

July 15, 2020

Via ECF

Honorable Paul G. Gardephe
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

**Re: United States v. Avenatti, No. S1 19 Cr. 373 (PGG)
Motion for an Adjournment of the Sentencing
Date and Filing of Sentencing Submissions**

Dear Judge Gardephe:

Mr. Avenatti's sentencing hearing is currently scheduled for August 19, 2020, having been adjourned once previously. I write to respectfully request a second adjournment of the sentencing date for approximately fifty (50) days, until the week of October 5-9, 2020, if the Court's schedule permits. Mr. Avenatti further requests a corresponding adjournment of the dates for the defense and the government to file their sentencing submissions. The government takes no position on this motion.

As this Court is aware, on February 14, 2020, a jury found Mr. Avenatti guilty of the three counts charged against him in the Superseding Indictment. At the time, Mr. Avenatti was in custody pursuant to a remand order entered by United States District Judge James Selna of the Central District of California. On April 24, 2020, Mr. Avenatti was temporarily released to home confinement in California at the residence of a friend pursuant to conditions set by Judge Selna in the wake of the COVID-19 pandemic. *See United States v. Avenatti*, Case No. SA-CR-19-61-JVS (ECF No. 154:7).

Mr. Avenatti remains under home confinement in Venice, California. Undersigned counsel (Srebnick) is based in Miami, Florida. Both California and Florida have recently experienced surges in COVID-19 infections; Miami is now considered the "epicenter" of the virus in the United States. Trends in Florida and California are not encouraging.

On June 24, 2020, Governor Cuomo issued Executive Order 205 ("EO-205"), which requires all travelers to New York from states with COVID-19 infection rates above a certain threshold to quarantine for 14 days upon arriving in New York. *See Exhibit 1*. On July 13, 2020, the New York Department of Health issued an Order requiring all travelers to New York subject to EO-205 to complete a State Traveler Health Form to ensure compliance with EO-

205. *See* Exhibit 2. Travelers from 22 states, including California and Florida, are currently subject to EO-205. Failure to comply subjects violators to civil penalties.

Thus, as matters currently stand, both Mr. Avenatti and undersigned counsel would be required to travel to New York and quarantine for 14 days before a sentencing hearing in this case. Likewise, any family member who wishes to attend Mr. Avenatti's sentencing, or any potential sentencing witness, would also be required to quarantine for 14 days. This would place an unnecessary burden on undersigned counsel, Mr. Avenatti, and any attendees from one of the 22 states.

Mr. Avenatti's trial in his second case in the Southern District of New York, *United States v. Avenatti*, No. 19 Cr. 374, is currently scheduled to commence before Judge Furman on Tuesday, October 13, 2020. We respectfully request, therefore, that the sentencing hearing in the instant case be scheduled for the week prior (Oct. 5-9), if the Court's schedule permits.

Moreover, Mr. Avenatti respectfully requests that his sentencing submission be due 2-3 weeks before any new sentencing date and that the government's sentencing submission be due one week after the due date for the defense submission.

The trial prosecutors have advised that the government takes no position on this request.

Respectfully Submitted,
/s Scott Srebnick
Scott A. Srebnick
E. Danya Perry

cc: Government Counsel



State of New York

Executive Chamber

No. 205

EXECUTIVE ORDER

QUARANTINE RESTRICTIONS ON TRAVELERS ARRIVING IN NEW YORK

WHEREAS, the State of New York has successfully slowed the transmission of COVID-19;

WHEREAS, the State of New York has gone from having the highest infection rate to one of the lowest in the country and is one of only a few states reported to be on track to contain COVID-19;

WHEREAS, the Governor has undertaken a cautious, incremental and evidence-based approach to reopening the State of New York;

WHEREAS, other states that may have taken a less cautious approach are experiencing an increased prevalence of COVID-19;

WHEREAS, New York must work in conjunction with its neighboring states of New Jersey and Connecticut, in light of the significant risk posed to the health and welfare of all residents by the further spread of COVID-19 to the tristate area, to protect the progress made;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, in particular Article IV, section one, I do hereby order and direct as follows:

The commissioner of the Department of Health to issue a travel advisory to be communicated widely at all major points of entry into New York, including on highway message boards and in all New York airports, that:

All travelers entering New York from a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven day rolling average, will be required to quarantine for a period of 14 days consistent with Department of Health regulations for quarantine.

The Commissioner may issue additional protocols for essential workers, or for other extraordinary circumstances, when a quarantine is not possible, provided such measures continue to safeguard the public health.

The criteria and the protocols will be coordinated with New Jersey and Connecticut Commissioners of Health, in order to ensure that the tristate area is protected from community transmission of COVID-19, while permitting free travel between and among the states.

The Commissioner of Health in New York shall make public the impacted jurisdictions on its website and such travel advisory will be effective at 12:01 a.m. on June 25, 2020, until rescinded by the Commissioner.

Any violation of a quarantine or isolation order issued to an individual pursuant to the Commissioner of the Department of Health's travel advisory by a local department of health or state

department of health may be enforced pursuant to article 21 of the public health law, and non-compliance may additionally be deemed a violation pursuant to section 12 of the public health law subject to a civil penalty of up to \$10,000.



G I V E N under my hand and the Privy Seal of the
State in the City of Albany this
twenty-fourth day of June in the year
two thousand twenty.

BY THE GOVERNOR


Secretary to the Governor



STATE OF NEW YORK : DEPARTMENT OF HEALTH

IN THE MATTER

OF

COVID-19 NEW YORK STATE
TRAVELER HEALTH FORM

**ORDER FOR
SUMMARY
ACTION**

WHEREAS, 2019-Novel Coronavirus (2019-nCoV) (hereinafter referred to as “COVID-19”) is an infection associated with fever and signs and symptoms of pneumonia or other respiratory illness, that is easily transmitted from person to person predominantly through droplet transmission, and has significant public health consequences; and

WHEREAS, on January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern; and

WHEREAS, on March 7, 2020, Governor Andrew M. Cuomo (“Governor Cuomo”) issued Executive Order No. 202 declaring a State disaster emergency related to the impact and effect of COVID-19 transmission in New York; and

WHEREAS, since March 2020, Governor Cuomo and the Department of Health have issued numerous evidence-based Orders, Regulations and Guidelines aimed at minimizing the transmission of COVID-19 by placing restrictions and requirements on businesses and individuals in the State of New York; and

WHEREAS, these Orders, Regulations and Guidelines and the efforts of New York residents to comply therewith has led to a reduction in transmission of COVID-19 in New York, such that New York has gone from having the highest COVID-19 infection rate to one of the lowest in the County and is one of only a few states reported to be on track to contain COVID-19; and

WHEREAS, other states that have taken a less cautious approach to addressing the COVID-19 pandemic are currently experiencing an exponential increase in the prevalence of COVID-19; and

WHEREAS, on June 24, 2020, Governor Cuomo issued Executive Order No. 205 entitled Quarantine Restrictions on Travelers Arriving in New York, which required that the Department of Health issue a travel advisory requiring that all travelers entering New York from a state with a positive rate higher than 10 per 100,000 residents, or higher than a 10% positivity rate, over a seven day rolling average, will be required to quarantine or a period of 14 days consistent with Department of Health regulations for quarantine; and

WHEREAS, individuals entering New York are subject to Executive Order No. 205 and the Department of Health guidelines issued in accordance therewith, and will be liable for and subject to penalties for their failure to comply with said Order and guidelines; and

WHEREAS, in order to achieve the public health goal of such Executive Order, those individuals traveling into New York from impacted states, must be identified to local departments of health to ensure their compliance with said Order and guidelines, as well as information relating to the individuals' recent travel history and their intended lodging and travel within the State of New York; and

WHEREAS, the New York State Health Commissioner ("Health Commissioner") finds that the inability of New York Department of Health officials to identify those individuals traveling into New York who are subject to Executive Order No. 205 and the Department of Health guidelines issued in accordance therewith, and to ensure their compliance with said Order and guidelines, constitutes a threat to public health and safety; and

WHEREAS, it therefore is prejudicial to the interest of the people to delay action for fifteen (15) days until an opportunity for a hearing can be provided in accordance with the provisions of New York Public Health Law ("PHL") § 12-a.

NOW, THEREFORE, THE HEALTH COMMISSIONER HEREBY ORDERS THAT: Pursuant to PHL § 16, all travelers subject to Executive Order No. 205 shall complete the New York State Traveler Health Form attached hereto and submit the complete form to the New York officials stationed at the airport, or in a receptacle designated for such forms.

FURTHER, I DO HEREBY give notice that all travelers subject to this instant Summary Order may request a hearing, to be held within fifteen (15) days, at an office of the New York State Department of Health to be determined or via videoconference, to present any proof that failure to complete such form does not constitute a danger to the health of the people of the State of New York. If travelers subject to this instant Summary Order desire such a hearing, a request for a hearing must be made in writing to Mark Fleischer, Director of the Bureau of Administrative Hearings, within ten (10) days of their receipt of this Order.

DATED: Albany, New York
July 13, 2020

NEW YORK STATE DEPARTMENT OF HEALTH



BY: _____

HOWARD A. ZUCKER, M.D., J.D.
Commissioner of Health