

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF
MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

EDMI Case. No. 18-20315

Hon. Judith R. Levy

v.

NATHANIEL COTTON,

Defendant.

**DEFENDANT’S REPLY TO GOVERNMENT’S RESPONSE IN
OPPOSITION TO DEFENDANT’S MOTION FOR REVOCATION OF
DETENTION ORDER AND MOTION FOR COMPASSIONATE
RELEASE**

Now comes the Defendant Nathaniel Cotton, by and through his attorney Charles Longstreet II, now and hereby prays this honorable court grant Defendant’s Motion for Revocation of Detention Order and Motion for Compassionate Release.

In answer to the government’s response, the Defendant is a pretrial detainee and is therefore asking that this court order Defendant’s release pursuant to 18 U.S.C. § 3142(f). While the 6th Circuit Court has not addressed release on these grounds, other courts are instructive on when release is proper with respect to the recent pandemic, particularly where a defendant’s preexisting condition has made

them more susceptible to contracting COVID-19.

Many federal courts have recently held that, pursuant to § 3142(f), where a defendant has an underlying condition, the outbreak of COVID-19 can be considered new and material information not contemplated at the time of the defendant's pretrial hearing. *See, e.g., United States v. Dabney*, 2020 WL 1867750, at *1 (D.D.C. Apr. 13, 2020)(ordering release of a pretrial detainee with a diagnosis of asthma under § 3142(f), holding that "having an underlying medical condition that could heighten a defendant's risk of harm during the period of pretrial detention has a 'material bearing' on the required detention determination."); *United States v. Lee*, 2020 WL 1541049, at *4 (D.D.C. Mar. 30, 2020)(Noting that "those [defendants] who have underlying medical conditions" may be able to "reasonably maintain that COVID-19 casts new light on the individual 'characteristics' that the court previously considered when deciding whether detention was required."); *United States v. Ramos*, 2020 WL 1478307, at *1 (D. Mass. Mar. 26, 2020)(holding that where individuals with moderate to severe asthma may be at higher risk of getting very sick from COVID-19, a defendant with those symptoms may successfully invoke § 3142(f) to reopen his detention determination); *United States v. Appiah*, No. 19-cr-361, ECF No. 40 (D.D.C. Mar. 26, 2020) (finding that reopening of defendants' detention hearing pursuant to § 3142(f) was warranted because one defendant had been diagnosed with asthma, and the need to isolate other detainees due to COVID-19

compromised DOC's flexibility to continue providing protective measures to the other defendant who was recently assaulted); *United States v. Courtney*, No. 19-cr-413, ECF No. 27 (D.D.C. Mar. 20, 2020) (finding the § 3142(f) standard met where the COVID-19 pandemic was likely to impair the jail's ability to provide the defendant adequate care for his present medical issues, including caring for his wounds and colostomy bag and transporting him to his medical appointments at the hospital).

As the case law above shows, while the Defendant's asthma may not have been material information at the time of his pretrial hearing, given the recent developments of the COVID-19 outbreak, new light should be given to his preexisting condition. The CDC guidelines consider at risk "people of all ages with underlying medical conditions, particularly if not well controlled, including... moderate to severe asthma." See [CDC Website, People at Higher Risk](#). In particular, the CDC states: "COVID-19 can affect your respiratory tract (nose, throat, lungs), cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease." See [CDC Website, People Needing Extra Precautions - Asthma](#). The CDC further recommends that those with asthma avoid crowds and people who may be sick, as well as avoid sharing personal items such as cups and towels. *Id.* In addition, the CDC recommends that items and surfaces that are touched regularly by others should be cleaned and disinfected frequently by someone other than the person with asthma, and using disinfectants that will not

result in an asthma attack. *Id.* Detainment, by its very nature, goes against each and every one of the CDC's recommendations, putting Defendant directly in harm's way.

It is clear that, pursuant to the case law regarding 18 U.S.C. § 3142(f) as well as the CDC guidelines, Defendant Cotton's underlying medical condition puts him at a heightened risk of becoming severely ill should he remain in pretrial custody. The recent public health crisis of the COVID-19 outbreak is new and material information not considered at the time of the Defendant's pretrial hearing and, as such, this court should reopen his detention determination pursuant to § 3142(f) and grant him pretrial release.

WHEREFORE for the reasons set forth above, the Defendant prays this honorable court grants his Motion for Revocation of Detention Order and Motion for Compassionate Release.

Respectfully,

LONGSTREET LAW PLLC.

By: *Charles Longstreet, II*

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CERTIFICATE OF SERVICE

I, Attorney Charles Longstreet II, certify that on June 24, 2020, I caused a copy of this pleading to be served upon the Clerk of the court sealed via e-file

/s/ Charles Longstreet II

Charles Longstreet II (P68205)

