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Superior Court of California

City and County of San Francisco

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| **People of the State of California,**  Plaintiff,  vs.  **Defendant,**  Defendant. | Court No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Motion for Formal Bail Hearing and Order Releasing Defendant on Own Recognizance  Date: \_\_\_\_\_\_\_\_\_\_\_\_  Time: \_\_\_\_\_\_\_\_\_\_\_\_  Dept: \_\_\_\_\_ |

Defendant moves the court for a bail hearing and an order granting his release. This motion is based on the attached points and authorities, the declaration of counsel, and any testimony or evidence adduced at the hearing on this motion.

**Changed Circumstances: COVID-19 Outbreak**

Currently, San Francisco is experiencing a COVID-19 outbreak via community transmission. An outbreak is when a large number of people suddenly get sick. The Mayor of San Francisco declared a State of Emergency on February 25, 2020.[[1]](#footnote-1) Public health officials recommended community actions to reduce people’s risk of being exposed to COVID-19.[[2]](#footnote-2)

On March 6, 2020, the San Francisco Department of Public Health announced “aggressive recommendations” for San Francisco to reduce the spread of COVID-19 Coronavirus, including social distancing and that people over 60 or with underlying health conditions stay at home as much as possible.[[3]](#footnote-3)

With confirmed cases that indicate community spread, the time is now to take action to protect vulnerable populations and the community at large. According to the Centers for Disease Controls and Prevention the people at higher risk of getting very sick from this illness include: (1) adults over the age of 60 and (2) people who have serious chronic medical conditions like heart disease, diabetes and lung disease.[[4]](#footnote-4) The San Francisco Department of Public Health included people with weakened immune systems in its definition of “vulnerable populations.”[[5]](#footnote-5)

People regularly cycle in and out of jails and prisons, people who work in them leave and return daily, and visitors regularly stream through. Viruses of all kinds have multiple entry points, and those that enter tend to spread fast. Outbreaks of the flu [regularly](https://www.omaha.com/news/state_and_regional/flu-outbreak-at-nebraska-state-penitentiary-prompts-cancellation-of-christmas/article_0c6ab320-1d5e-5561-9f49-605897b880fa.html) occur in jails, and during the H1N1 epidemic in 2009, [many](https://www.spokesman.com/stories/2009/jul/25/idaho-prison-reports-outbreak-of-swine-flu/) jails and prisons [dealt with high numbers of cases](https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/).[[6]](#footnote-6) Many people who are incarcerated also have [chronic conditions](https://www.prisonerhealth.org/educational-resources/factsheets-2/chronic-and-infectious-diseases-in-justice-involved-populations/), like diabetes or HIV, which makes them vulnerable to severe forms of COVID-19.

When coronavirus suddenly exploded in China’s prisons, there were reports of more than 500 cases spreading across five facilities in three provinces. In Iran, 54,000 inmates were temporarily released back into the country amid virus fears.[[7]](#footnote-7)

**Defendant is particulary vulnerable**

The defendant is vulnerable because he is over the age of 60/has a serious medical condition. The defendant moves the court for a bail hearing and an order granting own-recognizance release or release on appropriate financial or non-financial conditions. Money bail, as set, is beyond Defendant’s ability to pay, operating as a no-bail detention order despite no court having made the findings required under state and federal law for a valid detention order. Because the Defendant is among the vulnerable population at higher risk of getting very sick from this illness he should not be detained before trial, this court must order release on conditions narrowly tailored to the government’s interests in court appearance and public safety.[[8]](#footnote-8)

## Conclusion

Defendant should be granted release because the Defendant is among the vulnerable population at higher risk of getting very sick from this illness.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Attorney

Deputy Public Defender

Attorney for Defendant

Declaration of Counsel

I declare:

I am a deputy public defender for San Francisco County and, in that capacity, I represent the defendant.

All information in the Statement of the Case and Facts of the attached motion is taken from my review of discovery provided by the state.

I am informed and believe that:

Currently, San Francisco is experiencing a COVID-19 outbreak. An outbreak is when a large number of people suddenly get sick. The Mayor of San Francisco declared a State of Emergency on February 25, 2020.[[9]](#footnote-9) Public health officials recommended community actions to reduce people’s risk of being exposed to COVID-19.[[10]](#footnote-10)

On March 6, 2020, the San Francisco Department of Public Health announced aggressive recommendations for San Francisco to reduce the spread of COVID-19 Coronavirus, including social distancing.

With confirmed cases that indicate community spread, the time is now to take action to protect vulnerable populations and the community at large. According to the Centers for Disease Controls and Prevention the people at higher risk of getting very sick from this illness include: (1) adults over the age of 60 and (2) people who have serious chronic medical conditions like heart disease, diabetes and lung disease.[[11]](#footnote-11)

People regularly cycle in and out of jails and prisons, people who work in them leave and return daily, and visitors regularly stream through. Viruses of all kinds have multiple entry points, and those that enter tend to spread fast. Outbreaks of the flu [regularly](https://www.omaha.com/news/state_and_regional/flu-outbreak-at-nebraska-state-penitentiary-prompts-cancellation-of-christmas/article_0c6ab320-1d5e-5561-9f49-605897b880fa.html) occur in jails, and during the H1N1 epidemic in 2009, [many](https://www.spokesman.com/stories/2009/jul/25/idaho-prison-reports-outbreak-of-swine-flu/) jails and prisons [dealt with high numbers of cases](https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/).[[12]](#footnote-12) Many people who are incarcerated also have [chronic conditions](https://www.prisonerhealth.org/educational-resources/factsheets-2/chronic-and-infectious-diseases-in-justice-involved-populations/), like diabetes or HIV, which makes them vulnerable to severe forms of COVID-19.

When coronavirus suddenly exploded in China’s prisons, there were reports of more than 500 cases spreading across five facilities in three provinces. In Iran, 54,000 inmates were temporarily released back into the country amid virus fears.[[13]](#footnote-13)

The defendant is vulnerable because he is over the age of 60/has a serious medical condition.

The foregoing is true and correct of my own knowledge, except on those matters stated on information and belief, and as to those, I believe them to be true.

Executed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at San Francisco, California.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Attorney

Deputy Public Defender

Attorney for Defendant

Proof of Service

I say:

I am over eighteen and not a party to this action. My business address is 555 Seventh Street, San Francisco, California 94l03.

I caused to be filed and served the attached document on

Assistant District Attorney

San Francisco District Attorney

850 Bryant Street, 3rd Floor

Francisco, CA 94103

I declare under penalty of perjury that the foregoing is true and correct. Executed on March , 2020 in San Francisco, California.



1. <https://www.sfchronicle.com/bayarea/article/SF-mayor-London-Breed-declares-state-of-emergency-15083811.php> [↑](#footnote-ref-1)
2. <https://www.sfdph.org/dph/alerts/coronavirus.asp>, <https://abc7news.com/5990803/> [↑](#footnote-ref-2)
3. San Francisco Department of Public Health Announces Aggressive Recommendations to Reduce the Spread of Coronavirus (COVID-19), March 6, 2020, available at https://sfmayor.org/article/san-francisco-department-public-health-announces-aggressive-recommendations-reduce-spread. [↑](#footnote-ref-3)
4. <https://www.cdc.gov/coronavirus/2019-ncov/index.html> [↑](#footnote-ref-4)
5. See footnote 3. [↑](#footnote-ref-5)
6. <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap> [↑](#footnote-ref-6)
7. <https://apnews.com/af98b0a38aaabedbcb059092db356697> [↑](#footnote-ref-7)
8. Several judges in the Northern District of California have granted writs of habeas corpus on similar grounds to *Humphrey*. See, e.g., *Coleman v. Hennessy* (N.D. Cal. Jan. 5, 2018) No. 17-CV-06503-EMC, 2018 WL 541091 at \*1; *Rodriguez-Ziese v. Hennessy* (N.D. Cal. Dec. 6, 2017) No. 17-CV-06473-BLF, 2017 WL 6039705, at \*3; *Reem v. Hennessy* (N.D. Cal. Nov. 29, 2017) No. 17-CV-06628-CRB, 2017 WL 6765247, at \*1. [↑](#footnote-ref-8)
9. <https://www.sfchronicle.com/bayarea/article/SF-mayor-London-Breed-declares-state-of-emergency-15083811.php> [↑](#footnote-ref-9)
10. <https://www.sfdph.org/dph/alerts/coronavirus.asp>, <https://abc7news.com/5990803/> [↑](#footnote-ref-10)
11. <https://www.cdc.gov/coronavirus/2019-ncov/index.html> [↑](#footnote-ref-11)
12. <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap> [↑](#footnote-ref-12)
13. <https://apnews.com/af98b0a38aaabedbcb059092db356697> [↑](#footnote-ref-13)