IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CROSLEY ALEXANDER GREEN,

Petitioner,

v. CASE NO. 6:14-cv-00330-RBD-T_S

SECRETARY, DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

MOTION FOR THE IMMEDIATE RELEASE OF CROSLEY GREEN

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United States v. Montalvo-Murillo,
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United States v. Provost,
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United States v. Salerno,
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United States v. Stephens,
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Blackstone, William, Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769, Chicago: University of Chicago Press, 1979 3

Cleaning and Disinfection for Community Facilities, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html.....7

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FAQs for Administrators, Staff, People Who Are Incarcerated, and Families, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/downloads/316368A_FS_COVID19_CorrectionDetention.pdf 7

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Office of the Attorney General, *Increasing Use of Home Confinement at Institutions Most Affected by COVID-19,* POLITICO (Apr. 3, 2020) 8

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INTRODUCTION

Crosley Green—who was granted habeas relief by this Court more than two-and-a-half years ago, who has been incarcerated for that period of time not convicted of anything, and who is 63 years old—remains in a Florida state prison awaiting the Eleventh Circuit's decision on the State's appeal of the Court's habeas grant, all while at a greater risk for contracting, and even dying of, COVID-19. Mr. Green is at increased risk because, in addition to his age, [redacted] —*facts only learned by counsel for Mr. Green last week* (on March 9, 2021), and which support the filing of this Motion at this time. Two hundred and ten inmates at Florida Department of Correction Institutions have died of COVID-19. At least three prisoners have already died of COVID-19 at Mr. Green's facility. If Mr. Green should meet that same fate while awaiting the Eleventh Circuit's decision, it will be a miscarriage of justice of unconscionable proportions.

Notably, the State *did not oppose Mr. Green's August 2020 motion for release before the Eleventh Circuit*. The fact that the State did not previously oppose the same relief requested here (the release of Mr. Green) when sought from the appeals court is reason enough to grant this Motion. At the very least, the State's previous acquiescence significantly undercuts, or even nullifies, any argument the State will make in opposition. Either way, Mr. Green should be released immediately, before COVID-19 renders his 30-year successful quest to prove his innocence moot.

This Court has jurisdiction over this Motion while its decision on habeas relief is pending on appeal,[1] and should grant Mr. Green's release to avoid any chance of Mr. Green's infection and possible death, which would nullify this Court's habeas grant. Mr. Green asks this Court to exercise its power under Federal Rule of Appellate Procedure 23(d) to grant his release from potential forcible exposure to COVID-19 pending the conclusion of the State's appeal (and potential retrial) by modifying the Court's custody order or by issuing an "independent order" to that effect. The reasons stated by the Court in January 2019 for keeping Mr. Green confined no longer exist and are overshadowed by the subsequent wildfire spread of COVID-19 throughout the country—and in Mr. Green's facility—with no certain end in sight. This situation presents a clear reason why Rule 23(d) exists; these are the sort of "special reasons" that allow this Court to release Mr. Green pending this Court's ruling. To be clear, Mr. Green is not seeking to lift the stay of the 90-day re-initiation order, and this Court can sustain that part of the stay order while at the same time releasing Mr. Green.

At 63 years of age, Mr. Green poses no risk of flight and no threat to the community. Mr. Green has a large family, including siblings, children and grandchildren, living in Brevard County who are willing to take him in and assist in the event of his release. And, as previously noted for the Court, Mr. Green has been and continues to be a model prisoner throughout his more-than three decades of unconstitutional confinement, 19 of which were on Florida's Death Row. The Warden of Mr. Green's current facility (CCI) has provided the Court with a sworn declaration that Mr. Green has been a model inmate with an "unusual" and "impressive" record:

> To my knowledge, since I have been the Warden at Calhoun, Mr. Green has been a model prisoner. I have even mentioned to others that I wished all of our inmates

[1] As noted by this Court in its March 3, 2021 Order, the Eleventh Circuit has "explain[ed] that Mr. Green must move in the district court for release based on COVID-19." Doc. 93 at 1. This Court thus has jurisdiction to entertain this Motion.

> were like Mr. Green. I have known Mr. Green to carry himself with dignity and respect. I have known Mr. Green to be respectful of my staff and to have a positive attitude despite his incarceration. … I have not seen many disciplinary records that are as clean and unblemished as Mr. Green's.

Exhibit A, Declaration of Warden Heath Holland ("Holland Decl."), at ¶¶5-6. Such a sworn statement by a Warden is extraordinary in and of itself, but also aptly demonstrates that Mr. Green is no ordinary prisoner. Mr. Green's unblemished prison disciplinary record and accolades should speak for themselves, but if not, Mr. Green is willing to post a bond sufficient to ensure his appearance should the State determine that a new trial is required. Either way, Mr. Green respectfully requests his immediate release.

LEGAL STANDARDS

The writ of habeas corpus has been called the "Great Writ" since it is the most fundamental device we have to protect ourselves from arbitrary arrest or continued confinement without just cause.[2] It has been a pillar of Western law since the signing of the Magna Carta in England in 1215. The Founders of our nation believed habeas corpus was so essential to preserving liberty, justice, and democracy that they enshrined it in the very first article of the United States Constitution. Paraphrasing Justice Story, it is a great bulwark of personal liberty because it determines whether any person is rightfully confined or not. If the holder cannot give sufficient reason to continue the denial of liberty, the confined person is entitled to immediate

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[2] Blackstone, William, Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769, Chicago: University of Chicago Press, 1979, http://press-pubs.uchicago.edu/founders/documents/a1_9_2s4.html, last visited March 19, 2021. "But the great and efficacious writ in all manner of illegal confinement, is that of *habeas corpus ad subjiciendum*; directed to the person detaining another, and commanding him to produce the body of the prisoner with the day and cause of his caption and detention, *ad faciendum*, *subjiciendum*, *et recipiendum*, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf." Justice Joseph Story, in his Commentaries on the Constitution (1833) 3:§1333, called it the "great and celebrated writ."

release. As a result, 28 U.S.C. § 2243 authorizes federal courts to dispose of habeas corpus matters "as law and justice require."

This Court has the power to release Mr. Green: "In general, if a convicted state criminal defendant can show a federal habeas court that his conviction rests upon a violation of the Federal Constitution, he may well obtain a writ of habeas corpus that requires a new trial, a new sentence, or release." *Trevino v. Thaler*, 569 U.S. 413, 421 (2013); *see also Preiser v. Rodriguez*, 411 U.S. 475 (1973). As the Supreme Court recognized in *Hilton v Braunskill*, Federal Rule of Appellate Procedure 23(c) "undoubtedly" creates a strong presumption favoring release of a successful habeas petitioner pending appeal. 481 U.S. 770, 774 (1987). That presumption has led other District Courts to release habeas prisoners. *See*, *e.g.*, *Green v. Attorney Gen., State of Fla.*, 193 F. Supp. 3d 1274, 1289 (M.D. Fla. 2016) (ordering State to resentence habeas prisoner to time served, effectuating his release); *Haskell v. Folino*, 461 F. Supp. 3d 202, 209-11 (W.D. Pa. 2020) (ordering the State to release petitioner—based on the Court's "absolute jurisdiction to ensure [petitioner's] release"—after the Third Circuit granted petitioner's writ of habeas corpus); *Morales v. Portuondo*, 165 F. Supp. 2d 601, 609 (S.D.N.Y. 2001) (ordering petitioners' immediate release and vacating their convictions).

To release Mr. Green, or any successful *habeas* petitioner, under Rule 23, the Court is to consider the traditional stay factors, but also four additional ones: "[1] the possibility of the prisoner's flight; [2] the risk that the prisoner will pose of danger to the public if released; [3] the State's interest in continuing custody and rehabilitation pending a final decision on appeal; and [4] the prisoner's substantial interest in release pending appeal." *Hilton*, 481 U.S. at 771. After an initial review of these factors by a court, the entry of that initial custody order "continues in effect pending review unless for *special reasons shown* … the order is modified or an

independent order regarding custody, release, or surety is issued." Fed. R. App. P. 23(d) (emphasis added).

ARGUMENT

I. Mr. Green's Circumstances Have Changed Dramatically Since the Court Initially Denied His Release in January 2019

A. The COVID-19 Pandemic Has Ravaged Florida's Prisons

On January 21, 2020, Washington State announced the first confirmed case of COVID-19, a novel strain of coronavirus, in the United States.[3] Less than two months later, on March 11, 2020, the World Health Organization officially classified COVID-19 as a global pandemic.[4] Now a year later, COVID-19 has infected more than 116 million people across the United States, leading to at least 2.5 million deaths.[5]

The State of Florida, and the inmates confined in its various facilities, like Mr. Green, have not been spared. In just one year, the virus has spread rapidly through Florida's prisons, resulting in 210 COVID-19 inmate deaths,[6] at least three of those deaths coming from Mr. Green's facility, CCI.[7] These numbers led the Centers for Disease Control and Prevention

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[3] *First Patient with Wuhan Coronavirus Is Identified in the U.S.*, THE NEW YORK TIMES (Jan. 21, 2020), https://www.nytimes.com/2020/01/21/health/cdc-coronavirus.html (last visited March 19, 2021).

[4] *WHO Characterizes COVID-19 as a Pandemic*, WORLD HEALTH ORGANIZATION (Mar. 11, 2020), https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (last visited March 19, 2021).

[5] *Coronavirus Map: Tracking the Spread of the Outbreak*, THE NEW YORK TIMES (March 7, 2021), *available at* https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html (updating regularly) (last visited March 19, 2021).

[6] *COVID-19 Information*, FLORIDA DEPARTMENT OF CORRECTIONS, http://www.dc.state.fl.us/comm/covid-19.html (last visited March 19, 2021).

[7] *Deaths Associated with COVID-19 at Florida Department of Corrections facilities,* FLORIDA HEALTH, http://ww11.doh.state.fl.us/comm/_partners/covid19_report_archive/correction-facilities-deaths/fdc_death_latest.pdf (last visited March 19, 2021).
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("CDC") to report this month that the State of Florida has the fourth-highest number of inmate COVID-19 cases and deaths in the country.[8] Unfortunately, and for reasons still unclear, the Department of Corrections has recently stopped reporting institution-level statistics making up-to-date data on CCI impossible to find.[9] Nevertheless, as of December 17, 2020 (the last day of individual reporting) there had been 195 positive inmate COVID tests and 43 positive staff COVID tests at CCI.[10] There are sure to have been even more since then.

This rapid spread through Florida's prisons, including at Mr. Green's facility, is not surprising: "[b]ecause incarcerated inmates are necessarily confined in close quarters, a contagious virus represents a grave health risk to them—and graver still to those who have underlying conditions that render them medically vulnerable." *Swain v. Junior*, 961 F.3d 1276, 1280 (11th Cir. 2020).[11] Conditions of prison confinement create the ideal environment for the transmission of contagious disease.[12] As the CDC explained, "[P]eople incarcerated in correctional and detention facilities are at greater risk for some illnesses, such as COVID-19,

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[8] *Confirmed COVID-19 Cases and Deaths in US Correctional and Detention Facilities By State*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://covid.cdc.gov/covid-data-tracker/#correctional-facilities (last visited March 19, 2021).

[9] Until December 2020, the DOC website published data regarding positive COVID-19 tests for inmates and staff. Currently, only information on whether an institution has an inmate placed in medical isolation due to COVID-19 is available.

[10] *COVID-19 Information*, FLORIDA DEPARTMENT OF CORRECTIONS, http://www.dc.state.fl.us/comm/covid-19.html (last visited March 19, 2021).

[11] The legal standard for this motion is different from that in *Swain v. Junior*, which sought injunctive relief under 42 U.S.C. § 1983, requiring that plaintiffs prove deliberate indifference to risks of harm to an inmate. *Id.* at 1285. Deliberate indifference is unnecessary for this motion to succeed under Federal Rule of Appellate Procedure 23(d).

[12] Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, *available at* https://doi.org/10.1086/521910 (last visited March 19, 2021).
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because of the close living arrangements inside the facility."[13] In other words, prisons do not provide an environment for social distancing and continuous mask use, as suggested by the CDC, "to slow the spread of COVID-19."[14] In Mr. Green's dorm, social distancing is not an option, and the prisoners are in a confined space with recirculating air.[15] Sadly, much of this is avoidable. One of the best ways to protect inmates who are more vulnerable to COVID-19 is to reduce overcrowding in correctional facilities.[16] Or, as one New York federal judge recognized, "[r]ealistically, the best—perhaps the only—way to mitigate the damage and reduce the death toll is to decrease the jail and prison population by releasing as many people as possible." *United States v. Nkanga*, No. 18-CR-713, 2020 WL 1529535, at *4 (S.D.N.Y. Mar. 31, 2020) (concluding that the court was powerless to provide bail after a prison sentence had commenced despite temporary release being the "rational and right result").

The pandemic has led a number of states and courts to take a second look at the confinement of many inmates, and compassionately release them. For example, former U.S. Attorney General William Barr directed the federal Bureau of Prisons to expand the cohort of

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[13] *FAQs for Administrators, Staff, People Who Are Incarcerated, and Families*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/faq.html#Staff (last visited March 19, 2021).

[14] *Coronavirus Disease 2019 (COVID-19): Social Distancing*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html (last visited March 19, 2021).

[15] *See Cleaning and Disinfection for Community Facilities*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html (last visited March 19, 2021).

[16] *See generally*, *Responses to the COVID-19 pandemic*, PRISON POLICY INITIATIVE, *available at* https://www.prisonpolicy.org/virus/virusresponse.html (last visited March 19, 2021).
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inmates eligible for release.[17] Likewise, last year, the Miami-Dade county jails reduced their population by roughly 20%.[18] Other states across the country have instructed judges to release people from prison and reconsider detention in the face of this global pandemic.[19] Likewise, as a result of the pandemic, individual judges granted bail where the law allowed them to do so,[20] or found pretrial release necessary to "protect Defendant, the prison population, and the wider community during the COVID-19 pandemic." *United States v. Kennedy,* No. 18-20315, 2020

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[17] Office of the Attorney General, *Increasing Use of Home Confinement at Institutions Most Affected by COVID-19,* POLITICO (Apr. 3, 2020) at 1-2, https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000 (last visited March 19, 2021).

[18] *Responses to the COVID-19 pandemic*, PRISON POLICY INITIATIVE, https://www.prisonpolicy.org/virus/virusresponse.html (last visited March 19, 2021).

[19] *See*, *e.g.*, *Karr v. State*, No. A-13630, 2020 WL 1456469, at *3 (Alaska Ct. App. Mar. 24, 2020) ("[C]ourts must now balance the public health safety risk posed by the continued incarceration of pre-trial defendants in crowded correctional facilities with any community safety risk posed by a defendant's release. Additionally, courts must re-evaluate the flight risk and safety risk posed by releasing a defendant into a community which now has fewer open businesses, fewer opportunities, for travel, and more people staying at home."); Mem. from Mike McGrath, Chief Justice, Mont. Sup. Ct., to Montana Courts of Limited Jurisdiction Judges (Mar. 20, 2020) ("Because of the high risk of transmittal of COVID-19, not only to prisoners within correctional facilities but staff and defense attorneys as well, we ask that you review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses."), https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333 (last visited March 19, 2021); Mem. from Chief Justice Beatty, S.C. Sup. Ct., to Magistrates, Municipal Judges, and Summary Court Staff (Mar. 16, 2020) ("Any person charged with a non-capital crime shall be ordered released pending trial on his own recognizance without surety, unless an unreasonable danger to the community will result or the accused is an extreme flight risk."), https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2461 (last visited March 19, 2021).

[20] *See*, *e.g.*, *United States v. Chandler*, No. 1:19-CR-867 (PAC), 2020 WL 1528120, at *2 (S.D.N.Y. Mar. 31, 2020); *United States v. Stephens*, No 15-CR-95 (AJN), 2020 WL 1295155, at *3 (S.D.N.Y. Mar. 19, 2020); *Davis*, 2020 WL 1529158, at *3; *Matter of Extradition of Toledo Manrique*, No. 19-MJ-71055-MAG-1 (TSH), 2020 WL 1307109, at *1 (N.D. Cal. Mar. 19, 2020).

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WL 1493481, at *4 (E.D. Mich. Mar. 27, 2020), *reconsideration denied*, No. 18-20315, 2020 WL 1547878 (E.D. Mich. Apr. 1, 2020).

B. COVID-19 Poses a More Acute Risk to Mr. Green Than Other Inmates

Although the number of new COVID-19 cases has decreased from the summer of 2020, COVID-19 is far from defeated, and the pandemic poses a direct risk that is far greater if Mr. Green continues to be detained. Adults over sixty years old (Mr. Green is 63) are "at higher risk for severe illness" from COVID-19.[21] In addition to the general risks for a person of his age, Mr. Green is at greater risk of death or permanent injury as a result of his incarceration. Incarcerated people typically have poorer health than the general population, and even in the best of times, medical care is limited.[22] A study published in the *Journal of the American Medical Association* shows that deaths of prisoners attributable to coronavirus were 34% higher than those of the U.S. population, despite the fact that people over age 65—who account for 81% of the coronavirus deaths in the U.S.—make up a much smaller share of the prison population.[23] The study further

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[21] *Older Adults*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html (last visited March 19, 2021). *See also FAQ: Coronavirus and Older Adult Patients,* UCSF HEALTH, https://www.ucsfhealth.org/education/faq-coronavirus-and-older-adult-patients ("There is evidence that older adults (over age 60) – especially those with cancer, diabetes or cardiovascular disease – are more susceptible and at higher risk of getting very sick from this illness.") (last visited March 19, 2021).

[22] Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.; U.S. Department of Justice, Bureau of Justice Statistics, https://www.bjs.gov/content/pub/pdf/mpsfpji1112.pdf (last visited March 19, 2021).

[23] *COVID-19 in Prisons and Jails in the United States*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, https://jamanetwork.com/journals/jama/fullarticle/2768249, at E1-2 (last visited March 19, 2021).
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estimates that if prisons had the same age and sex distribution as the country, mortality in prisons would be three times higher than the overall U.S. rate.[24]

Yet Mr. Green is even more susceptible to COVID-19 than the average inmate. In addition to his race (African-American) and age (63), both of which are contributing factors to serious illness from COVID-19, [redacted]

[24] *Id.* at E2.

[25] [redacted]

[26] [redacted]

[27] [redacted]

Releasing a prisoner "early," let alone a prisoner who has been granted habeas relief, because of their medical conditions, including age, [redacted] and other conditions that make an inmate more vulnerable to COVID-19, is not a unique occurrence in light of the COVID-19 pandemic. *See United States v. Provost*, 474 F. Supp. 3d 819, 825-29 (E.D. Va. 2020) (granting early release to prisoner with medical history of asthma, chronic obstructive pulmonary disease, and hypertension who would not pose a danger to the community); *see also United States v. Pena*, 459 F. Supp. 3d 544, 550 (S.D.N.Y. 2020) (releasing 60-year-old prisoner who was involved in a violent armed robbery because of underlying health conditions that increased his vulnerability to COVID-19); *United States v. Moon*, No. 13-cr-00817-JST-1, 2020 WL 6749362, at *2 (N.D. Cal. Nov. 17, 2020) (resentencing prisoner to time-served because his obesity increased his risk of experiencing severe symptoms if he were to contract COVID-19).

This Court should consider the "total harm and benefits to prisoner and society" that continued unconstitutional imprisonment of Mr. Green will yield, relative to the heightened health risks posed to Mr. Green during this continued pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (calling for heightened judicial scrutiny of the projected impact of jail and prison conditions on a defendant); *United States v. Davis*, No. ELH-20-09, 2020 WL 1529158, at *2 (D. Md. Mar. 30, 2020) ("The Court finds that the COVID-19 public health emergency must be considered when weighing 'the nature and seriousness of the danger to any person or the community that would be posed by the person's release' and the defendant's 'physical and mental health.'"); *Stephens*, 2020 WL 1295155, at *3 ("[T]he unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent … [and] "a comprehensive view of the danger the Defendant poses to the community

requires considering all factors – including this one – on a case-by-case basis"); *Matter of Extradition of Toledo Manrique*, No. 19-MJ-71055-MAG-1 (TSH), 2020 WL 1307109, at *1 (N.D. Cal. Mar. 19, 2020) (finding the risk of contracting COVID-19 to be a special circumstance that warrants bail).

Mr. Green [redacted]; his increased risk of serious illness or even death from COVID-19 should be an additional factor the Court considers in determining whether, the Court having granted habeas relief, Mr. Green will actually gain the benefit that the Great Writ was designed to confer.

II. The Court Should Modify Its Previous Order or Issue an Independent Order for Immediate Release Due to Changed Circumstances and "Special Reasons"

While the Court denied Mr. Green's Motion for Release Pending Appeal in January 2019 (Doc. 87), Federal Rule of Appellate Procedure 23(d) permits a modification of that order, or an independent order regarding custody, for "special reasons shown." Fed. R. App. P. 23(d). Changes in circumstances such as severe risks to a petitioner's health and life are "special reasons" envisioned by Rule 23(d). While neither the Rules nor precedent defines "special reasons," *Aronson v. May*, 85 S. Ct. 3, 5 (1964), analogous rules and court practice make clear that continued incarceration risking Mr. Green's health and life pending a decision on appeal constitutes "special reasons" in at least three ways:

First, a significant change in circumstances that alters the equities is a well-established basis for reconsideration of or relief from an order. *See*, *e.g.*, *Agostini v. Felton*, 521 U.S. 203, 215 (1997) ("[I]t is appropriate to grant a Rule 60(b)(5) motion when the party seeking relief from an injunction or consent decree can show 'a significant change either in factual conditions or in law.'"). Indeed, failure to modify an order that "has been turned through changed circumstances into an instrument of wrong" is reversible error. *Id.* Here, prior to the

coronavirus pandemic, this Court reasoned that continued incarceration presented no risk of substantial injury to Green but would "simply provide Respondents the opportunity to appeal without the necessity of conducting a trial in the meantime." Doc. 83 at 2; *see* Doc. 87 at 2 (citing Doc. 83). Now, nearly three years later, Mr. Green might die of a preventable disease if he is not released pending appeal (and possible retrial) so that he can take recommended precautionary measures such as social distancing and have greater access to a broader range of medical care, should he need it.

Second, a new risk that, absent modification of an order *pendente lite*, may moot the case is a frequently considered factor in analogous contexts. Courts of Appeal and the Supreme Court have repeatedly accepted this argument in principle but found it inapplicable on the facts. *See*, *e.g.*, *In re Johnson*, 72 S. Ct. 1028 (1952) (Douglas, J., in chambers) ("Hence there is no danger at present that petitioner's appellate proceedings will be jeopardized.") (applying analogous Supreme Court Rule); *Benson v. Cal.*, 328 F.2d 159, 162 (9th Cir. 1964) ("Apparently the suggestion is that … he would lose his opportunity to set aside or annul his state court conviction …. The answer to this contention is that appellant's case would not become moot after his release from jail."). Here, the risk that Mr. Green might unnecessarily die from unnecessary exposure to a pandemic creates the new and preventable risk that the case might become moot—with the relief granted by the District Court never having materialized.

Third, courts have interpreted "special reasons" to mean that the strength of the *Hilton* factors alone may overcome the "presumption of correctness" of the District Court's Rule 23(c) decision. *See Hilton*, 481 U.S. at 777 ("[The presumption of correctness … may be overcome if the traditional stay factors so indicate."). Thus, appellate courts routinely modify district court orders through motions practice simply because the *Hilton* factors weigh in the moving party's

favor. *See*, *e.g.*, *Haggard v. Curry*, 623 F.3d 1035, 1039 (9th Cir. 2010) ("We may reverse or modify a district court's decision to release a prisoner pending appeal of his successful habeas petition 'for special reasons shown.' … Accordingly, we consider the [*Hilton*] factors."). Independent of any change in circumstances, the *Hilton* factors strongly favor Mr. Green's release pending conclusion of the appeal because of the novel coronavirus pandemic.

III. Application of the *Hilton* Factors Today Favors Mr. Green's Immediate Release

As discussed above, this Court is authorized to release Mr. Green *immediately* should it correctly find that Mr. Green has met the four traditional stay factors and the four additional factors for release set out in *Hilton v. Braunskill*. Mr. Green has previously detailed why the four traditional stay factors (likelihood of success on the merits, irreparable harm to Mr. Green, substantial injury to the State, and public interest) and the four additional release factors (flight risk, danger to the public, the State's interest in continued confinement, and Mr. Green's substantial interest in release) weigh heavily in favor of his release. *See* Doc. 80 (Mr. Green's Opposition to the State's Motion to Stay); *see also* Doc. 84 (Mr. Green's Motion for Release Pending Appeal). Accordingly, Mr. Green incorporates those arguments by reference and will not repeat them here. Instead, Mr. Green provides the following analysis as specifically relates to his changed circumstances since the Court's initial denial of his Motion for Release (Doc. 87).

A. Mr. Green's Continued Unconstitutional Incarceration, During a Pandemic That May Unduly Affect Him, Constitutes Irreparable Harm, and Underscores Mr. Green's Great Interest in Release Pending Appeal

The possibility that Mr. Green may die, or become seriously ill or debilitated, as a direct result of continued unconstitutional imprisonment constitutes irreparable harm and highlights the great interest Mr. Green has in his release pending appeal (and potential retrial). If Mr. Green's health and life are given any weight at all, it should easily tip the balance in favor of his immediate release. As discussed in more detail in Section I.B. above, Mr. Green is an African-

American, 63-year-old inmate with [redacted] These conditions and factors all place Mr. Green at a seriously increased risk of becoming seriously ill, or even dying, should he contract COVID-19.

In addition to the potential effects of the COVID-19 pandemic on his life and livelihood, continued confinement of Mr. Green will constitute substantial injury to his liberty interests in view of this Court's *habeas* grant. When a court is determining whether a petitioner will be substantially injured if not released, "the interest of the habeas petitioner in release pending appeal [is] always substantial." *Castillo v. Tucker,* No. 10-23898-CIV, 2012 WL 2049360, *2 (S.D. Fla. June 6, 2012) (quoting *Hilton,* 481 U.S. at 778); *see also Boyles v. Weber*, No. CIV 04-4134, 2007 WL 2684872, at *2 (D.S.D. Sept. 7, 2007) (noting that the state should not minimize this harm because "[c]ontrary to [the state's] argument, one of the most important personal rights guaranteed by the Constitution of the United States is one's right to liberty without due process of the law, which cannot be lightly disregarded").[28] In other words, "[t]he injury that [a] Petitioner will suffer by continued detention is undeniably irreparable." *U.S. ex rel. Newman v. Rednour*, 917 F. Supp. 765, 789 (N.D. Ill. 2012); *see also Engesser v. Dooley,* No. CIV 10-5039-KES, 2011 WL 6085523, *3 (D.S.D. Dec. 7, 2011) ("A petitioner convicted of a crime does not have the same rights and guarantees as a pretrial detainee, but petitioner's

[28] Although it is a pre-*Hilton* decision, *Cross* is a persuasive decision here on this point. The court in *Cross* rejected the State's argument that because the petitioner in *Cross* "only" served 8 years of a 30-year term, the petitioner posed a great risk of flight. *U.S. ex rel Cross v. DeRobertis*, No. 82 C 4072, 1986 WL 12590, *2 (N.D. Ill. Nov. 3, 1986). In reaching this decision, the court explained that "petitioner's constitutional rights were flagrantly violated[,] [and] [d]ue to the nature and extent of those constitutional violations, and in light of the long wait the petitioner has had for a ruling on this matter, the court believes that the respondents bear an especially great burden to show why the petitioner should remain incarcerated while his case drifts through what is likely to be a lengthy appeal process." *Id.* at *2.

continued custody after the court has determined that the original convictions should not stand would cause petitioner substantial injury."). Accordingly, "[t]his factor weighs in favor of … releasing the petitioner[,]" *id.*, "undoubtedly creat[ing] a presumption of release from custody," unless the possibility of flight, the risk of danger to the public, and the state's interest in continuing custody, "tip the balance against it." *Kelley v. Singletary,* 265 F. Supp. 2d 1305, 1307 (S.D. Fla. 2003) (citing *Hilton*, 481 U.S. at 774, 777).

Whether because of COVID-19 or because of a continued substantial injury to his liberty, this factor weighs heavily in favor of release.

B. Mr. Green, as a Model Prisoner, Is Neither a Flight Risk, nor a Threat to Public Safety if Released

Despite the Court's earlier findings on these factors (*see* Doc. 87), the COVID-19 pandemic means that the Court should balance these factors anew. As to public safety, the Court should now balance "the public health safety risk posed by the continued incarceration of pre-trial defendants in crowded correctional facilities with any community safety risk posed by a defendant's release;" and the Court should "re-evaluate the flight risk and safety risk posed by releasing a defendant into a community which now has fewer open businesses, fewer opportunities for travel, and more people staying at home." *Karr*, 2020 WL 1456469, at *3. A balancing of these factors in light of the continuing pandemic, Mr. Green's heightened susceptibility to COVID-19, and his conduct as a model prisoner, clearly weighs in favor of release.

Mr. Green is exactly the kind of person for whom Rule 23(c) was created. For 31 years, both while on Florida's Death Row and in the years since his resentencing, Mr. Green has been a model inmate. Three correctional officers at Mr. Green's previous facility, Union Correctional Institution, submitted affidavits in support of Mr. Green's character: Mr. Willy Watson,

Sergeant Jerome Lee, and Lieutenant Randolf Salle, all of whom worked at this institution for 17-18 years.[29] Mr. Watson knew Mr. Green for most of the time he worked at Union Correctional Institution on Death Row, nearly 17 years.[30] All three correctional officers avow they had extensive contact with Mr. Green, and in their opinion, he was nothing but a model inmate as long as they knew him.[31] Mr. Green was never a disciplinary problem, and is a truthful person.[32] In addition, Mr. Green is "extremely courteous and respectful" to all, and volunteers to assist correctional officers and staff members.[33] Because of their high regard for Mr. Green, Mr. Watson and Lieutenant Salle felt compelled to offer testimony on behalf of Mr. Green—both of whom never offered testimony on behalf of an inmate in their entire careers.[34] All three correctional officers also believed if Mr. Green were ever to be released on parole, he would not pose any risk, and in fact, he would be an ideal candidate for parole.[35] The

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[29] *See generally* Exhibit B, Affidavits of Corrections Officers Lieutenant Watson, Lieutenant Salle, Sergeant Lee, and Declaration of Sergeant Wallace ("Officer Aff. & Decl."); *see also* Exhibit C, Excerpt of August 31, 2009 Resentencing Hearing Transcript ("Resentencing Tr."), at 24:25-25:6.

[30] *See generally* Exhibit B, Officer Aff. & Decl.; *see also* Exhibit C, Resentencing Tr., at 25:7-18.

[31] *See generally* Exhibit B, Officer Aff. & Decl.; *see also* Exhibit C, Resentencing Tr., at 25:7-18.

[32] *See generally* Exhibit B, Officer Aff. & Decl.; *see also* Exhibit C, Resentencing Tr., at 25:7-18.

[33] *See* Exhibit B, Officer Aff. & Decl., at 2, 4, 8.

[34] *Id.* at 2, 8.

[35] *See* Exhibit C, Resentencing Tr., at 23 ("Q. Based on the exposure and interaction you have had with Mr. Green since the 15 or 16 years that you have known him have you formed an opinion as to whether or not Mr. Green would pose a risk if he were to be moved into a general population? A. [from Lieutenant Salle] Not in my opinion no, I believe he would be able to function well in an open population."); *id.* at 25:7-18.
(Continued...)

resentencing trial court admitted these three affidavits into evidence, after *the State had no objection*.[36]

More recently, the Warden of Mr. Green's current facility (CCI) has provided the Court with a sworn declaration that Mr. Green has been a model inmate:

> To my knowledge, since I have been the Warden at Calhoun, Mr. Green has been a model prisoner. I have even mentioned to others that I wished all of our inmates were like Mr. Green. I have known Mr. Green to carry himself with dignity and respect. I have known Mr. Green to be respectful of my staff and to have a positive attitude despite his incarceration. … I have not seen many disciplinary records that are as clean and unblemished as Mr. Green's.

Exhibit A, Holland Decl., at ¶¶5-6. Such a sworn statement by a warden is extraordinary in and of itself, but also aptly demonstrates that Mr. Green is an extraordinary petitioner. He is a model prisoner with a nearly perfect disciplinary record and will pose no danger to the community if released. Add to that the life-and-death threat posed by COVID-19, and the case in favor of release is compelling.

The facts here are like those in the *Kelley* and *Floyd* cases, two cases where a court released a petitioner over the state's objections. In *Kelley*, the Southern District of Florida found the petitioner's history "insufficient to warrant [him] a public threat" even though he had served eighteen years in prison, and, prior to his 1985 capital murder conviction, had one prior violent conviction for robbery from 1959 when he was seventeen. 265 F. Supp. 2d at 1308. Importantly—and just like the State's silence here—the State had never challenged Kelley's characterization as a model inmate during his eighteen years in prison. *Id.* The court also did not find the petitioner a flight risk from his retrial in Florida, even though he would be living in Massachusetts when released, because of his closeness to immediate family in Florida.

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[36] *Id.* at 26:1-2.

Similarly, in *Floyd*, the Eastern District of Louisiana relied on the affidavit of a former warden at the petitioner's prison, where he served nearly 35 years for second-degree murder. *Floyd v. Vannoy*, No. 11-2819, 2017 WL 2688082, at *3 (E.D. La. June 22, 2017). The court determined that the petitioner was not a danger to the public based on the former warden's affidavit, where the former warden attested to the petitioner as a "model prisoner with a nearly perfect disciplinary record," and the petitioner's trustworthiness, when asked for his help with post-Hurricane Katrina cleanup. *Id.*

Just like in *Kelley* and *Floyd*, Mr. Green has served 31 years, both on Death Row and after his resentencing. He had a few prior arrests for drug possession and petit larceny, but these are insufficient to warrant him a public threat.[37] More relevant than those 30-year-old arrests is his conduct as a model prisoner since then, for the entire 31 years that he has been unconstitutionally incarcerated. Mr. Green also provides a declaration from his current Warden who, like the former warden's declaration in *Floyd*, objectively demonstrates that Mr. Green would not be a danger to the public if released. *See* Holland Decl. at ¶¶ 4-6.

Mr. Green also does not pose a flight risk. He is a lifelong resident of Florida, and all of his immediate family lives in Florida. If released, Mr. Green would stay with his brother-in-law

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[37] Mr. Green's arrests for petit larceny and drug offenses, occurring over 29 years ago, should not deem Mr. Green dangerous, as they do not put the lives of the public at risk. *Compare Bauberger v. Haynes*, 702 F. Supp. 2d 588 at 598 (M.D.N.C. 2010) (concluding that the petitioner is an alcoholic who is unable to control his drinking and driving), *with Floyd*, 2017 WL 2688082, *3 (granting release of petitioner convicted of second-degree murder, after the court determined he is not a danger to society, relying on a correctional officer's affidavit affirming, among other things, that he is "model prisoner with a nearly perfect disciplinary record"), *and Manley v. Ross Corr. Inst. Warden*, No. 3:04 CV 7351, 2008 WL 2783491, *8 (N.D. Ohio July 17, 2008) (concluding that while a previous record of violent crime is not without significance, and since the two aggravated assaults and incarceration from age 16 to age 25 were sufficiently removed in time, the facts do not support a finding that petitioner is a habitual violent criminal who must remain in custody for the interest of the public). (Continued...)

who owns a three-bedroom home in Titusville. *See* Exhibit D, Declaration of David Peterkin. Mr. Green's brother and sister live in Orlando, Florida, and two more sisters live in Titusville, Florida. Mr. Green has two sons and several grandchildren, all of whom live in Titusville, Florida. *Id.* Mr. Green only desires to spend time with his family, none of whom plan to leave Florida. And, as the correctional officers attest under oath, he would be a "law-abiding member of society" and "a model member of society."[38]

C. The State Has No Valid Interest in Continuing Unconstitutional Custody

The last of the *Hilton* considerations for release is the "State's interest in continuing custody and rehabilitation pending a final determination of the case on appeal." *Hilton*, 481 U.S. at 777. This Court previously found that the State would be irreparably harmed absent a stay of its order due to the requirement that the state initiate proceedings within 90 days to bring a new trial against Mr. Green. Importantly, the State has never argued (and this Court has never found) that Mr. Green's *release from prison*—separate and apart from the 90-day re-initiation order—would cause any harm at all, much less irreparable harm. Mr. Green is not seeking to lift the stay of the 90-day re-initiation order, and this Court can sustain that part of the stay order while at the same time releasing Mr. Green pending appeal and possible retrial. The State is not prejudiced by Mr. Green's release if that portion of the stay order is maintained.

In fact, in light of the COVID-19 crisis that is running rampant through the Florida prison system, it is *in the State's interest* to release Mr. Green and thus reduce overcrowding at CCI and other facilities. *Cf. Nkanga*, 2020 WL 1529535, at *1 ("Realistically, the best—perhaps the

[38] Exhibit B, Officer Aff. & Decl., at 2, 5, 8, 10.
(Continued...)

only—way to mitigate the damage and reduce the death toll is to decrease the jail and prison population by releasing as many people as possible.").[39]

Nor does the fact that the state *may* decide to retry Mr. Green prevent this Court from granting his release. Mr. Green's conviction has been overturned and he stands before the court as an innocent man. Liberty is the norm and "detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). One charged with a crime is, after all, presumed innocent. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). A single individual unnecessarily detained before trial is one individual too many, and the increasing use of the practice places tremendous wear on our constitutional system. *United States v. Montalvo-Murillo*, 495 U.S. 711, 723–24 (1990) (Stevens, J., dissenting, joined by Brennan and Marshall, JJ.). Due to the crucial interests involved, it follows that a "case-by-case" approach is required at any stage of the case in assessing the propriety of pretrial detention. *See United States v. Gonzales Claudio*, 806 F.2d 334, 340 (2d Cir. 1986) (discussing due process analysis for evaluating propriety of prolonged pretrial detention, and the interests at stake) (citations omitted), *cert. dismissed sub nom.*, *Melendez-Carrion v. United States*, 479 U.S. 978 (1986). Simply put, this factor also weighs heavily in favor of Mr. Green's release.

CONCLUSION

Mr. Green respectfully asks the Court to reweigh the *Hilton* factors in light of his current, changed, circumstances, and to release him from continued unconstitutional incarceration. He deserves to be freed without further delay. Justice requires it.

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[39] *Responses to the COVID-19 pandemic*, PRISON POLICY INITIATIVE, https://www.prisonpolicy.org/virus/virusresponse.html (last visited March 19, 2021).

Respectfully submitted:

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LOCAL RULE 3.01(g) CERTIFICATION

I HEREBY CERTIFY that I conferred with Kellie Nielan, Assistant Attorney General, on March 17, 2021 via e-mail, that the parties do not agree on the resolution of all or part of this Motion, and that the State has indicated that it plans to oppose this Motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 19, 2021 the foregoing was filed using the CM/ECF system, which will send an electronic notice of the filing to Kellie Nielan, Assistant Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, crimappdab@myfloridalegal.com. An unredacted version of the foregoing was also served on Kellie Nielan, Assistant Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, crimappdab@myfloridalegal.com.

Dated: March 19, 2021

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