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Judge Orders Release of Ex-Doctor Amid COVID-19 Scares

"Realistically, 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," U.S. District Judge Jesse M. Furman wrote.

By Tom McParland | April 08, 2020



U.S. District Judge Jesse Furman. Photo: Rick Kopstein

A former doctor, whose case highlighted the limited ability of judges to protect vulnerable inmates from the deepening coronavirus crisis in the nation's jails, was set to be "immediately" released from government custody, a Manhattan federal judge said in an order (<https://images.law.com/contrib/content/uploads/documents/389/100617/Nkanga.pdf>) made public on Wednesday.

U.S. District Judge Jesse M. Furman of the Southern District of New York, in a ruling dated April 7, granted Nkanga Nkanga's latest application for bail and home detention, after federal prosecutors agreed to his temporary release from Brooklyn's Metropolitan Detention Center in a Tuesday court filing.

The Manhattan U.S. Attorney's Office for weeks had opposed Nkanga's emergency bail motions, which argued that the 67-year-old former physician's underlying health conditions made him particularly vulnerable to COVID-19, the potentially deadly illness caused by the novel coronavirus.

Furman said last month that he was "powerless" under existing law to order Nkanga's release from the Brooklyn detention facility, where at least one inmate had died from the virus. In a remarkable ruling (<https://images.law.com/contrib/content/uploads/documents/389/99823/Furman-COVID.pdf>), the judge decried a case-by-case approach that had handcuffed courts in responding to such motions, and called on Congress and the Trump administration to take "swift" and "systemic" action to avoid a catastrophe in federal lockups.

"Realistically, 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," Furman wrote in a 10-page opinion published March 31.

"There are many cases where temporary release of an inmate would be the rational and just course of action, but the law does not give a judge the authority to take it. This is one such case, and it underscores the need for a swift congressional and executive response," he said.

As of Tuesday, the Bureau of Prisons reported that eight of the 241 inmates that had tested positive for COVID-19 nationwide had died, though defense attorneys have argue those numbers significantly underreport the actual number of cases in federal jails.

In New York, only 12 inmates at MDC and the Metropolitan Correctional Center in Manhattan had been tested for the virus, according to a court-ordered status report (<https://www.law.com/newyorklawjournal/2020/04/07/no-coronavirus-tests-since-friday-at-new-york-citys-federal-lockups-mandated-report-reveals/>) published Tuesday afternoon. No new tests had been administered to inmates since late last week, the latest data showed.

Nkanga, who pleaded guilty in October to illegally prescribing oxycodone and other drugs at his Staten Island office, was sentenced to three years on March 12—after the coronavirus had reached New York, but just before the implications of the pandemic were widely understood in the broader community.

Had he, or counsel, "fully anticipated" the public health crisis now gripping large parts of the country, Furman said he would have adjourned Nkanga's sentencing and ordered his temporary release based on the "exceptional" circumstances presented by the virus. Federal law, however, prevents federal judges

from granting bail following the “imposition or execution” of a sentence, and other forms of statutory relief were not available in Nkanga’s case, according to Furman’s ruling.

Nkanga, who suffers from asthma and complications from a 2008 stroke, had no prior criminal record, was not a danger to the community and did not pose a risk of flight, Furman said.

After more than a week of “opposing one motion after another,” Furman said, prosecutors had finally agreed to Nkanga’s release on the basis that his attorneys were ineffective in failing to request bail pending his sentencing and a voluntary surrender date that would have kept him out of custody until after the worst of the pandemic had passed.

In Tuesday’s filing, Assistant U.S. Attorneys Jacob R. Fiddelman and Cecilia E. Vogel stressed that their decision had no bearing beyond Nkanga’s specific case, and reserved the right to challenge Nkanga’s claim at a later date.

“However, the government recognizes that in light of the very particular confluence of factors unique to this case, there appear to be extraordinary circumstances making bail necessary to make any potential habeas remedy effective,” the filing said.

According to Furman’s order, Nkanga would be released on \$500,000 bond, and would be barred from leaving his home except for emergency medical services. A tentative status conference was set for July 13 to discuss the “next steps” in the case.

Nkanga is represented by Benjamin Silverman, Daniel Parker and Joshua Horowitz.

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