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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.

SA CR No. 19-061-JVS

DEFENDANT’S EX PARTE
APPLICATION FOR AN ORDER
EXTENDING DEFENDANT’S
TEMPORARY RELEASE

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16 Defendant MICHAEL JOHN AVENATTI (“Mr. Avenatti”) by and through his
17 counsel of record, H. Dean Steward, hereby files this *Ex Parte* Application for an Order
18 Extending Defendant’s Temporary Release from March 31, 2021 to May 31, 2021.

19 Dated: March 15, 2021

Respectfully submitted,

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21 /s/ H. Dean Steward
22 H. DEAN STEWARD

23 Attorney for Defendant
24 MICHAEL JOHN AVENATTI
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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 the reasons set forth in (a)
5 the Opposition [Dkt. No. 271] to the Government’s Motion to Terminate and Not
6 Further Extend Defendant Michael John Avenatti’s Temporary Release, which is
7 pending, and (b) the accompanying declarations filed with the Opposition,
8 including that of board-certified infectious disease specialist Dr. F. Ramzi Asfour
9 (under seal) [Dkt. No. 280]. Absent a further extension, Mr. Avenatti will be
10 required to self-surrender on March 31, 2021.

11 The COVID-19 pandemic conditions in California are improving from their
12 most dangerous levels but remain at levels that are greater than when this Court
13 initially released Mr. Avenatti to home confinement and greater than in at least
14 four prior instances when this Court extended Mr. Avenatti’s release. [Dkt. Nos.
15 291, 314, 352, and 384.] Orange County just moved into the second most
16 restrictive tier in California (the red tier) from the most restrictive tier (purple) over
17 this past weekend; the County is expected to remain in that tier for a number of
18 weeks. Orange County had been in the purple tier since November 16 of last year;
19 before that, the county was in the red tier from approximately early September to
20 mid-November. Importantly, this Court previously extended Mr. Avenatti’s
21 temporary release on four occasions while Orange County was in the red tier
22 (September 16, September 29, October 14 and November 10). Further, while the
23 local health metrics have improved recently from their peaks during the surge in
24 January, they remain as serious, and in some cases more serious, than they were
25 over the majority of the months this past year when this Court permitted Mr.
26 Avenatti to remain on temporary release. Nationwide, cases remain at levels
27 approximating those seen during the Summer surge.

1 In addition, comparison of the data from last March/April, when Mr.
2 Avenatti was initially ordered released to home confinement, and today
3 demonstrates that the current risks and fallout from the COVID-19 pandemic are
4 still greater now in the Central District. This comparison is even more dramatic
5 than when defendant filed his Opposition. *See, e.g.*, Exhibit A to Dkt. No. 271
6 (extensive comparison of the data and citing to multiple sources). The rate of
7 infection is far greater; the rate of death is higher; the rate of hospitalization is
8 higher; the number of cases has exploded; and the number of deaths is higher.
9 According to Johns Hopkins University, California has now surpassed over
10 3,600,000 confirmed cases statewide (an over 78,000% increase over when Mr.
11 Avenatti was ordered released and California had 4,600 cases in total). Over
12 55,500 deaths have also been recorded in the state (an over 50,000% increase over
13 when Mr. Avenatti was ordered released and California had 110 deaths in total).
14 Further, when Mr. Avenatti was ordered released, Orange County had a total of 3
15 deaths and 321 cases. Those numbers are now routinely exceeded every two days
16 at most and the county has recorded over 4,400 deaths and 248,400 cases
17 according to the Orange County Health Department, an over 144,600% and
18 77,300% increase, respectively. Comparing the March/April data for Los Angeles
19 County to today is equally troubling. Further, the 7-day moving averages for
20 California and Orange and Los Angeles counties are presently higher than when
21 Mr. Avenatti was ordered released last year.

22 Moreover, medical experts are warning that the pandemic is far from over,
23 the threat remains significant and that precautions used over the last year need to
24 continue. For instance, Dr. Rochelle Walensky, Director of the CDC, recently
25 warned during a televised White House press briefing that the U.S. could face a
26 fourth COVID-19 wave in the coming weeks despite the recent decline in cases
27 from their peaks and increased vaccination. While noting the still significant levels
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1 of cases and deaths, she added, “I am really worried about reports that more states
2 are rolling back the exact public health measures we have recommended to protect
3 people from COVID-19. I understand the temptation to do this. 70,000 cases a
4 day seems good compared to where we were just a few months ago. But we
5 cannot be resigned to 70,000 cases a day, 2,000 daily deaths.” She added, “The
6 goal is not to open up travel, open up all things, because we are scaling up
7 vaccination. At this level of cases with variants spreading, we stand to completely
8 lose the hard-earned ground we have gained. These variants are a very real threat
9 to our people and our progress. Now is not the time to relax the critical safeguards
10 that we know can stop the spread of COVID-19 in our communities. . . . We have
11 the ability to stop a potential fourth surge in cases in this county. Please stay
12 strong in your conviction.” Friday, Dr. Walensky added: “Cases, hospitalizations,
13 and deaths remain high. And we’ve been fooled before into being too lax. So now
14 is the time to double down to see this through. . . . I am asking everyone to do the
15 right thing, continue taking public health precautions . . .” Earlier today, during a
16 White House/CDC COVID-19 briefing, she again warned of another impending
17 surge in cases based on data from Europe if significant precautions and health
18 measures are rolled back: “I’m pleading with you for the sake of our nation’s
19 health. These should be warning signs for all of us. Cases climbed last Spring,
20 they climbed again in the Summer, they will climb now if we stop taking
21 precautions. . . .”

22 Yesterday (Sunday), Dr. Fauci stated during a televised interview that he is
23 concerned about vaccines being less combative against new variants of the virus
24 and the possibility of another surge, which is why “I and so many of my public
25 health colleagues say that although we are going in the right direction . . .
26 concerning the vaccines . . . if you look at the numbers, [] even though the numbers
27 have gone down, over the last couple of weeks they’ve plateaued and when you see
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1 a plateau at a level as high as 60,000 cases a day, that is a very vulnerable time to
2 have a surge to go back up and that is exactly what happened in Europe. They had
3 a diminution of cases, they plateaued, and they pulled back on public health
4 measures, you see the pictures in the paper and on TV . . . and then all of a sudden,
5 you had a surge that went right back up. And that's where we are right now.”

6 In addition, experts are warning of another potential spike resulting from
7 spring break, while also noting that other countries are beginning to experience
8 another wave as a result of the spread of variants, including the U.K. variant
9 (B.1.1.7), which has been shown to be far more infectious and 30-100% more
10 deadly, according to a just released study in the *British Medical Journal*. Over the
11 last year, these countries have served as a bell weather, with the United States
12 usually experiencing the same outbreak or increase in cases approximately four to
13 six weeks later. By the end of March, it is estimated that the UK variant will be
14 the most dominant strain throughout the United States and in California, where it
15 has already been detected. Indeed, the U.K. variant is already the most dominant
16 strain in the State of Florida and is rapidly spreading throughout the United States,
17 growing by 7% every day in the United States according to a recent CDC backed
18 study. The health department in Houston, Texas warned last Wednesday that
19 testing shows ongoing and uncontrolled community spread of the U.K. variant.
20 Dr. Peter Hotez, Dean of the Baylor Medical School and a recognized infectious
21 disease expert, warned last Wednesday, “I worry we're in for the perfect storm.
22 We're lifting restrictions and the B.1.1.7. variant is here in a big way . . . none of
23 that is good news.”

24 Meanwhile, the rate of COVID-19 infections and deaths in Southern
25 California prisons and jails has increased significantly compared to when Mr.
26 Avenatti was initially released by this Court. Outbreaks have occurred in the
27 Metropolitan Detention Center (“MDC”) in Los Angeles, the Western Region
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1 Detention Facility in San Diego, and the Orange County Jail system. These
2 outbreaks led to hundreds of cases and the pandemic spreading like wildfire as a
3 result of jail conditions, which are not conducive to CDC precautions. A recent
4 study by the Marshall Project has found that there are more than 383,754 infections
5 of inmates or prisoners across the United States – an infection rate of over 20%,
6 with over 2,446 deaths. Over 104,278 cases among prison staff (likely an
7 undercount) have been reported and at least 189 employees have died. This is
8 consistent with the American Medical Association’s determination in July that
9 “COVID-19 case rates have been substantially higher and escalating much more
10 rapidly in prisons than in the U.S. population.” The Journal article further provides
11 a telling chart on the rate of coronavirus infection in prisons versus the wider
12 population, and there can be no dispute – prisons and jails are vastly more
13 dangerous. *See* B. Saloner, Ph D., et al., *Covid-19 Cases and Deaths in Federal &*
14 *State Prisons*, J. Am. Med. Assoc. (July 8, 2020). The researchers found that the
15 infection rate for inmates was 5.5 times higher than the U.S. population and the
16 death rate in the prison population was 3.0 times higher. Other data shows that the
17 risk remains exceedingly high in jails and prisons. *See, e.g.*, charts at end of
18 Exhibit A to Dkt. No. 271. Another recent study by the Prison Policy Institute
19 shows that the poor management of COVID-19 risks in jails and prisons across the
20 country has also contributed significantly to the dramatic spread of the pandemic
21 *outside* prison walls, producing as many as 500,000 additional cases outside
22 prisons and jails in just three months.

23 Importantly, the risks to Mr. Avenatti were he to contract the virus remain
24 significant according to expert Dr. F. Ramzi Asfour. *See* Declaration of Dr. F.
25 Ramzi Asfour (under seal) and attached report (attesting to the risks to Mr.
26 Avenatti’s health conditions and the risks to him were he to be remanded) [Dkt No.
27 280]. Importantly, while vaccine distribution has increased significantly, vaccines
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1 are not yet universally and easily available. However, as a result of recent changes
2 to the qualification standards in California, Mr. Avenatti expects to be able to
3 begin and complete the vaccination process during the extended period.¹

4 Accordingly, in order provide additional time for the parties to (i) address
5 any further motion by the defense (to be filed if necessary), (ii) examine the data
6 relating to the virus in the interim time period, and (iii) permit Mr. Avenatti
7 adequate time to be fully vaccinated and acquire immunity, defendant respectfully
8 requests that the Court extend his temporary release to May 31, 2021 under the
9 same conditions previously ordered.

10 Prior to filing this *ex parte* Application, counsel for the defendant requested
11 that the government provide their position as to defendant’s Application and
12 requested relief. The government responded: “We oppose, including for the
13 reasons set forth in Sections III. A-D in our prior motion (CR 262).”

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15 Dated: March 15, 2021

Respectfully submitted,

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17 /s/ H. Dean Steward
H. DEAN STEWARD
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19 Attorney for Defendant
MICHAEL JOHN AVENATTI

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26 ¹ Once a patient is able to receive a first shot, it takes a total of approximately six
27 weeks thereafter to be able to receive a second shot and for the vaccine to provide
28 immunity.

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 March 15, 2021, service of the defendant's:

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

AUSA BRETT SAGEL AND AUSA ALEXANDER WYMAN

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

Executed on March 15, 2021

/s/ H. Dean Steward

H. Dean Steward