

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

UNITED STATES OF AMERICA

§

§

v.

§

Case No. 4:21-CR-289-O

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BRANDON JESTER (04)

§

**DEFENDANT BRANDON JESTER'S MOTION TO
EXTEND VOLUNTARY SURRENDER DATE**

Defendant Brandon Jester (“Mr. Jester”) files this Motion to Extend His Surrender Date, respectfully requesting that the Court extend his voluntary surrender date from July 5, 2022 until August 16, 2022 as follows:

I. INTRODUCTION

Mr. Jester makes this request for a number of reasons. First, on Monday he will file an Emergency Application for Continued Release Pending Appeal in the Fifth Circuit. Mr. Jester recognizes that the Court of Appeals is likely to deny that motion based on its recent denial of the respective motions for continued release filed by his codefendants. However, in the event of the Court of Appeals’ denial of his application for release pending appeal, and that the defendants choose to seek en banc consideration of the issue, that request may be pending at the time of his current report date.

Additionally, his two children, both minors, are out of school for the summer break and Mr. Jester seeks additional time with them before he leaves for prison. The requested report date extension would allow that. Relating to his children and time with them, his son is now scheduled to play in the Don Mattingly World Series, which starts on his report date of July 5, 2022. Finally, COVID-19 has resurged in the Bureau of Prisons (“BOP”). As of June 21, 2022, this resurgence

caused 92 out of 98 reporting institutions to be at Institutional Operational Level 3 – Intense, the highest COVID alert level in the BOP system. This heightened operational level means that Mr. Jester would be at an increased risk of contracting COVID and, further, that his family’s ability to visit him at his designated institution would be severely curtailed or eliminated during this time.

The government opposes the requested extension. Mr. Jester’s Pretrial Services Officer Lorene Dudley informed counsel that she will advise the Court of her assessment of this request upon receiving and reviewing the motion.

II. BACKGROUND

On January 21, 2022, Mr. Jester was convicted after a jury trial on all counts (ECF No. 298), at which point he was taken into custody. He subsequently filed a Motion for Release Pending Sentencing (ECF No. 287) and was released on January 24, 2022 under his existing pretrial release conditions. ECF No. 300. On May 20, 2022, the Court sentenced Mr. Jester to a custodial term of 36 months (ECF No. 456) and continued him on release conditions until his report date of July 5, 2022. He complied with all of these release conditions leading up to sentencing, and has continued to comply with the release conditions as of the present time.

As this Court has previously held, Mr. Jester is not a flight risk. ECF No. 530. Allowing him to remain home for an additional six weeks before his surrender date would do nothing to increase his flight risk. Mr. Jester fully intends to serve his custodial sentence, but the requested extension would allow the Fifth Circuit to rule on his Emergency Application for Continued Release Pending Appeal. This additional time would also allow Mr. Jester to spend important time with his children while they are home through the summer and to attend events like his son’s baseball tournament, noted above. Finally, the requested extension would allow the current surge of COVID-19 to pass, and so minimize the risk of Mr. Jester contracting the virus upon his entry

into BOP and being excluded from seeing his family once he is inside the facility. Therefore, he is respectfully requesting that his report date be continued until August 16, 2022.

III. ARGUMENT

A. Mr. Jester is Filing an Emergency Application for Continued Release Pending Appeal.

On May 20, 2022, Mr. Jester filed a Motion for Release Pending Appeal. ECF Nos. 466, 529. The Court denied the motion on June 22, 2022. ECF No. 530. Given Mr. Jester's sentence length, and the amount of time for which it could take his appeal to be heard, he will likely serve half of his sentence before his appeal is finalized. Therefore, Mr. Jester is filing an Emergency Application for Continued Release Pending Appeal pursuant to 18 U.S.C. § 3143 and FED. R. APP. P. 9(b)–(c).

Mr. Jester's counsel is working diligently to file this motion, and anticipates that it will be filed Monday. However, given the short timeline, the Fifth Circuit will have minimal time before his current report date—approximately one week—to issue an order on the application and, in the event of a request for en banc consideration of the application, to rule on that request as well. If Mr. Jester reports on July 5, 2022, and the Court of Appeals subsequently grants his continued release based on the emergency application or possible en banc request, he will be released only after reporting to BOP. Therefore, in order to avoid the possibility that he reports to BOP and then is shortly thereafter released, the requested extension of his surrender date will allow the Fifth Circuit adequate time to rule on his request for continued release.

B. Mr. Jester's Son is Playing in the Don Mattingly World Series Which Begins July 5, 2022.

Since Mr. Jester's sentencing, he has spent all of his time with his wife and children. Specifically, his son, Jaxson, has spent the summer playing in various baseball tournaments which

Mr. Jester has attended. Over the past weekend, Jaxson's baseball team qualified for the Don Mattingly World Series ("World Series"). This is a high-level baseball series that teams either must be invited to or win a qualifying tournament in order to gain access. Jaxson's team won a qualifying tournament last weekend and was invited to play in the World Series. Participants will include teams from across the country, Puerto Rico, and Canada. Furthermore, the tournament is heavily scouted by colleges, providing a potential for Jaxson to be recruited by various schools. This event takes place in Melissa, Texas, and begins on Tuesday, July 5—Mr. Jester's report date.

This is a pivotal event in Jaxson's life, and could be the point in which he decides where he will go to college. At the very least, it will indicate which colleges show interest in him, whether he has an opportunity to play college baseball, and where he may want to play college baseball. If Mr. Jester reports on July 5, this will impact his son's performance since this will likely be the worst day in Jaxson's life. Furthermore, Mr. Jester's sentence will inevitably require him to miss a number of pivotal points in Jaxson's life, including his admission into college, high school graduation, moving into college, and the start of his college experience. Allowing Mr. Jester to be with his son while he plays in the World Series allows him to play at least a small role in planning Jaxson's college options and opportunities.

Although Mr. Jester will play a role in his son's life while in prison, it will be significantly curtailed by the fact that he cannot attend any of his baseball games, be present when he tours college campuses, be present when he applies to college, or be present when he opens his admission letter to the college he ultimately attends. Extending Mr. Jester's surrender date by six weeks will allow him to play a more meaningful role as a father and still allows Jaxson to perform in the World Series starting July 5 without the heavy burden of knowing that his father is simultaneously reporting to prison for the next three years.

C. COVID-19 is Currently Surging in the Bureau of Prisons.

The President declared the COVID-19 outbreak a national emergency beginning March 1, 2020. That declaration was extended on February 24, 2021, again on February 18, 2022, and was still in effect as of June 15, 2022. As a result of the national emergency and to directly address COVID-19 contagion, the BOP instituted modified operating procedures to reduce the spread of COVID-19. In order to preserve resources and manage institutional outbreaks, the BOP implemented a method of modifying institutional protocols through what is known as Institution Operational Levels (Level 1 – Minimal, Level 2 – Moderate, or Level 3 – Intense). These operational levels are based on the facilities' COVID-19 medical isolation rate, combined percentage of staff and inmate completed vaccinations series, and their respective county transmission rates.

As of June 21, 2022, 92 of 98 BOP reporting institutions were reporting at Level 3 – Intense. Therefore, out of an abundance of caution, Mr. Jester respectfully requests that this Court extend the date of his surrender from July 5, 2022 until August 16, 2022 in order to avoid this current wave of COVID-19 infection.

III. CONCLUSION

Because Mr. Jester is filing an Emergency Application for Continued Release Pending Appeal, his son's upcoming baseball world series tournament, and the current surge of COVID-19 in the BOP, Mr. Jester is respectfully requesting that this Court extend his voluntary surrender date from July 5, 2022 until August 16, 2022. Mr. Jester has and will continue to abide by all of his release conditions during the pendency of his release.

Dated: June 24, 2022

Respectfully submitted,

By: /s/ Jeff Ansley
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**COUNSEL FOR DEFENDANT
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CERTIFICATE OF CONFERENCE

I certify that on June 24, 2022, I conferred with Assistant U.S. Attorney Tiffany Eggers, attorney for the government, who stated that the government is opposed to this motion.

/s/ Arianna Goodman
Arianna Goodman

CERTIFICATE OF SERVICE

I certify that on June 24, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that a true copy of the foregoing was furnished by CM/ECF to all counsel of record.

/s/ Jeff Ansley
Jeffrey J. Ansley

