

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GEORGE EDWARD CLARK,

Petitioner,

v.

Case No. 16-cv-11959
Hon. Victoria A. Roberts

NOAH NAGY, Warden,
Lakeland Correctional Facility,

Respondent.

_____ /

**PETITIONER'S EMERGENCY MOTION
FOR IMMEDIATE RELEASE ON BOND**

Petitioner George Edward Clark, by and through his attorneys, files this Emergency Motion for Immediate Release on Bond pending final resolution of this case. Such relief is warranted because it will serve the interests of justice and the public health.

Petitioner has already demonstrated time and again that his decades-long claim of innocence and his pending petition for habeas corpus relief have merit. At the status conference held March 17, 2020, the Director of the Wayne County Conviction Integrity Unit (“CIU”) appeared and informed the Court that the CIU’s investigation is nearing conclusion and that she intends to make a recommendation

to Wayne County Prosecutor Kym Worthy that Petitioner receive relief, either in the form of exoneration or a new trial.

Since the status conference, the COVID-19 global pandemic has swiftly spread throughout the United States and has already claimed the lives of thousands. At least two inmates at Lakeland Correctional Facility, where Petitioner is housed, have tested positive for the virus. Experts throughout the nation and in the State of Michigan agree that it is nearly impossible to observe social distancing norms and stop the spread of COVID-19 in overpopulated prisons. Petitioner worries that he has no means to keep himself safe and healthy from the virus and to avoid contributing to its further spread in the prison system and beyond, to the public.

Petitioner respectfully requests that the Court order his immediate release on bond, subject to appropriate conditions, pending the outcome of this case. Doing so is warranted in light of the abundant merit in Petitioner's claim (which is corroborated by the CIU's pending recommendation), because it is in the interest of the public health and Petitioner's individual health, and because Petitioner has already demonstrated during his prior release on bond that he is not a flight risk or a risk to public safety.

Petitioner respectfully asks the Court to order an abbreviated briefing schedule for this motion and to consider the motion on an expedited basis, as each day in custody only further increases the risk to his health and safety.

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel has conferred with counsel for the State regarding this motion but did not obtain concurrence in the relief sought.

Dated: March 30, 2020

Respectfully submitted,

s/ Brandy H. Ranjan

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Petitioner respectfully moves for his immediate release on bond pending the resolution of this case. The unique circumstances of this case, including the strong merit of the pending petition for habeas corpus and the risk to Petitioner's health and the public health posed by the spreading outbreak of the COVID-19 virus, warrant Petitioner's release on bond.

The Wayne County Conviction Integrity Unit ("CIU") recently informed the Court that it plans to recommend that the Wayne County Prosecuting Attorney grant relief for Petitioner, either in the form of exoneration or retrial. Even if the anticipated recommendation is accepted by the Prosecuting Attorney (and that decision results in Petitioner's release), this process may take several months before this case is finally resolved. During such time, the threat of the global COVID-19 pandemic—which has already begun to spread throughout Michigan's prison system—poses a real and imminent threat to Petitioner's and the public's health and safety. This threat will only continue to grow, especially in a prison setting where social distancing is impractical if not impossible.

This Court previously granted Petitioner's release on bond while his appeal was pending. During such time, Petitioner demonstrated that he is not a flight risk, that he has the support of his family and a place to live, and that he is willing to

abide by all conditions of his release. When his bond was revoked, Petitioner followed the Court's orders and voluntarily reported back to custody on time and without incident.

The Court should release Petitioner on bond immediately, pending the outcome of this case.

II. ARGUMENT

“[T]here is abundant authority that federal district judges in habeas corpus and section 2255 proceedings have inherent power to admit applicants to bail pending the decision of their cases” *United States v. Bankhead*, No. 2:18-cr-20784, 2020 WL 673861, at *2 (E.D. Mich. Jan. 7, 2020) (quoting *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985) (Posner, J.)); accord *Fonseca v. United States*, 129 F. Supp. 2d 1096, 1098-1099 (E.D. Mich. 2001).

To receive bail pending a decision on the merits, prisoners must show (i) “a substantial claim of law based on the facts surrounding the petition” and (ii) “the existence of ‘some circumstance making [the motion for bail] exceptional and deserving of special treatment in the interests of justice.’” *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990) (quoting *Aronson v. May*, 85 S. Ct. 3, 5 (1964)). This case presents precisely the “special circumstances” that distinguish it from other habeas cases and justify Petitioner’s release.

A. Petitioner Has Demonstrated a Substantial Claim on the Merits.

Petitioner has demonstrated a substantial claim of law based on the facts presented in his Petition.

As the Court is aware, in the months since this case was remanded for further evidentiary hearing, the CIU conducted a lengthy investigation into Petitioner's claim of innocence. That investigation was undertaken with Petitioner's consent and cooperation and at the urging of the Michigan Attorney General's office. At the status conference held March 17, the Court heard from Valerie Newman, Director of the CIU, that the CIU's investigation is nearly complete. Ms. Newman stated that, based on the evidence the CIU has found to date, she plans to recommend relief for Petitioner, either in the form of exoneration or a new trial. It will likely take two to three months, however, for the CIU to finalize its recommendation and for Wayne County Prosecutor Kym Worthy to review the recommendation and make a final decision. These circumstances demonstrate that Petitioner has "a substantial claim" for relief that is more than sufficient to support Petitioner's release on bond.¹

¹ Petitioner has demonstrated that his claim for habeas corpus relief has merit through the evidence already presented in this case as well. This Court previously granted Petitioner a writ of habeas corpus, holding that Petitioner "was denied his Fourteenth Amendment right to due process by the suppression of potentially exculpatory evidence" and that Petitioner "has shown by clear and convincing evidence that no reasonable juror would have found him guilty in light of this new evidence." Doc. No. 17 at 13, 17.

B. Special Circumstances Warrant Petitioner’s Release.

This case also presents the necessary “special circumstances” demonstrating that it is in the interest of justice for the Court to grant bond. In addition to the reasons discussed above, Petitioner’s release pending the duration of his case is justified by the extraordinary circumstances posed by the global COVID-19 pandemic and the fact that Petitioner already has demonstrated that he poses no risk if he is released on bond.

While Petitioner awaits the conclusion of the CIU’s investigation and the Prosecutor’s final decision, the global COVID-19 pandemic has spread quickly throughout the United States and Michigan. Government officials and scientific leaders have recommended that the best way to prevent the further spread of the virus is to practice social distancing. In fact, Michigan’s Governor has ordered all individuals in the state to stay at home and adhere to social distancing measures, including remaining at least six feet away from other individuals.² Other states have already taken actions to reduce overcrowded prisons by expediting the release of certain inmates.³ Similarly, U.S. Attorney General William Barr issued a memo

² Michigan Executive Order 2020-21 (COVID-19), *available at* https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html.

³ *See, e.g., Iowa’s Prisons Will Accelerate Release of Approved Inmates to Mitigate COVID-19*, Bellevue Herald Leader (Mar. 22, 2020), https://www.bellevueheraldleader.com/news/coronavirus_updates/iowa-s-prisons-

to the Director of the Bureau of Prisons recommending the Bureau grant home confinement for certain inmates to decrease the risk to the health of the inmate population posed by COVID-19.⁴

Petitioner’s risk of contracting and contributing to the spread of the virus is not hypothetical. There have already been two inmates at Lakeland Correctional Facility—where Petitioner is housed—who have tested positive for the virus⁵ in addition to dozens of inmates and staff at other correctional facilities in Michigan.⁶ Experts recognize that Michigan’s prison systems are “fertile ground for a lethal virus,” as noted in the following excerpt from one news article:

Even with MDOC measures to try to prevent spread of the virus, experts say the very nature of prison life runs contrary to the guidelines of social distancing Michigan residents have been ordered to follow. Some inmates in many prisons are packed in groups of seven or eight in 10-by-20 foot cells according to the head of a prison

[will-accelerate-release-of-approved-inmates-to/article_48c149d4-6c52-11ea-9f4a-d7a70fa364f1.html](https://www.justice.gov/file/1262731/download).

⁴ March 26, 2020 Memorandum for Director of Bureau of Prisons, Office of the Attorney General, *available at* <https://www.justice.gov/file/1262731/download>.

⁵ *Update: Second Lakeland Inmates Tests Positive for COVID-19*, WTVB (March 26, 2020), <https://wtvbam.com/news/articles/2020/mar/26/mdoc-says-lakeland-inmate-is-one-of-seven-with-covid-19/999522/>.

⁶ *Gov. Whitmer Moves to Protect Michigan Prisons as Coronavirus Spreads* Detroit Metro Times (Mar. 30, 2020), <https://www.metrotimes.com/news-hits/archives/2020/03/30/gov-whitmer-moves-to-protect-michigan-prisons-as-coronavirus-spreads> (noting that as of March 29, fifty-eight prisoners, one parolee, and twelve employees have tested positive for coronavirus across eight correctional facilities).

guard association. They share showers. They may walk in groups to the dinner hall. They mingle in exercise yards. They have physical encounters with guards.

Peter Gulick, an infectious disease expert at Michigan State University, said it's fertile ground for a lethal virus. And it's an environment that poses a particular threat to the prison system's older inmates – and possibly to the outside world.⁷

Petitioner will benefit little from habeas relief should he contract the virus and fall fatally ill during the months while awaiting a final decision in his case.

What's more, Petitioner has already proven he is not a flight risk or a risk to public safety should he be released on bond. This Court previously granted Petitioner release on bond while his appeal was pending in the Sixth Circuit. *See* Doc. No. 52. During that time, Petitioner was out on bond for nearly a month during which he observed all conditions of his release. When his bond was subsequently revoked, Petitioner followed this Court's orders and voluntarily returned to custody on time and without incident.

III. CONCLUSION

For the foregoing reasons, Petitioner should be released on bond immediately pending final resolution of this matter.

⁷ *Coronavirus Cases Surge in Michigan's Crowded Prisons*, Bridge Magazine (Mar. 27, 2020), <https://www.bridgemi.com/michigan-government/coronavirus-cases-surge-michigans-crowded-prisons>.

Dated: March 30, 2020

Respectfully submitted,

s/ Brandy H. Ranjan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on March 30, 2020, **PETITIONER'S EMERGENCY MOTION FOR IMMEDIATE RELEASE ON BOND** was filed using the Court's CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

/s/ Brandy H. Ranjan _____

Date: March 30, 2020