STATE OF ILLINOIS)

) SS

COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY

CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS )

Plaintiff, )

vs ) No. \_\_\_\_\_\_\_\_

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

Defendant. )

**MOTION FOR BAIL HEARING AND ORDER**

**RELEASING DEFENDANT ON OWN RECOGNIZANCE**

Now comes the Defendant, **CLIENT**, by and through counsel, **XXXXXXXXX,** and respectfully moves this Honorable Court for a bail hearing and an order granting his release. This motion is based on changed circumstances created by coronavirus, or COVID-19, which presents a serious public health risk globally and in the United States.In support thereof, the defendant states the following:

1. CLIENT is currently charged with \_\_\_\_\_\_\_\_\_\_. Bail was set for him in the amount of \_\_\_\_\_\_\_\_. He has been incarcerated at the Cook County Department of Correction since \_\_\_\_\_, financially unable to afford the present bail.

2. **A global pandemic**. Currently, the United States is experiencing a COVID-19 outbreak via community transmission.[[1]](#footnote-1) On Wednesday, March 11, 2020, the World Health Organization classified the virus as a global pandemic.[[2]](#footnote-2) Two days later, President Donald Trump declared the pandemic a national emergency.[[3]](#footnote-3)

3. The following orders have been issued by Illinois Governor J.B. Pritzker:

* On March 9, 2020, the Governor issued a disaster proclamation for the State of Illinois. [[4]](#footnote-4)
* On March 13, 2020, the Governor banned all gatherings of 1000 persons or more. [[5]](#footnote-5)
* The same day, Governor Pritzker closed all public and private schools within the State of Illinois.[[6]](#footnote-6)
* On March 16, 2020. Governor Pritzker ordered all bars and restaurants closed for on-premises consumption, and also enhanced his order of March 13, banning all gatherings of 50 persons or more.[[7]](#footnote-7)

4. The Illinois Supreme Court has recognized the crisis and issued M.R. 30370 on March 17, 2020. In relevant part, M.R. 30370 authorized the continuation of essential court matters, allowing them to continue if feasible via telephone, video, or other electronic means; ordered that all nonessential court matters and proceedings be continued; authorized the suspension of any deadlines or procedures for up to 30 days after the Governor’s state of emergency declaration has been lifted; temporarily suspended any Supreme Court rules to the extent they are contrary to M.R. 30370, restricted access to all courthouses, and ordered temporary reductions in courthouse staffing.[[8]](#footnote-8)

5. Although both the Centers for Disease Control and Prevention (“CDC”) urged and Governor Pritzker ordered no gatherings of more than 50 persons, [[9]](#footnote-9) on March 16, 2020, President Trump urged people across the country to avoid gathering in groups of more than ten people.[[10]](#footnote-10) The U.S. Surgeon General Jerome Adams emphasized “that the United States is at a ‘critical inflection point’ as it grapples with the coronavirus outbreak and said ‘there’s every chance that we could be Italy” if people don’t follow basic public health measures that have been advised in recent weeks.”[[11]](#footnote-11)

6. According to the Centers for Disease Control and Prevention, the people at higher risk of getting very sick from Covid-19 include: (1) Adults over the age of 60, and (2) People who have serious chronic medical conditions like heart disease, diabetes, and lung disease.[[12]](#footnote-12) An analysis of the first one hundred COVID-19 deaths in the United States revealed that 85 percent were people over the age of 60 and more than a third lived in nursing homes or long-term care facilities.[[13]](#footnote-13)

7. **Jails have great potential for outbreak**. One of the greatest threats to health and safety in a pandemic is the local jail system. As of March 19, 2020, the Cook County Department of Corrections (CCDOC) had 5,567 persons incarcerated within its walls.[[14]](#footnote-14)

8. Incarcerated people are unable to follow the CDC guidelines for “social distancing” and maintain a separation of at least 6 feet from another person.[[15]](#footnote-15)

9. People regularly cycle in and out of jail. Hundreds of persons are arrested each week and enter the CCDOC, while hundreds also pass through and are released on I-bonds or cash bonds. Additionally, the Cook County Sheriff employs more than 5,000 deputies, all of whom enter and leave the CCDOC complex. Add to that the families, friends, and attorneys who visit incarcerated detainees on a daily and weekly basis, and it is obvious that this massive turnover in jail population pushes illness into the CCDOC, and likewise from the CCDOC into the surrounding communities, affecting innumerable people – CCDOC employees, law enforcement, probation officers, attorneys, judges, courthouse staff, families and friends of the incarcerated, and the community at large.

10. **The CCDOC has a limited ability to manage COVID-19**. On March 14, 2020, the Cook County Sheriff has ordered that “all visits to detainees at the Cook County Department of Corrections (DOC) will be suspended until further notice.”[[16]](#footnote-16)

11. The Sheriff is making all efforts to maintain a clean and healthy environment, but the CCDOC is not a health facility. As posted on the Sheriff’s web page, “To date, there are no known cases of COVID-19 in the jail, but reducing the number of non-violent, low level offenders in custody – especially those at increased risk due to age or medical condition – is a high priority of the Sheriff’s Office.[[17]](#footnote-17) However, with the current population, the Sheriff is not equipped to properly separate new detainees from the general population. In a press release dated March 18, 2020, the Sheriff states that new detainees are only observed for 7 days before entering the general population. [[18]](#footnote-18)

12. Despite the best efforts of all involved, an outbreak will occur given the unique features of Covid-19:

* **Covid-19 has an average incubation period of 5.1 days**, which means that a person may not feel the effects of the virus until five days after being exposed to the virus.[[19]](#footnote-19) The CDC reports that symptoms may appear as much as 14 days after exposure.[[20]](#footnote-20) Therefore, if a person is screened by the jail in the early days after exposure, that person could be admitted to general population and come in contact with dozens of people before any symptom is detected.
* Because of this long incubation period, people **can carry and spread** the virus **without showing any symptoms**.[[21]](#footnote-21) In fact, “a Massachusetts coronavirus cluster with at least 82 cases was started by people who were not yet showing symptoms, and more than half a dozen studies have shown that people without symptoms are causing substantial amounts of infection.”[[22]](#footnote-22)
* COVID-19 can remain viable and spread – even when the infected person is no longer around. “A new analysis found that the virus **can remain viable in the air for up to 3 hours**, on copper for up to 4 hours, on cardboard up to 24 hours and on plastic and stainless steel up to 2 to 3 days.”[[23]](#footnote-23)
* New studies suggest that **even young, healthy people could experience a life-threatening progression of symptoms due to *sustained* exposure** to COVID-19. When a symptomatic person shares a confined space with a large number of otherwise healthy people, “super-spreading” could occur due to COVID-19’s ability to replicate the virus faster than an individual immune system could respond to such repeat, extended exposure.[[24]](#footnote-24)

13. **Business as Usual Poses a Danger**. These alarming factors are why scientists and doctors urge “social distancing” – staying six feet or more away from other people – to stop the outbreak.[[25]](#footnote-25) And why Illinois officials have taken extreme measures to keep people away from large groups.

14. It is also why **the Chief Judge of Cook County** issued an order suspending criminal case matters, with the exception of bail, preliminary hearings, and arraignment hearings.[[26]](#footnote-26)

15. Social distancing is impossible in the CCDOC, and for that matter any jail or prison. At the federal level, the Chairman of the U.S. House Judiciary Committee requested that the United States Attorney General “consider measures that can be taken to reduce the number of prisoners in government custody.”[[27]](#footnote-27) The Chairman urged federal prosecutors “to not seek the detention of individuals at their initial appearance in court, decline prosecuting minor, non-violent offenses, and decline pursuing supervised release and probation revocations that involve technical and minor violations.”[[28]](#footnote-28)

16. The medical community is in agreement. Dr. Josiah Rich, an epidemiologist who has studied infectious disease in prison systems for decades, says “[t]he most surefire way to avoid a COVID-19 breakout in a correctional facility is to temporarily release incarcerated people.”[[29]](#footnote-29) Homer Venters, former chief medical officer on Rikers Island who helped contain the 2009 H1N1 outbreak inside New York City jails, asserts “one of the most important questions [in responding to COVID-19] is: How can we have fewer people in these places—in jails and prisons?”[[30]](#footnote-30) Iran, “which has recorded alarming death rates from COVID-19 has granted furlough to 54,000 incarcerated men and women to limit the spread in prisons.”[[31]](#footnote-31) One group of doctors explained how releasing inmates is essential to protecting the health of those outside of jails and prisons:

The abrupt onset of severe covid-19 infections among incarcerated individuals will require mass transfers to local hospitals for intensive medical and ventilator care — highly expensive interventions that may soon be in very short supply. Each severely ill patient coming from corrections who occupies an ICU bed will mean others may die for inability to obtain care.[[32]](#footnote-32)

Human Rights Watch has joined doctors in calling for the release of elderly and medically vulnerable inmates.[[33]](#footnote-33)

17. Unnecessary detention creates an unnecessary ethical dilemma for defense attorneys. Ethical obligations require visits to incarcerated clients, yet defense counsel are “faced with a new dilemma as COVID-19 spreads and routine trips could now mean either transmitting the disease to an already vulnerable population or contracting it themselves.”[[34]](#footnote-34)

18. **Due to the health crisis, CLIENT should be released.** CLIENT should be released because FACTS UNIQUE TO THE CLIENT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**For these reasons**, the CLIENT moves the Court for a bail hearing and an order granting a personal recognizance bond.

Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **XXXXXXXXX**

Certification of attorney

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

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

NAME

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3. Lisa Mascaro, et al., *Trump declares virus emergency; House passes aid package*, Associated Press (Mar. 13, 2020), [https://apnews.com/83b0c8e168548fd453b0c177dd1f203a](about:blank). [↑](#footnote-ref-3)
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5. [https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-04.pdf](about:blank) [↑](#footnote-ref-5)
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14. [https://www.cookcountysheriff.org/wp-content/uploads/2020/03/CCSO\_BIU\_CommunicationsCCDOC\_v1\_2020\_03\_19.pdf](about:blank) [↑](#footnote-ref-14)
15. [https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf](about:blank) [↑](#footnote-ref-15)
16. [https://www.cookcountysheriff.org/social-visits-for-detainees-at-cook-county-jail-suspended-as-part-of-covid-19-precautions/](about:blank) [↑](#footnote-ref-16)
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