

MOTION FOR REDUCTION OF BOND

Defendant, by counsel, respectfully requests this Court, under I.C. 35-33-8-5(c), to authorize a reduction in the amount of bond to an amount no higher than is reasonably required to assure the Defendant's appearance in Court or released under Criminal Rule 26, the National Emergency existing due to the COVID-19 pandemic, I.C. 35-33-8-4, and the Eighth Amendment to the United States and Article I, Section 17 of the Indiana Constitutions. To support this Motion, the Defendant states:

1. On January 21, 2020, an information was filed charging the Defendant with [charges].
2. Bond is set at \$ surety.
3. Because the background information to be produced at the hearing requested herein creates a strong inference that Defendant will appear as required, the Defendant should be released on his own recognizance or admitted to bond in a reasonable, and lower, amount.
4. Further due to the conditions at the Marion County Jail, given the ongoing COVID-19 pandemic there exists no reasonable basis to hold a non-violent offender.
5. **The continued holding of Defendant is a violation of his due process as individuals already convicted of offenses are no longer reporting for probation, etc., but an individual that has not been convicted has not been released.**

Factual Background

Changed Circumstances: COVID-19 Outbreak

As of March 12, 2020, the new strain of coronavirus which causes COVID-19, has

infected over 132,300 people, leading to at least 4,954 deaths worldwide.¹ On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.² Indiana and the United State Government have declared States of Emergency to include Additional protective measures have been taken including restrictions of gatherings of people of 250 people or more. *As of March 15, 2020, there are 19 of positive cases of COVID-19 in Indiana including some within the correctional community.*

The CDC has issued guidance that individuals at higher risk of contracting COVID-19—adults over 60 years old and people with chronic medical conditions — take immediate preventive actions, including avoiding crowded areas and staying home as much as possible.³ With confirmed cases in Indiana that indicate community spread, we must take every necessary action to protect vulnerable populations and the community.

¹ *Coronavirus Map: Tracking the Spread of the Outbreak*, The New York Times (March 12, 2020), at <https://nyti.ms/2U4kmud> (updating regularly).

² *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (March 11, 2020) at <https://bit.ly/2W8dwpS>.

³ *People at Risk for Serious Illness from COVID-19*, CDC (March 12, 2020) at <https://bit.ly/2vgUt1P>.

Conditions of Confinement and Spread of Coronavirus

Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease.⁴ Inmates cycle in and out of detention facilities from all over the world and the country, and people who work in the facilities including correctional officers, and care and service providers leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited.⁵ Many people who are incarcerated also have chronic conditions, like diabetes or HIV, which makes them vulnerable to severe forms of COVID-19. According to public health experts, incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe;” “infection control is challenging in these settings.”⁶ Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases.⁷ In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.⁸ Secretary of State Mike Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human

⁴ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

⁵ Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>

⁶ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

⁷ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at <https://bit.ly/2TNcNZY>.

⁸ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (Feb. 21, 2020) at <https://bit.ly/2vSzSRT>.

decency.”⁹ Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.¹⁰ In the U.S. steps are already being taken in some jurisdictions to facilitate the release of elderly and sick prisoners and to reduce jail populations by discouraging the refusing the admission of individuals arrested on non-violent misdemeanor charges.¹¹

Within Marion County Jail, far over 250 people are contained. Further, inmates, even more so than the ongoing health crisis in the general public, have limited access to personal hygiene items such as tissues, soap, disinfectant, or hot water, shared phones, and limited laundry and clothing which prevent individuals from taking recommended precautions to minimize the spread of the virus. Relevant hygiene items that may be available only to inmates with financial resources.

At this time, Counsel cannot even move this case forward due to the Marion County Prosecutor ceasing depositions, even when a video option is proposed. Defendant will otherwise be forced to sit and wait instead of having his case move forwarded or properly investigated.

Further, Counsel is of the groups of persons at a high risk due to an auto-immune

⁹ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020) at <https://cnn.it/2W4OpV7>.

¹⁰ Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press (Mar. 7, 2020) at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

¹¹ In New York Brooklyn District Attorney Eric Gonzalez, joined by public health experts, has asked Governor Cuomo to grant emergency clemencies to elderly and sick prisoners (Sarah Lustbader, *Coronavirus: Sentenced to COVID-19*, The Daily Appeal (Mar. 12, 2020) at <https://theappeal.org/sentenced-to-covid-19/>); Cuyahoga County (Ohio) is holding mass pleas and bail hearings to reduce the current jail population (<https://www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html>); Mahoning County (Ohio) jail is refusing all non-violent misdemeanor arrestees (<https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>); see also Collin County (TX) (<https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>);

disease and aortic regurgitation. At this time, Counsel cannot perform visits. Since, Marion County Jail 2 still lacks the ability to do video visits, its further hampers Counsel's ability to represent Defendant if he is to remain in custody.

Marion County Jail lacks the resources to engage in screening and testing of inmates, correctional staff, law enforcement officers and other care and service providers who enter the facility.

As additional people are arrested who have been out in the community as the coronavirus spreads, if they are not symptomatic, they will be brought into the Marion County Jail, and held with the existing population, potentially bringing COVID-19 into this population held in large numbers, close quarters, and low sanitary conditions

Bond Review

1. The \$160,000 bond violates the Defendant's statutory right set forth in I.C. 35-33-8-4 and constitutional rights under Article I, Sections 16 and 17 of the Indiana Constitution because:
 - (a) The amount is not commensurate with the past record and conduct of Defendant. *Sherelis v. State*, 452 N.E.2d 411 (Ind.Ct.App. 1983).
 - (b) The amount is not commensurate with the nature of the offense charged.
 - (c) The amount is not commensurate with the Defendant's family ties in the community, her employment and character, her length of residence in the community, or her record of appearance at court proceedings.
 - (d) The amount is excessive and not considerate of the financial ability of the Defendant. *Hobbs v. Lindsey*, 240 Ind. 74, 162 N.E.2d 85 (1959).
 - (e) "In providing a constitutional right to bail, the Indiana Constitution affords

a greater right than that provided by the United States Constitution." *Ray v. State*, 679 N.E.2d 1364, 1366 (Ind.Ct.App. 1997). Indiana Courts have consistently construed the right to bond as interrelated to the presumption of innocence and to have one purpose, assure the Defendant's presence. *Brown v. State*, 322 N.E.2d 708, 262 Ind. 629 (1975); *Sherelis v. State*, 452 N.E.2d 411 (Ind.Ct.App. 1983).

2. The courts have long recognized there is no greater necessity than keeping a defendant alive, no matter the charge. As Judge Weinstein held, "We do not punish those who have not been proven guilty. When we do punish, we do not act cruelly. Continued incarceration of this terminally ill defendant threatens both of these fundamental characteristics of our democracy." *United States v. Scarpa*, 815 F.Supp.88 (E.D.N.Y. 1993) (pretrial defendant with AIDS facing murder charges released on bail because of the "unacceptably high risk of infection and death on a daily basis inside the MCC").
3. This Court should consider the "total harm and benefits to prisoner and society" that continued pretrial imprisonment of the Defendant will yield, relative to the heightened health risks posed to the Defendant during this rapidly encroaching pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (calling for heightened judicial scrutiny of the projected impact of jail and prison conditions on a defendant); *United States v. Mateo*, 299 F. Supp. 2d 201, 212 (S.D.N.Y. 2004) (reducing sentence where defendant's pretrial conditions were "qualitatively more severe in kind and degree than the prospect of such experiences reasonably foreseeable in the ordinary case").

4. The bond required is greater than the amount reasonably required to assure the Defendant's appearance in Court. *Stack v. Boyle*, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951).
5. The bond required is unreasonable and excessive and, thus, violates the prohibitions of Article 1, Sec. 17, of the Indiana Constitution and the Eighth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Defendant requests:

- A. A prompt hearing on bond reduction is held; or
- B. In the alternative, he is admitted to bond in the lowest amount reasonable to assure her appearance in Court;
- C. And all other relief just and proper.

Respectfully submitted,