2020 the Bridgewater Treatment Center had four confirmed cases of Covid-19. *Christie v. Commonwealth*, ___ Mass. ___, SJC-12927, at *8 (April 1, 2020). Just two days later, the number had increased to eleven. *Id.* By March 31, the number had increased to 17. *Id.* At last count, 41 inmates at Bridgewater tested positive for the virus; four have died. <https://www.enterpriseneews.com/news/20200413/coronavirus-cases-increase-at-bridgewater-prison>.

¹¹ <https://www.mass.gov/doc/sjc-12926-post-argument-letter-of-the-sheriffs-of-the-14-counties-of-massachusetts/download>

hyperlipidemia,¹² abnormal liver enzymes,¹³ and obesity. See Exhibit 5, Defendant's medical records. These conditions were first detected in 2012. See, e.g., pp. 1, 5 and 22 of the attached records. Reference to his obesity may be found at id., pp. 7, 20, 29 and 39. Also, in 2016, Mr. [REDACTED] was seen for "acute palpitations." See id., at pages 28-29.

The Center for Disease Control ("CDC") warns that individuals with underlying medical conditions, including liver disease and obesity, are at higher risk of serious illness or death in connection with the virus.¹⁴

With respect to his obesity, his most recent BMI put him at 37.57, which is just under the 40 BMI the CDC classifies as high risk for coronavirus related complications. See medical records, page 7 (reflecting BMI assessment on February 5, 2019).

While the Magistrate Judge correctly observed that none of Mr. [REDACTED]' conditions have progressed beyond the threshold

¹² According to WebMD, hyperlipidemia "makes the blood vessels narrower and makes it more difficult for blood to get through. [It can cause] blood pressure to go up. The buildup can also cause a blood clot to form. If a blood clot breaks off and travels to [the] heart, it causes a heart attack. If it goes to [the] brain, it can cause a stroke." <https://www.webmd.com/cholesterol-management/hyperlipidemia-overview#2-4>

¹³ According to Medical News Today, "Elevated liver enzymes may be a sign that a person's liver is not working properly." <https://www.medicalnewstoday.com/articles/325838>

¹⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

which the CDC characterizes as placing him at special vulnerability, she erred by concluding that each condition should be considered separately. She also failed to appreciate that the CDC's guidance does not create an absolute threshold, where those beyond the threshold were highly vulnerable, and those below it were safe. The issue is not binary; rather, the risk factors must be viewed in their totality. In their totality, Mr. [REDACTED]' various conditions, each of which elevate his risk, elevate to create substantial concern regarding his survivability in the event he becomes afflicted.

Where even young and healthy individuals have perished, Mr. [REDACTED]' overall compromised health warrants heightened concern. His continued incarceration subjects him to a high risk of exposure to the virus. Mr. [REDACTED] is a non-violent offender with no record of conviction and no default history. His pretrial incarceration at the height of a deadly pandemic is unjustifiable.

The District Court did not consider the implications of the COVID-19 pandemic when initially determining whether to detain the Defendant on the instant case, because the public health crisis had not yet emerged. But because the pandemic substantially impacts the fundamental rights of Mr. [REDACTED] - and any incarcerated individual - the Court can and should re-evaluate whether the government's interest in pretrial detention

outweighs the serious and potentially lethal impact continued detention has on Mr. [REDACTED].¹⁵

Due process requires that, in order to lawfully detain an individual prior to conviction, the government's interest in pretrial detention must outweigh its infringement on the individual's fundamental rights. United States v. Salerno, 481 U.S. 739, 748 (1987). Although the government's interest in

¹⁵ See Christie v. Commonwealth, ___ Mass. ___, SJC-12927, at *8 (April 1, 2020) ("because of the arrival of the COVID-19 pandemic in Massachusetts, the exponential spread of the virus, and the particular danger of transmission of the virus to persons in custody who cannot realistically engage in social distancing, a fundamental change in circumstances had occurred[.]"); United States v. Mclean, No. 19-cr-380, Dkt. No. (D.D.C. Mar. 28, 2020) ("As counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to the community have not changed - with one exception. That one exception - COVID-19 - however, not only rebuts the statutory presumption of dangerousness, see 18 U.S.C. § 3142(e), but tilts the balance in favor of release."); United States v. Michaels, 8:16-cr-76-JVS, Minute Order, dkt. 1061 (C.D. Cal. Mar. 26, 2020) ("Michaels has demonstrated that the Covid-19 virus and its effects in California constitute 'another compelling reason' justifying temporary release under § 3142(i)."); United States v. Jaffee, No. 19-cr-88 (D.D.C. Mar. 26, 2020) (releasing defendant with criminal history in gun & drug case, citing "palpable" risk of spread in jail and "real" risk of "overburdening the jail's healthcare resources"; "the Court is . . . convinced that incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant's release to home confinement"); United States v. Perez, No. 19 CR. 297 (PAE), 2020 WL 1329225, at *1 (S.D.N.Y. Mar. 19, 2020) (releasing defendant due to the "heightened risk of dangerous complications should he contract COVID-19"); United States v. Stephens, 2020 WL 1295155, ___ F. Supp. 3d ___ (S.D.N.Y. Mar. 19, 2020) (releasing defendant in light of "the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic"); In re Manrigue, 2020 WL 1307109 (N.D. Cal. Mar. 19, 2020) ("The risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail."); see also United States v. Avenatti, No. 8:19-cr-61 (C.D. Cal. Mar. 25, 2020) (sua sponte inviting defendant to move for reconsideration of a just-denied motion for release "[i]n light of the evolving nature of the Covid-19 pandemic").

securing a defendant's presence at trial or the safety of the community can justify detention, the balance shifts when weighed against the person's fundamental right to life and safety.

The Eighth Amendment is also implicated in instances where confinement conditions introduce health risks not otherwise present in instances of pretrial detention. See Helling v. McKinney, 509 U.S. 25, 33 (1993) (second-hand smoke in prison); Carroll v. DeTella, 255 F.3d 470, 472 (7th Cir. 2001) (contaminated water); Masonoff v. DuBois, 899 F. Supp. 782, 797 (D. Mass. 1995) (use of chemical toilets).

Despite the unprecedented circumstances which the COVID-19 pandemic has caused, the government advances the same argument it made at the Defendant's initial detention hearing: Mr. [REDACTED] must be detained because his offense involves dangerous drugs. The refrain is familiar; it tracks the same argument that the government has already made in this case, and in virtually all drug cases dating back to the "crack epidemic" of the mid-eighties.

In referencing the opioid epidemic as a justification for detention, the government implies that the Defendant's detention is necessary to prevent overdose deaths. What the government omits, however, is the lack of any evidence or data that indicates Mr. [REDACTED]' detention will serve that purpose at all:

[A]s the federal prison population soared [from 5,000 to 92,000], spending ballooned 595 percent between 1980 and 2013 without delivering a convincing public safety return. In fact, self-reported use of illegal drugs increased between 1990 and 2014, as has the availability of heroin ... as indicated by falling prices and a rise in purity. The surge in federal prison spending has also failed to reduce recidivism. The rate of federal drug offenders who leave prison and are placed on community supervision but commit new crimes or violate the conditions of their release has been roughly a third for more than three decades."

Pew Research Center: More Imprisonment Does Not Reduce State Drug Problems (March 8, 2018).¹⁶

There is no dispute that the opioid epidemic is a human tragedy. But that tragedy cannot be meaningfully compared to the threat of COVID-19. While the opioid epidemic has claimed the lives of 3,542 people in the two years between January 2018 and December 2019, the terrible reality is that, in this Commonwealth alone, COVID-19 has killed 2,192 in just two months.¹⁷

No evidence or data supports the Government's position that the Defendant's detention is necessary to prevent the flow of dangerous drugs. The data establishes the opposite.

¹⁶ <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>

¹⁷ <https://www.mass.gov/doc/covid-19-dashboard-april-22-2020/download>

In fact, consideration of the principles animating the rebuttable presumption of danger reveals their inapplicability to the instant case. Congress codified the presumption of dangerousness for narcotics offenses because drug offenders can present "a significant risk of pretrial recidivism." United States v. Shea, 749 F.Supp. 1162, 1165 - 1166 (D. Mass. 1990).

Congressional presumptions aside, Mr. [REDACTED] presents no factual risk of recidivism. Mr. [REDACTED] was 43 years old at the time of the instant offense. His 43 years without any prior drug involvement are a better indicator of his future conduct than this offense. United States v. Cabrera, 567 F. Supp. 2d 271, 279, 2008 U.S. Dist. LEXIS 56766, *20 (D. Mass. July 25, 2008) (individuals "with zero criminal history points are less likely to recidivate than all other offenders.") This was Mr. [REDACTED]' first offense, and he got caught. Where the only drug offense in the 43 years of his life led directly to a federal indictment which carries the threat of a ten-year-minimum-mandatory sentence followed by certain deportation, Mr. [REDACTED]' only experience with drugs created terrible consequences with none of the perceived pecuniary rewards which might otherwise incentivize recidivist drug offenses.

While no evidence supports the government's argument that his detention is necessary to protect the public, there is

medical consensus that Mr. [REDACTED]' decarceration will spare him from the virus and prevent him from spreading it to others.

On the issue of risk of flight, Mr. [REDACTED] recognizes a rebuttable presumption of detention followed congressional testimony that "flight to avoid prosecution is particularly high among persons charged with major drug offenses." United States v. Jessup, 757 F.2d 378, 385 (1st Cir. 1985), abrogated by United States v. O'Brien, 895 F.2d 810 (1st Cir. 1990), quoting S.Rep. No. 225, 98th Cong., 1st Sess. 19 at 20, 23-24 (1983). That risk of flight is associated with drug traffickers with "the resources and foreign contacts to escape to other countries. [To them, f]orfeiture of even a large bond may be just a cost of doing business[.]" United States v. Palmer-Contreras, 835 F.2d 15, 17 (1st Cir. 1987)

Mr. [REDACTED] is not this type of defendant. Instead of being a high-ranking member of a drug trafficking organization, Mr. [REDACTED] is a first offender who was himself exploited by an "archetypical drug trafficker" to mule a load of drugs while working as an Uber driver. Mr. [REDACTED] had no proprietary interest in what he carried. He was to be paid \$5,000 for bearing all the risk of an interstate drug delivery. The owner of the drugs expressly stated that all contact with Mr. [REDACTED] was to be severed following the delivery. Instead of having the resources to post a large bond and then sacrifice it

as a "cost of doing business," Mr. [REDACTED]' wife, uncle, and siblings have agreed to offer the family home and family garage as collateral to secure Mr. [REDACTED] release. "The less those features [of a defendant's case] resemble the congressional paradigm, the less weight the magistrate [should] give to Congress's concern for flight." United States v. Shea, 749 F. Supp. 1162, 1166 (D. Mass. 1990), quoting Jessup, 757 F.2d at 387.

While the government points out that his base offense level previews a substantial prison sentence, Mr. [REDACTED] expects that, at sentencing, this Court will recognize that the quantity-based sentencing guidelines do not accurately portray his culpable conduct. Reflecting the pioneering traditions of the judiciary in this Commonwealth, in 2008, the Honorable Justice Nancy Gertner (ret.) was among the first to recognize that the sentencing guidelines' focus on drug quantity results in "a classic case of false uniformity[, which] occurs when we treat equally individuals who are not remotely equal because we permit a single consideration, like drug quantity, to mask other important factors. Drug quantity under the Guidelines treats as similar the drug dealers who stood to gain a substantial profit, here the purchasers who escaped, and the deliveryman, Cabrera, who received little more than piecework wages." Cabrera, supra, at 273. Judges may "vary from the Guidelines based solely on

[their] judgement that the policies behind the guidelines are wrong." United States v. Irely, 612 F.3d 1160, 1212 (11th Cir. 2010) (en banc) citing United States v. Kimbrough, 552 U.S. 85, 109-10 (2007).

Following Judge Gertner's lead, many federal judges have done just that because they recognize that "drug quantity is a poor proxy for culpability," United States v. Diaz, No. 11-CR-00821-2 (JG), 2013 U.S. Dist. LEXIS 11386, at *72 (E.D.N.Y. Jan. 28, 2013). See also United States v. Johnson, 379 F. Supp. 3d 1213, 1217, 2019 U.S. Dist. LEXIS 78152, *6, 2019 WL 2057230 (M.D. Ala. May 9, 2019); United States v. Hayes, 948 F. Supp. 2d 1009 (N.D. Iowa 2013); United States v. Saldana, No. 1:17-cr-271-1, 2018 U.S. Dist. LEXIS 110790 (W.D. Mich. July 3, 2018); United States v. Ibarra-Sandoval, 265 F. Supp. 3d 1249 (D.N.M. 2017); United States v. Carrillo, No. 2:17-cr-00082-KJM, 2020 U.S. Dist. LEXIS 31338 (E.D. Cal. Feb. 21, 2020); United States v. Vang, 789 F. Supp. 2d 1020 (E.D. Wis. 2011); United States v. Woody, No. 8:09CR382, 2010 U.S. Dist. LEXIS 72909 (D. Neb. July 20, 2010).

These courts have recognized that because the weight-based guidelines "are not rooted in empirical evidence" and thus do not arise from "the Commission's exercise of its characteristic institutional role" to 'base its determinations on empirical data and national experience." Johnson, *supra* at 1217-1218.

Rather, the Commission patterned §2D1.1 on the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986), which "used the weight (and thus quantity) of the drugs involved in the offenses as the sole proxy to identify 'major' and 'serious' dealers." Id. at 1219 (citations omitted).

In Mr. [REDACTED]' case, "drug quantity most assuredly is not an accurate proxy" for his culpability. Cabrera, supra at 277. Like the defendant in Cabrera, there is a substantial difference between Mr. [REDACTED] and the Mexican drug lord who owned the drugs, and who escaped prosecution: Mr. [REDACTED] is

a first offender ... sent on a mission about which he knew little and from which he was to make little money ... [T]he way [Mr. [REDACTED]] came into the transaction makes it clear that his culpability is unrelated to the amount of [fentanyl] on offer. He did not negotiate the sale or know the quantity involved before meeting the agents. As far as [Mr. [REDACTED]] was concerned, the quantity was only happenstance; it could equally have been 1.4 kg or 28 kg ... Indeed, it would not be surprising if [Mr. [REDACTED]] was selected precisely because he ... had limited information and thus could compromise the operation as little as possible.

Id. at 277 - 278.

Even the minimal role reduction, which the Court will presumably apply to Mr. [REDACTED], is "limited and do[es] not come close to offsetting the high quantity-driven base offense level." Id. at 272-273; see also Johnson, supra at 1222 ("the

mitigating and aggravating role adjustments under USSG §§ 3B1.1 and 3B1.2 allow for only up to eight levels of differentiation. This pales in comparison to the up to 32 levels of differentiation among defenders based on drug quantity enshrined by USSG § 2D1.1(c).")

When considered against the threat to Mr. [REDACTED]' health and safety, Mr. [REDACTED] submits that the balance now tilts in favor of release. His release will allow him to engage in the social distancing and hygiene practices which medical experts deem necessary to mitigate the risk of contracting the frightening virus.

PROPOSED CONDITIONS

Mr. [REDACTED] suggests the following conditions of release, as well as any additional conditions that this Honorable Court deems appropriate: (1) electronic GPS monitoring; (2) home confinement; (3) regular reporting to a pretrial services officer (via telephone); (4) the agreement of Mr. [REDACTED] and the co-owners of [REDACTED] Street, Philadelphia, PA to forfeit their interest in the property upon Mr. [REDACTED] violation of the terms of his pretrial release; (5) the agreement of [REDACTED] and [REDACTED] to forfeit their interest in the property at [REDACTED] Street, Philadelphia, PA upon Mr. [REDACTED]' violation of the terms of his pretrial release.

Mr. [REDACTED] further suggests that the Court appoint [REDACTED] as a third-party custodian, based on her agreement to supervise him and report any violations of release conditions to the Court. Upon request, Ms. [REDACTED] stands ready to undergo any necessary background check to verify her suitability as a third-party custodian. Alternatively, if the Court determines that it would prefer Mr. [REDACTED] remain in the District of Massachusetts, his sister who resides in Massachusetts, [REDACTED], will be amenable to assume the role of third-party custodian. Ms. [REDACTED] lives at [REDACTED] Street, Lawrence, MA 01841.

Undersigned has conferred with the head of both households, each of whom have affirmed that they practice, and will continue to practice, the social distancing and hygiene measures which the CDC currently recommends.

CONCLUSION

For the reasons stated above, the Defendant respectfully requests that this Honorable Court allow his motion.

Respectfully submitted,
[REDACTED]
By and through his Attorney,
/s/ Murat Erkan
Murat Erkan, BBO# 637507
Erkan & Associates, LLC
300 High Street
Andover, MA 01810
(978) 474-0054

Date: April 23, 2020

CERTIFICATE OF SERVICE

I, Attorney Christopher Basso, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 23, 2020.

/s/ Christopher Basso

Christopher Basso, BBO# 695588

Erkan & Associates, LLC

300 High Street

Andover, MA 01810