No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL GREER, *Petitioner*

v.

STATE OF CONNECTICUT, *Respondent*

APPLICATION FOR BAIL PENDING APPEAL OF PETITIONER'S STATE CRIMINAL CONVICTIONS

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To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit:

Pursuant to 28 U.S.C. § 1651, Petitioner Daniel Greer prays for the issuance of an order setting bail pending the appeal of his state criminal convictions or, in the alternative, for an order directing a Judge of the Connecticut Superior Court to set bail pending his appeal.

I. INTRODUCTION

The Petitioner, who is eighty-one years old, is serving a sentence of twenty years, execution suspended after twelve years, as a result of his 2019 convictions of four counts of the crime of risk of injury to a child, in violation of Connecticut General Statutes § 53-21(a)(2). Petitioner's direct criminal appeal is pending in the Connecticut Appellate Court (hereafter "Appellate Court"), which is Connecticut's intermediate

appellate tribunal. The Petitioner's opening brief has been filed, and he is awaiting the filing of the state's responsive brief. Petitioner recognizes that an application for bail by a *state* criminal defendant, whose appeal has not been finally determined in the state courts, presents jurisdictional concerns. They are addressed in section II of this application.

Petitioner started seeking bail pending appeal immediately after sentence was imposed on December 2, 2019. Since that date, the trial court judge who presided at petitioner's trial has issued ten bail rulings. Several of the rulings denied bail pending appeal, but two of them *granted* the petitioner temporary home release for specified periods of time, due to petitioner's vulnerability during the COVID-19 pandemic.

The petitioner "appealed" all of the adverse bail rulings to the Appellate Court, which has statutory authority to review bail rulings made by trial court judges. On two occasions the Connecticut Supreme Court declined to exercise its discretionary authority to review the bail rulings in this case. In addition, the United States District Court for the District of Connecticut (Meyer, J.) denied petitioner's request for habeas corpus relief (seeking bail pending appeal) under 28 U.S.C. § 2254. All of the relevant bail decisions are reproduced in the Appendix to this application.

Throughout the bail proceedings, petitioner has been relying on a fundamental constitutional predicate that may be succinctly stated: Although there is no federal constitutional right to bail pending appeal of a state court conviction; see *Finetti v. Harris*, 609 F.2d 594, 597, 599 (2nd Cir. 1979); *Roberson v. Connecticut*, 501 F.2d 305, 308 (2nd Cir. 1974); "once a state makes provision for such [postconviction] bail, the Eighth and Fourteenth Amendments require that it not be denied *arbitrarily or*

unreasonably." (Emphasis added.) *Finetti v. Harris*, *supra*, 599; *Brown v. Wilmot*, 572 F.2d 404, 405 (2nd Cir. 1978); *Young v. Hubbard*, 673 F.2d 132, 134 (5th Cir. 1982); *Miller v. Walker*, 413 F. Supp. 2d 251, 256 (W.D.N.Y. 2006); *Martin v. Diguglielmo*, 644 F. Supp. 2d 612, 621 (W.D. Pa. 2008).

In Connecticut, post-conviction bail is available for all crimes, with the exception of four murder offenses not implicated here. Connecticut makes provision for such post-conviction bail by statute; see Conn. Gen. Stat. § 54-63f[1]; by court rule; see Conn. Practice Book § 43-2[2]; and by common law. See, e.g., *State v. McCahill*, 261 Conn. 492, 510-513, 518-19, 811 A.2d 667, 678-80, 683 (2002); *State v. Vaughan*, 71 Conn. 457, 460-61, 42 A. 640, 641 (1899); *Liistro v. Robinson*, 170 Conn. 116, 123-24, 365 A.2d 109, 112-13 (1976); *Cinque v. Boyd*, 99 Conn. 70, 92-93, 121 A. 678, 685-86 (1923).

As specified in both the statute and court rule, the *only* disqualifying factor for bail pending appeal is if "the court finds custody to be *necessary* to provide *reasonable assurance* of such person's appearance in court." (Emphasis added.) In this case, the trial judge has described petitioner as presenting a "serious and substantial" flight risk.

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[1] In pertinent part, the statute provides: "A person who has been convicted of any offense, except a violation of section 53a-54a [murder], 53a-54b [murder with special circumstances], 53a-54c [felony murder] or 53a-54d [arson murder], and is either awaiting sentence *or has given oral or written notice of such person's intention to appeal* or file a petition for certification or a writ of certiorari *may be released pending final disposition of the case, unless the court finds custody to be necessary to provide reasonable assurance of such person's appearance in court*. . . ." (Emphasis added.)

[2] Connecticut Practice Book § 43-2 provides in pertinent part: "A person who has been convicted of any offense and who either is awaiting sentence or has given oral or written notice of his or her intention to appeal or file a petition for certification or a writ of certiorari may be released, subject to General Statutes § 54-95, pending final disposition of his or her case upon sentence or appeal, *unless the judicial authority finds custody to be necessary to provide reasonable assurance of the person's appearance in court*, upon the first of the following conditions of release found sufficient by the judicial authority to provide such assurance: . . . ." (Emphasis added.)

That description is demonstrably inaccurate and unreasonable in light of all the circumstances that are relevant to bail decisions. Indeed, the trial judge's reliance on the "flight risk" rationale is undermined and refuted by the historical record. As explained in greater detail below, after petitioner commenced service of his sentence, the trial judge twice granted him temporary home release (and extended the periods of home release), under conditions that included electronic monitoring and strict limitations on the petitioner's activities. During those periods of home release, totaling more than seven months, petitioner *complied fully with all release conditions*, and at the expiration of each release period he surrendered *to be taken back into custody* when directed to do so by the trial judge. If, as Justice Holmes famously observed, "a page of history is worth a volume of logic"; *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921); the history of this case reveals that the trial judge's denial of bail pending appeal was both illogical and unreasonable.

II. JURISDICTION

Jurisdiction is predicated on 28 U.S.C. § 1651, the "All Writs Act," which provides as follows:

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction."

The Supreme Court has stated that "'the All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute." *Carlisle v. United*

States, 517 U.S. 416, 429 (1996). A unanimous Court also has stated that "[t]he All Writs Act invests a court with a power *essentially equitable* and, as such, not generally available to provide alternatives to other, adequate remedies at law." (Emphasis added.) *Clinton v. Goldsmith*, 526 U.S. 529, 537(1999). Petitioner invokes the All Writs Act because there are currently no other adequate remedies at law.

It appears that under the All Writs Act, a Circuit Justice has the same authority to act that the full Court would have. For example, in *Coleman v. PACCAR, Inc.*, 424 U.S. 1301, 1302 (1976), Justice Rehnquist, as Circuit Justice, stated: "Pursuant to Rules 50 and 51 of this Court I have authority as Circuit Justice to take any action which the full Court might take under 28 U.S.C. § 1651."[3] In *Coleman*, Justice Rehnquist vacated a stay order entered by the Ninth Circuit. Although the party seeking vacation of the stay order had "not presently" filed a petition for writ of certiorari to review the stay order, Justice Rehnquist concluded that vacation of the stay order would be "'in aid of this Court's jurisdiction' to [later] review by certiorari a final disposition on the merits[.]" *Coleman*, 1303-04. Justice Rehnquist noted that "the harm flowing from the stay issued by the Court of Appeals could not be redressed by an ultimate decision, either in that court or this, in [applicant's] favor on the merits." *Id.*, 1308. He also concluded that if he did not provide the "interim relief sought," there could be "irreparable harm impairing the Court's ability to provide full relief in the event it ultimately reviews the action of the Court of Appeals on the merits[.]" *Id.*, 1305. *Coleman* thus stands for the proposition that "a Circuit Justice has jurisdiction to vacate a stay where it appears that the rights of the parties to a case pending in the court of appeals, which case could and very likely

[3] Rules 50 and 51 of the 1970 Rules, in effect at the time of the *Coleman* decision, are now found, as amended, in Rules 22 and 23 of the 2019 Rules.

would be reviewed here upon final disposition in the court of appeals, may be seriously and irreparably injured by the stay, and the Circuit Justice is of the opinion that the court of appeals is demonstrably wrong in its application of accepted standards in deciding to issue the stay." *Id.*, 1304. See also, *Kimble v. Swackhamer*, 439 U.S. 1385 (1978) (Justice Rehnquist, as Circuit Justice) ("a single Justice has authority only to grant interim relief in order to preserve the jurisdiction of the full Court to consider an applicant's claim on the merits"); *Blodgett v. Campbell*, 508 U.S. 1301, 1304 (1993) (Justice O'Connor, as Circuit Justice) (quoting same).

Petitioner submits that a Circuit Justice's jurisdictional authority to vacate a stay, or impose a stay, see 28 U.S.C. § 2101(f), is closely related to a Justice's authority to set bail pending appeal—because by operation of law, the posting of an appeal bond ordinarily stays the execution of the sentence. See Conn. Gen. Stat. § 54-95(b) ("the appeal or the notice [of an intention to appeal] *shall operate as a stay of execution* pending the final determination of the case, *provided the defendant is admitted to bail*," unless a judge directs otherwise) (Emphasis added.); *State v. Walzer*, 208 Conn. 420, 427, 545 A.2d 559 (1988) ("The effect of posting the appeal bond was, of course, by virtue of [Conn. Gen. Stat.] § 54-95(b), to stay execution of the sentence after the bond had been posted during pendency of the appeal and thus to suspend for that period the authority of the commissioner [of correction] under the mittimus.").

Obviously, a Circuit Justice's exercise of jurisdiction under 28 U.S.C. § 1651 would depend in part on the viability of the federal constitutional claim that a petitioner has raised or is proposing to raise. In this case, the petitioner asserts that his convictions were obtained in violation of his federal right to due process of law under the

Fifth and Fourteenth Amendments to the United States Constitution. Specifically, petitioner claims that it is fundamentally unfair, and a violation of federal due process, to allow uncharged sexual misconduct to be admitted into evidence as "propensity" evidence, without first requiring the prosecution to prove, *at least by a preponderance of the evidence*, that the defendant in fact committed the act of uncharged misconduct.

This constitutional claim derives from *Huddleston v. United States*, 485 U.S. 681 (1988), which is discussed more fully in section V. As explained therein, petitioner is currently foreclosed from raising this claim in his pending appeal, because the Appellate Court is prohibited from overruling, or even reconsidering, Connecticut Supreme Court precedent—and the Connecticut Supreme Court has held that a criminal defendant is *not* entitled to a jury instruction that an act of uncharged misconduct has to be proved by a preponderance of the evidence. See *State v. Cutler*, 293 Conn. 303, 322, 977 A.2d 209, 221-22 (2009).

If petitioner's state court appeal had already been decided, thereby rendering him eligible to file a petition for a writ of certiorari in this Court, an individual Justice would be authorized to set bail pending consideration of that petition. See *Hudson v. Parker*, 156 U.S. 277, 285-88 (1895) (upholding the authority of a single Justice to set bail pending review of a petitioner's writ of error); *Chambers v. Mississippi*, 405 U.S. 1205 (1972) (Powell, J., as Circuit Justice) (reaffirming his earlier order to admit petitioner to bail during pendency of certiorari proceedings); *California v. Alcorcha*, 86 S. Ct. 1359, 1360 (1966) (Douglas, J., as Circuit Justice) ("if this were a case brought here from a state court by appeal or writ of certiorari the power of a Circuit Justice to order release on bail would be clear"). See also S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D.

Himmelfarb, SUPREME COURT PRACTICE § 17.20, pp. 17-55--17-56 (11th ed. 2019) ("The Court or a Justice unquestionably has power to release a prisoner after a petition for certiorari to review a state court judgment has been filed in the Supreme Court. Thus, it has been held that where the offense is bailable under state law, the Court or a Circuit Justice has power to order a release pending Supreme Court review." (citing *Hudson v. Parker*, *supra*, and *Chambers v. Mississippi*, *supra*).

What is less certain is whether an individual Justice may set bail for a petitioner whose state appeal has not been decided, and who therefore cannot *yet* file a petition for certiorari. See S. Shapiro et al., *op. cit.*, p. 17-56 ("It may be argued, though it has not been decided, that the Court or a Circuit Justice may order release on bail during the pendency of state court proceedings under the All Writs Act, 28 U.S.C. § 1651.")

There is, to be sure, authority for the proposition that jurisdiction is lacking under those circumstances. For example, in *Valenti v. Spector*, 79 S. Ct. 7 (1958), five petitioners presented applications to Justice Harlan, as Circuit Justice, seeking bail pending review of their commitment orders by New York's appellate courts. Justice Harlan denied the applications "for lack of jurisdiction and, in any event, in the exercise of [his] discretion[.]" *Id.*, 8. He concluded that because the petitioners' appeals were pending in state appellate courts, "[t]he federal questions sought to be presented . . . are prematurely raised here, since none of them has yet been passed upon by the highest court of the State in which review could be had." *Id.* He also "decline[d] to disturb" the decisions of two state court judges who had denied the petitioners' applications for bail. *Id.*

Of similar effect is *California v. Alcorcha*, *supra*. In *Alcorcha*, the petitioner

applied to Justice Douglas for bail pending appeal of his state drug conviction. Justice Douglas noted that the petitioner's "motions for bail pending appeal have been denied by the trial court, the California District Court of Appeal, the California Supreme Court, and the United States District Court." *Id.* He stated that "the power of a Circuit Justice to grant bail in cases such as this does not appear to be supported by any statute nor by any decision of this Court or any individual Justice sitting in chambers," and he concluded that he had "no authority to grant bail in this case[.]" *Id.*, 1360, 1362. However, he did note the suggestion made in an earlier version of SUPREME COURT PRACTICE, *supra*, that the All Writs Act might provide a jurisdictional foundation under certain circumstances, as, for example, "where substantial federal issues have been raised and expiration of a short prison term would moot the case." *Id.*, 1361 (citing Stern and Gressman, SUPREME COURT PRACTICE 410 (3rd ed., 1962), and Note, *Powers of the Supreme Court Justice Acting in an Individual Capacity*, 112 U. PA. L. REV. 981, 1000 (1964)).[4]

The petitioner's constitutional claim is a substantial one, as explained below in section III. The elderly petitioner has been incarcerated for fifteen months, and it is anticipated that the Appellate Court will not be issuing a decision until the late spring or summer of 2022. If, at the request of either the petitioner or the prosecution, the Connecticut Supreme Court were to grant certification to review the Appellate Court's decision, the parties would be entitled to full briefing and oral argument in the higher court, a process that would ordinarily take another year.

[4] To the extent that petitioner is unable to cite an opinion from an individual Justice granting bail during the pendency of state appellate court proceedings, petitioner is reminded of "the old adage that there is no precedent for anything until it is done for the first time[.]" *Green v. New York*, 115 Misc. 2d 853, 857, 454 N.Y.S.2d 925, 928 (N.Y. Civ. Ct. 1982).

The petitioner respectfully requests that Justice Sotomayor, as Circuit Justice, provide an equitable remedy by setting bail for the petitioner, or by directing a Judge of the Connecticut Superior Court to do so. The granting of bail would help to preserve, in meaningful fashion, the full Court's future jurisdiction in this case. If the All Writs Act was sufficient authorization in *Coleman* for Justice Rehnquist to vacate a stay to prevent irreparable injury, the All Writs Act should allow an individual Justice to set bail in order to prevent the irreparable injury that results when a petitioner serves all or part of a sentence for a conviction later found to be unconstitutional. See *Holtzman v. Schlesinger*, 414 U.S. 1304 (1973) (Marshall, J., as Circuit Justice) ("There are, of course, many cases suggesting that a Circuit Justice should 'balance the equities' when ruling on stay applications and determine on which side the risk of irreparable injury weighs most heavily.") As Justice Jackson once observed: "All experience with litigation teaches that existence of a substantial question about a conviction implies a more than negligible risk of reversal. Indeed this experience lies back of our rule permitting [the] practice of allowing bail where such questions exist, to avoid the hazard of unjustifiably imprisoning persons with consequent reproach to our system of justice." *Williamson v. United States*, 184 F.2d 280, 284 (2nd Cir. 1950) (Jackson, J., as Circuit Justice).

III. STATEMENT OF THE CASE

Petitioner Daniel Greer is an ordained orthodox Jewish rabbi, and a longtime resident of New Haven, Connecticut. For many years he was the administrator of an orthodox Jewish high school known as the Yeshiva of New Haven, Inc.

In 2016, a former yeshiva student, "E.M.," brought suit against petitioner and the yeshiva in the United States District Court for the District of Connecticut, alleging that

petitioner had sexually abused E.M. when he was a student at the yeshiva. In June 2017, following a trial, the jury awarded E.M. $15 million in compensatory damages, and the District Court awarded him $5 million in punitive damages and interest, for a total award of $21,749,041.10. That judgment was upheld on appeal. See *Mirlis v. Greer*, 952 F.3d 36 (2nd Cir. 2020), cert. denied, __ U.S. __, 141 S. Ct. 1265 (2021).

In 2016, while the civil suit was pending, E.M., then twenty-eight years old, made his *initial* criminal complaint to law enforcement authorities in New Haven. As a result of that complaint the petitioner was arrested on July 26, 2017, and was charged in state court with four counts of sexual assault in the second degree in violation of Conn. Gen. Stat. § 53a-71(a)(1) and four counts of risk of injury to a child in violation of Conn. Gen. Stat. § 53-21(a)(2). All of the charges involved alleged criminal acts occurring in 2002 and 2003, fourteen and fifteen years prior to the petitioner's arrest. Petitioner pleaded not guilty and elected to be tried by a jury.

At the conclusion of the evidence, the trial court granted a motion for judgment of acquittal on the four sexual assault charges because they were barred by the applicable five-year statute of limitations. On September 25, 2019, the jury convicted the defendant of the four remaining counts of risk of injury to a child.[5] On December 2, 2019, the petitioner was sentenced to a total effective term of 20 years, execution suspended after 12 years, and 10 years probation.

Two aspects of the trial evidence should be noted. First, all of the charges lodged against the petitioner had the same "age" element, i.e., that the victim was under sixteen years of age when the sexual activity occurred. E.M. testified that he and the

[5] On appeal, the petitioner is also claiming that since the risk of injury charges were based on the *same essential conduct* as the time-barred sexual assault charges, the risk of injury charges should have been subject to the same five-year limitations period.

petitioner had a sexual relationship that began in the fall of 2002 (shortly before E.M.'s 15th birthday) and continued until 2006 (when E.M. was eighteen years old). Any sexual activity that occurred on or after October 27, 2003 (E.M.'s 16th birthday) was lawful.

The second factor of note relates to uncharged misconduct. At trial, the state introduced evidence of uncharged sexual misconduct, to wit, that the petitioner provided wine to, and tried to kiss, another male yeshiva student who was under sixteen years of age. That misconduct evidence was admitted as "propensity" evidence, and the jury was instructed accordingly ("In a criminal case such as this in which the defendant is charged with a crime involving sex - - sexual misconduct, evidence of the defendant's commission of other sexual misconduct is admissible and may be considered to prove that the defendant had the propensity or a tendency to engage in the type of criminal sexual behavior with which he is charged."). The jury was *not* instructed that the "other sexual misconduct" had to be proved by a preponderance of the evidence—or by any other ascertainable standard of proof.

IV. THE BAIL PROCEEDINGS IN THE COURTS BELOW

A. From Arrest Through Conviction

1. On July 26, 2017, petitioner was arrested pursuant to an arrest warrant. He was released that day after posting a professional surety bond in the amount of $100,000. By agreement with the state, the petitioner also surrendered his United States passport to his counsel.

2. During the course of pretrial and trial proceedings, the petitioner faithfully complied with all conditions of release, and never failed to appear in court when his appearance was required.

3. Jury selection proceedings were held on August 19, 20, 21, 22, 23, and 26, 2019, before Superior Court Judge Jon M. Alander. The evidentiary portion of the jury trial, before Judge Alander, was held on September 16, 17, 18, 19, 20, and 23, 2019. After the evidence concluded on September 23, 2019, Judge Alander granted the defendant's motion for judgment of acquittal on all four counts of sexual assault in the second degree, because those charges were prosecuted beyond the applicable statute of limitations. See Conn. Gen. Stat. § 54-193a.

4. Jury deliberations commenced on September 24 and concluded on September 25, 2019, on which date the jury convicted the defendant of four counts of risk of injury to a child.

5. Following the return of the guilty verdicts on September 25, 2019, the state prosecutor requested that the petitioner's bond (the $100,000 that he posted on the day of his arrest) be increased. Petitioner's counsel asked that the bond remain the same. The trial judge stated that "[i]n any situation like this I think the risk of flight is great," and the court increased the bond by $650,000, for a total bond of $750,000. Tr. 9/25/2019, p. 15. The prosecutor then "inquire[d] as to whether the [petitioner] has two passports, an Israeli one and an American one?" Petitioner's counsel responded that he would ascertain the answer. *Id.*, pp. 16-17.

6. Later that afternoon, the petitioner posted the increased bond through a professional surety. The petitioner personally informed the court, "I'm only a citizen of the United States." *Id.*, p. 18. When the court asked the petitioner, "And you're not a citizen of Israel, sir?" the petitioner replied, "Never." *Id.* The petitioner's United States passport was then handed to the marshal to give to the clerk. *Id.*

7. When the court asked if the prosecutor "want[ed] to be heard on conditions of release?" the prosecutor responded as follows:

> ATTY. [MAXINE] WILENSKY: Yes, your Honor. I'd like some sort of electronic monitor - - mon - - monitoring of the [petitioner]. *He claims not to have an Israeli passport, I'm not sure I necessarily believe that given that many, in particular Orthodox Jews who have been accused of crimes flee to Israel.* Given that, your Honor, I would like an electronic bracelet placed upon this [petitioner].

(Emphasis added.) *Id.*, p. 19.

8. During the course of the ensuing discussions, the court acknowledged that the petitioner "has lived in this [New Haven] community for a long time," that he "has strong ties to this community," and that he has no prior criminal history. *Id.*, pp. 32, 34. The court also indicated that it was not particularly concerned about the petitioner representing a danger to the community. However, the court was of the opinion that the petitioner represented a substantial flight risk:

> THE COURT: I don't share [petitioner's counsel's] view that the risks of flight are minimal. *Given the circumstances now where he has been convicted of four serious felonies and faces a substantial prison sentence I think the risks of flight are substantial* and, as - - as a result, I do think, notwithstanding the impact on his religion, that it is necessary that there be electronic monitoring.

(Emphasis added.) *Id.*, p. 27.

9. Noting that the petitioner's passport had been surrendered, the court ordered the petitioner to be under house arrest with electronic monitoring through GPS, with the understanding that he could leave his residence for medical appointments, legal appointments, and religious services. *Id.*, pp. 35-36. The defendant was then released from custody.

10. On October 4, 2019, the court issued a written order setting forth "Revised Conditions of Release," which is reproduced as Exhibit A in the Appendix, at A1-2.

11. The petitioner next appeared in court on November 20, 2019, for an evidentiary hearing on post-trial motions, which were denied.

B. The Sentencing Hearing and the Initial Denial of Bail Pending Appeal

12. The petitioner appeared at his sentencing hearing on December 2, 2019, at which time the court imposed a total effective sentence of 20 years imprisonment, execution suspended after 12 years, and 10 years probation.

13. Immediately after the imposition of sentence, petitioner's counsel gave oral notice of the petitioner's intent to appeal, and requested that petitioner be released on bail pending appeal. In support of that request, petitioner's counsel reminded the court that the defendant previously had surrendered his passport to the court clerk, and that "the state has verified that" the petitioner does not have a second, Israeli passport. Tr. 12/2/2019, pp. 33-34. Counsel also pointed out that the petitioner was then 79 years old, that he had lived in New Haven for more than forty years, and that he had complied with all previous conditions of release.

14. The state opposed the request for post-conviction bail, arguing that the lengthy sentence imposed on petitioner "increases his risk of flight." *Id.*, p. 37.

15. The trial court agreed with the prosecution, and stated: "I do find that there [has] been a substantial change in circumstances; I imposed a substantial term of imprisonment on the defendant, there exists *a serious and substantial risk that the defendant will flee to avoid serving that sentence. He has a strong motivation to flee - - to flee, the sentence which I just imposed on the defendant exceeds his life expectancy*." (Emphasis added.) *Id.*, p. 38. Citing social security actuarial tables, the court noted that the petitioner's life expectancy "is nine years" and the sentence

imposed was twelve years, and thus "there is no greater incentive to flee th[a]n the cold realization that otherwise you will spend all of the remaining years of your life in prison." *Id.* (As explained *infra*, a sentence of twelve years does not necessarily mean that a defendant will *actually serve* twelve years.)

16. The court then made an additional observation for which there was no factual basis:

> THE COURT: The defendant also has the financial means to flee. It is *my understanding* that when I raised the defendant's bond to $750,000 after his conviction *his wife paid a bondsman tens of thousands of dollars in cash that very day*. The defendant clearly has access to resources to finance an escape from accountability.

(Emphasis added.) *Id.*, p. 38. The court thereupon concluded: "I find that the denial of an appeal bond is necessary to ensure the defendant's future appearance in court pending his appeal. So the request for further bond is denied. The $750,000 bond is no longer in effect." *Id.* The petitioner was taken into custody at that point (December 2, 2019).

C. The First Bail "Appeal"

17. On December 12, 2019, the petitioner filed, in the Appellate Court, a petition for review of bail pursuant to Conn. Gen. Stat. § 54-63g and Connecticut Practice Book § 78a-1. That petition challenged the trial court's December 2, 2019 ruling refusing to set bail pending appeal. Relevant transcripts of the proceedings from September 25 and December 2, 2019, were filed along with the petition.

In that petition for review, petitioner's counsel discussed the relevant bail factors, e.g., the defendant's age (79), his physical ailments, his ties to the community, his lack of a prior criminal record, his record of appearance in court while out on bail, and the

risk of flight. There was no mention of the COVID-19 virus in that petition.

18. On December 20, 2019, the petitioner filed the necessary documents to initiate his direct appeal in the Appellate Court.

19. The state filed its opposition to the petition for review on December 23, 2019, and that same day the Appellate Court issued an order granting review but denying the relief requested. See Exhibit B, at A3. The Appellate Court also denied the petitioner's request for a hearing on the petition for review.

D. Subsequent Bail Motions and Petitions for Review

20. On February 13, 2020, the petitioner filed, in the trial court, a renewed motion for release on bail pending appeal. In an accompanying memorandum, petitioner's counsel addressed, *inter alia*, the trial court's previously-expressed belief that the defendant had the financial means to flee. With respect to the trial court's "understanding" that the petitioner's wife had paid a bondsman "tens of thousands of dollars in cash," counsel attached two exhibits to the renewed bail motion: an affidavit from the professional surety who posted the bond, and an affirmation from the petitioner's wife. Those documents are attached hereto as Exhibits C and D, at A4-5. They confirm that the premium for the bond was paid over a period of months, and that no cash was involved in the transaction.

The petitioner's memorandum also discussed certain medical issues that had arisen since the defendant was incarcerated.

21. On February 21, 2020, the state filed an objection to the petitioner's renewed motion for bail on appeal. On March 2, 2020, the trial court issued a written Order (Exhibit E, at A6) denying the renewed motion for bail. The court's Order states in full:

> The defendant has filed a motion to reconsider the court's denial of his motion to set bond pending appeal of his criminal conviction. The defendant has not presented a persuasive reason for the court to change its finding that there exists *a serious and substantial risk that the defendant will flee to avoid serving his sentence and that the denial of an appeal bond is necessary to ensure his future appearance in court*. The fact that no cash was involved when the defendant paid the substantial bond which was imposed prior to sentencing does not alter the court's conclusion that the defendant possesses the financial means to flee. Accordingly, the motion to reconsider is hereby denied.

(Emphasis added.)

22. On March 12, 2020, the petitioner filed, in the Appellate Court, a petition for review of the trial court's March 2 ruling. In addition to discussing the relevant bail factors, petitioner's counsel included one reference to the COVID-19 pandemic: "Finally, in light of current events, we would be remiss not to note the potential dangers of housing a nearly 80-year-old man amidst hundreds of other men in a prison setting." (citing Kelan Lyons, *Elderly Prisoners in Connecticut Vulnerable to Potential Coronavirus Outbreak*, Hartford Courant, March 11, 2020.)

23. The state filed its opposition to the petition for review on March 19, 2020, and on March 25, 2020, the Appellate Court issued an Order granting review, but denying the relief requested. See Exhibit F, at A7. The Appellate Court again denied the petitioner's request for a hearing.

24. On March 31, 2020, the petitioner filed, in the Appellate Court, a motion for reconsideration (which is expressly authorized by court rule) of that court's March 25, 2020 Order. The motion for reconsideration relied principally on arguments relating to COVID-19 and the Connecticut correctional system. The state filed its opposition to the motion for reconsideration on April 9, 2020.

25. On April 15, 2020, the Appellate Court issued an Order stating in pertinent

part that "reconsideration is granted, but the relief requested therein *is denied without prejudice to the defendant filing a new motion in the superior court to set bail pending appeal.* If such a motion is filed, a hearing should be scheduled on such motion as soon as practicable." (Emphasis added.) See Exhibit G, at A8.

E. The First Temporary Home Release (April 24, 2020 – July 30, 2020)

26. On April 16, 2020, and in accordance with the Appellate Court's suggestion that a new bail motion might be warranted, the petitioner filed, in the trial court, a document entitled "Defendant's Renewed Emergency Motion for Release on Bond Based on Pandemic Health Threat." The motion and accompanying memorandum focused heavily on the serious threat posed by the COVID-19 virus to inmates, especially for inmates whose age and pre-existing ailments made them particularly vulnerable or susceptible to the effects of the virus. On April 22, 2020, the state filed its opposition.

27. On April 24, 2020, the trial court issued a three-page Order *granting* the petitioner temporary release from custody. See Exhibit H, at A9-11. The Order noted that the seventy-nine-year-old petitioner "has chronic asthma," and that "[h]is age and his medical condition result in a higher risk for developing more serious complications from COVID-19 illness." *Id.* The Order also stated that "[g]iven the present high inciden[ce] of COVID-19 within Connecticut's prisons and the current lack of sufficient PPE for its staff, the defendant's advanced age and underlying medical condition warrant his temporary release from prison until the crisis abates." *Id.* The petitioner's release from custody was based on a "conditional promise to appear" with numerous conditions, including "Intensive pretrial supervision"; "Electronic monitoring through GPS

and/or RF monitoring by the Office of Adult Probation"; and "House arrest," with exceptions for approved visits "to his attorney's office, medical appointments, and religious services" at a local synagogue. *Id.* The court directed that petitioner's release "will continue for 45 days until June 8, 2020, unless extended or terminated by the court." *Id.* Pursuant to the trial court's Order, the petitioner was released from Cheshire Correctional Institution on Friday, April 24, 2020.

28. On May 26, 2020, the petitioner filed a motion to extend the temporary release order for another forty-five days, until July 23, 2020. On June 2, 2020, the state objected to the requested extension. On June 4, 2020, the trial court issued an Order in which it stated that "[t]he incidence of COVID-19 amongst the staff and inmate population within Connecticut's prisons has not sufficiently abated for the return of the defendant to prison." See Exhibit I, at A12. The court thereupon extended the petitioner's temporary release for an additional forty-five days, "until July 23, 2020, unless extended or terminated by the court." *Id.*

29. On July 14, 2020, the trial court issued an Order indicating that in order to provide the parties with sufficient time to file motions or objections, the petitioner's temporary release was "extended to July 30, 2020, unless further extended or terminated by the court." See Exhibit J, at A13.

30. On July 17, 2020, the petitioner filed a motion to extend the temporary release order for a period of ninety days. The motion and accompanying memorandum discussed the continuing risks from COVID-19 in the correctional system and the dramatic increase in COVID-19 cases nationwide. The memorandum also noted that since his release from prison on April 24, 2020, the petitioner had been in full

compliance with all conditions of release. On July 21, 2020, the state filed its objection to the request to extend the temporary release.

31. On July 28, 2020, the court issued an Order denying the request to extend the temporary release. Exhibit K, at A14-16. That ruling was based on the court's view that the COVID-19 conditions that originally led to the temporary release order no longer existed to the same degree. The court further noted that "[w]hile the [petitioner]'s increased risk regarding COVID-19 due to his advanced age and medical condition has not changed, DOC's [Department of Correction's] ability to provide reasonable protections against that risk has been substantially strengthened." *Id.* The Order directed the petitioner to report to the New Haven Judicial District courthouse "at 10 a.m. on July 30, 2020 so that he can be transported back to the custody of the Department of Correction." *Id.*

32. On July 29, 2020, the petitioner filed, in the Appellate Court, an "Emergency Motion for Stay of Execution of Trial Court Order Terminating the Defendant's Temporary Release from Custody." The first page of the motion indicated, *inter alia*, that Senior Assistant State's Attorney Robert Scheinblum, who was representing the state in this matter, "has authorized [petitioner's counsel] to represent that the State takes 'no position' on the relief requested in this motion [for stay], and will not be filing a written response." Despite the lack of an objection from the state, the Appellate Court denied the emergency motion for stay of execution on July 29, 2020. See Exhibit L, at A17.

33. On July 30, 2020, the petitioner, accompanied by his appellate counsel, appeared at the New Haven Judicial District courthouse at the designated time and was taken into custody.

34. On August 7, 2020, the petitioner filed, in the Appellate Court, a petition for review of the trial court's July 28, 2019 Order denying the request to extend the temporary release.

35. On August 14, 2020, the petitioner filed, in the Connecticut Supreme Court, a motion to transfer the petition for review (filed August 7, 2020) from the Appellate Court to the Connecticut Supreme Court.

36. On August 24, 2020, the state filed its opposition to the petition for review. On the same date, the state filed a response to the motion to transfer, indicating that "the state has no objection to this [Supreme] Court transferring the [petitioner]'s petition for review from the Appellate Court to the Supreme Court."

37. On September 9, 2020, the Supreme Court issued an Order denying the motion to transfer the petition for review to the Supreme Court. See Exhibit M, at A18.

38. On September 10, 2020, the Appellate Court issued an Order in which it granted review of the trial court's order (of July 28, 2019) denying an extension of the petitioner's temporary release, but denied the relief requested. See Exhibit N, at A19.

F. The Federal Habeas Petition Pursuant to 28 U.S.C. § 2254

39. On October 16, 2020, the petitioner filed, in the United States District Court for the District of Connecticut, a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that the denial of bail pending appeal was arbitrary and unreasonable, in violation of the petitioner's rights under the Eighth and Fourteenth Amendments. *Greer v. Commissioner of the Connecticut Department of Correction* (docket number 3:20-cv-01568-JAM). More specifically, petitioner alleged that the state trial judge's refusal to grant bail pending appeal was "a decision that was based on an unreasonable

determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). The state filed its opposition papers on November 9, 2020.

40. The District Court (Hon. Jeffrey A. Meyer) afforded the parties an opportunity for oral argument in an online hearing. Subsequently, on November 18, 2020, the District Court issued a written opinion denying the petition for writ of habeas corpus. Exhibit O, at A20-29. In its discussion, the District Court stated, *inter alia*: "[petitioner] makes some strong arguments why he is not a likely risk of flight. But the procedural limits of my review under § 2254 as well as the substantive bounds of the constitutional right at issue as stated in *Finetti* [*v. Harris*, 609 F.2d 594 (2nd Cir. 1979)] do not allow me to conduct my own reweighing of all the release factors. Because there is a rational basis in the record for Judge Alander's decision and because Greer has not shown that Judge Alander made any unreasonable determination of the facts, Greer has not shown grounds to grant his petition for writ of habeas corpus." *Id.*, at A28. The District Court denied the petition and stated that "no certificate of appealability shall enter." *Id.*, at A29.

G. The Second Temporary Home Release (Dec. 10, 2020 – April 8, 2021)

41. On November 27, 2020, the petitioner filed, in the trial court, a motion for renewed temporary release for a period of ninety days, under the same conditions set by the court during the petitioner's first period of home release (April 24, 2020 – July 30, 2020). The motion was based principally on the spread of COVID-19 both nationwide and in the Connecticut correctional system. On December 4, 2020, the state filed its opposition to the renewed motion for temporary release.

42. On December 10, 2020, the trial court issued an Order temporarily releasing

the petitioner on a conditional promise to appear, with the following conditions: intensive pretrial supervision; electronic monitoring through GPS or RF monitoring by probation personnel; house arrest except for approved visits to his attorneys' offices, medical appointments, and religious services; no travel outside the greater New Haven area; surrender of his passport (which previously had been surrendered); no contact with male children under the age of 16 years; and that he refrain from violating any criminal law. Exhibit P, at A30-31. The Order indicated that the temporary release would continue until February 1, 2021, unless extended or terminated by the court. *Id.*

43. On January 22, 2021, the petitioner filed, in the trial court, a motion to extend the temporary release order for a period of at least fifty days. The additional time was sought in order to afford the petitioner sufficient time to complete the regimen of COVID-19 vaccinations. The state indicated that the decision on the petitioner's request should be left to the court's discretion, although the state indicated it would object to any period of release extending beyond the time needed for the vaccinations.

44. On January 25, 2021, the court granted the petitioner's motion, and extended his temporary release until March 16, 2021, to allow him to receive the vaccinations and for immunization to take effect. Exhibit Q, at A32.

45. Because of a major snowstorm, Yale-New Haven Hospital postponed the date of the petitioner's first scheduled vaccination from February 2 until February 25, 2021. On March 5, 2021, the petitioner filed a motion to extend his temporary release to April 8, 2021, because petitioner was at that time scheduled to receive his second vaccination on March 25, 2021.

46. On March 8, 2021, the trial court extended the petitioner's temporary release

until April 8, 2021. Exhibit R, at A33.

47. On March 30, 2021, the petitioner filed a motion to extend the temporary release order, which was scheduled to expire on April 8, 2021, for the duration of the full appeal period. The motion and accompanying memorandum asserted that the petitioner's history of compliance while on release, both prior to and subsequent to his sentencing, "establish that incarceration is not necessary in order to ensure his appearance in court as required." On April 6, 2021, the state objected to the motion.

48. On April 7, 2021, the trial court issued an Order denying petitioner's request to extend his temporary release and his request to be released during the remainder of the appeal period. See Exhibit S, at A34-35. The Order stated in pertinent part: "The court remains convinced that a substantial and serious risk of flight continues to exist and the [petitioner]'s custody during his appeal is necessary to provide reasonable assurance of his appearance in court." *Id.* The Order directed the petitioner to appear at New Haven Superior Court at 10 a.m. on April 8, 2021, to be taken into custody by the Department of Correction.

49. On April 7, 2021, the petitioner filed, in the Appellate Court, an emergency motion for stay of execution of the trial court's order terminating the petitioner's temporary release. The state took "no position" on the request for a stay. The Appellate Court denied the emergency motion for stay on April 7, 2021. Exhibit T, at A36.

50. The petitioner appeared at the New Haven courthouse at the designated time on April 8, 2021, and was taken into custody. He has remained continuously in custody since that date.

51. On April 19, 2021, the petitioner filed, in the Appellate Court, a petition for

review of the trial court's April 7 Order denying his request to extend his temporary release. The state filed its opposition papers on April 27, 2021. On June 4, 2021, the Appellate Court issued an Order granting review, but denying the relief requested. Exhibit U, at A37.

H. The Application for a "Public Interest" Appeal

52. On June 18, 2021, the petitioner filed, with the Chief Justice of the Connecticut Supreme Court, an application for a "public interest" appeal pursuant to Conn. Gen. Stat. § 52-265a. The question of law on which the proposed appeal would be based was as follows: "Did the trial court act arbitrarily or unreasonably in repeatedly concluding that the [petitioner]—who on three separate occasions after conviction has been temporarily released from incarceration, and who returned to custody whenever ordered to do so by the trial court—continues to represent a 'substantial and serious risk of flight?'" On June 23, 2021, the state filed its opposition to the request for a public interest appeal, and on June 25, 2021, the Chief Justice of the Connecticut Supreme Court denied the application for a public interest appeal. Exhibit V, at A38.

53. In summary, since the return of the jury verdicts on September 25, 2019, the petitioner has been released during three separate periods:

(a) He was released on the date of conviction (September 25, 2019) and was at liberty until the date of sentencing (December 2, 2019), a period of approximately two months and one week;

(b) He was released on April 24, 2020, and was under house arrest until he surrendered on July 30, 2020, a period of approximately three months and one week;

(c) He was released on December 10, 2020, and was under house arrest until he

surrendered on April 8, 2021, a period of approximately four months.

V. THE PETITIONER'S CONSTITUTIONAL CLAIM IS A SUBSTANTIAL CLAIM

As noted earlier, the petitioner's claim arises from *Huddleston v. United States*, *supra*, which dealt with the standard for admitting evidence of uncharged misconduct under the Federal Rules of Evidence. Connecticut, which has comparable evidentiary rules, follows the *Huddleston* framework, which means that the jury—not the trial court—decides *if* a defendant committed an act of uncharged misconduct. The *Huddleston* court summarized the process as follows: "In determining whether the Government has introduced sufficient evidence to meet Rule 104(b), the trial court neither weighs credibility nor makes a finding that the Government has proved the conditional fact by a preponderance of the evidence. The court simply examines all the evidence in the case and decides *whether the jury could reasonably find the conditional fact* - - here, that the televisions were stolen - - *by a preponderance of the evidence*." (Emphasis added.) *Id.*, 690. On its face, the *Huddleston* court's invocation of the "preponderance of the evidence" standard would seem to indicate that that is the minimum baseline standard for proving an act of uncharged misconduct. See also *Estelle v. McGuire*, 502 U.S. 62, 73-74 (1991) ("To the extent that the jury may have believed McGuire committed the prior acts and used that as a factor in its deliberation, we observe that there was sufficient evidence to sustain such *a jury finding by a preponderance of the evidence*.") (Emphasis added.); *Dowling v. United States*, 493 U.S. 342, 356 (1990) (Brennan, Marshall, and Stevens, JJ., dissenting) ("Before a jury can consider facts relating to another criminal offense as proof of an element of the presently charged offense, the jury *must conclude by a preponderance of the evidence*

'that the act occurred and that the defendant was the actor.'") (Emphasis added.); *id.*, 361 (with respect to prior misconduct, "the jury is required to conclude that the defendant committed the prior offense *only by a preponderance of the evidence*") (Emphasis added.); *id.*, 362 (noting that "the lower [preponderance] standard of proof makes it easier for the jury to conclude that the defendant committed the prior offense").

Despite *Huddleston*'s apparent endorsement and adoption of the preponderance standard for proving an act of uncharged misconduct, the Connecticut Supreme Court has held "that *it is not necessary that a trial court instruct the jury that it must find, by a preponderance of the evidence*, that prior acts of misconduct actually occurred at the hands of the defendant. Instead, a jury may consider prior misconduct evidence for the proper purpose for which it is admitted *if there is evidence from which the jury reasonably could conclude* that the defendant actually committed the misconduct." (Footnote omitted; emphasis added.) *State v. Cutler*, *supra*, 293 Conn. 322, 977 A.2d 221-22. In rejecting the preponderance standard, the *Cutler* court expressed the view that *Huddleston*'s reference to the "preponderance of the evidence" (on page 690 of *Huddleston*), was dicta, and therefore not binding. *Cutler*, 293 Conn. 320, 977 A.2d 320. See Hon. Eliot D. Prescott, TAIT'S HANDBOOK OF CONNECTICUT EVIDENCE (Sixth ed. 2019) § 4.15.3, p. 172 ("The standard of proof for uncharged misconduct *if used in civil cases* is the civil burden of a preponderance of the evidence.") (Emphasis added.) In criminal cases, however, "[t]here is no rule that a prior act of misconduct must be proven by a preponderance of evidence." *Id.*, 173.

The Connecticut Supreme Court's view of *Huddleston* is uncommon, and may be unique. It appears that most federal Courts of Appeals have held, or assumed, that

Huddleston adopted or implicitly requires the preponderance standard.[6]

As for the states, one state supreme court has indicated that *Huddleston* "adopted the preponderance standard"; *People v. Carpenter*, 15 Cal. 4th 312, 381-82, 935 P.2d 708, 747 (Cal. 1997); *People v. Sanchez*, 63 Cal. 4th 411, 453, 375 P.3d 812 (2016), cert. denied, __ U.S. __, 137 S. Ct. 1340 (2017); while another supreme court has stated that *Huddleston* "enunciated" the preponderance standard. *State v. Weckerly*, 2018 ME 40, 181 A.3d 675, 682 n. 9 (2018); see *State v. Dean*, 589 A.2d 929, 933 n. 6 (Me. 1991). A number of other states that follow the *Huddleston* template have also held or assumed that the preponderance standard applies.[7]

The *Cutler* decision makes clear that the "evidence-from-which-the-jury-reasonably-could-conclude" formulation represents a *lower* standard of proof than preponderance of the evidence. See *id.*, 293 Conn. 321-22, 977 A.2d 221. In fact, Connecticut juries are routinely instructed that they may consider uncharged misconduct evidence if they "believe it." See, e.g., *State v. Carey*, 337 Conn. 463, 479

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[6] *United States v. DeCicco*, 370 F.3d 206, 211-12 (1st Cir. 2004); *United States v. Browne*, 834 F.3d 403, 409-10 (3rd Cir. 2016), cert. denied, 137 S. Ct. 695 (2017); *United States v. McLamb*, 985 F.2d 1284, 1290 (4th Cir. 1993); *United States v. Smith*, 804 F.3d 724, 735 (5th Cir. 2015); *United States v. Matthews*, 440 F.3d 818, 828 (6th Cir.), cert. denied, 547 U.S. 1186 (2006); *United States v. Burke*, 425 F.3d 400, 410 (7th Cir. 2005), cert. denied, 547 U.S. 1208 (2006); *United States v. Brumfield*, 686 F.3d 960, 963 (8th Cir.), cert. denied, 568 U.S. 1074 (2012); *United States v. Evans*, 728 F.3d 953, 962 (9th Cir. 2013); *United States v. Green*, 873 F.3d 846, 858 n. 9 (11th Cir. 2017), cert. denied, 138 S. Ct. 2620 (2018); *United States v. Ruffin*, 40 F.3d 1296, 1298 (D.C. Cir. 1994).

[7] See, e.g., *West v. State*, 305 Ga. 467, 473-74, 826 S.E.2d 64, 69 (2019); *Commonwealth v. Dorazio*, 472 Mass. 535, 541, 37 N.E.3d 566, 571 (2015); *State v. Martinez*, 141 N.M. 713, 719, 160 P.3d 894, 900 (2007); *State v. Smith*, 257 N.C. App. 389, 808 S.E.2d 621 (N.C. Ct. App.), rev. denied, 371 N.C. 114, 813 S.E.2d 237 (N.C.), cert. denied, __ U.S. __, 139 S. Ct. 250 (2018); *State v. Rodriguez*, 996 A.2d 145, 151-52 (R.I. 2010); *State v. Phillips*, 2018 SD 2, 906 N.W.2d 411, 417 (2018); *State v. Corona*, 2018 UT App. 154, 436 P.3d 174, 180 (Utah Ct. App. 2018), cert. denied, 437 P.3d 1249 (Utah 2019);*State v. Robinson*, 158 Vt. 286, 290, 611 A.2d 852 (Vt. 1992); *State v. Kaminski*, 322 Wis. 2d 653, 660-62, 777 N.W.2d 654, 658 (Wis. Ct. App. 2009).

n. 27, 254 A.3d 265 (2020); *State v. Boyd*, 295 Conn. 707, 738 n. 20, 992 A.2d 1071, 1091 n. 20 (2010), cert. denied, 562 U.S. 1224 (2011); *State v. Ellis*, 270 Conn. 337, 365 n. 20, 852 A.2d 676, 693 n. 20 (2004); *State v. Feliciano*, 256 Conn. 429, 451 n. 11, 778 A.2d 812, 827 n. 11 (2001). See also Conn. Jud. Branch Crim. Jury Instructions § 2.6-5, https://jud.ct.gov/JI/Criminal.pdf (last visited April 2, 2021) ("You may consider such [misconduct] evidence *if you believe it* and further find that it logically, rationally and conclusively supports the issue[s] for which it is being offered by the state, but only as it may bear on the issue[s] [for which it was offered].") (Emphasis added.) Of course, a "believe" standard is no standard at all, because "'[b]elief admits of all degrees, from the slightest suspicion to the fullest assurance.'" *Young v. Commonwealth*, 11 Ky. Op. 689, 690 (1882); *Montgomery v. Commonwealth*, 189 Ky. 306, 307, 224 S.W. 878 (Ky. Ct. App. 1920) (quoting same); *Maxwell Ice Co. v. Brackett, Shaw & Lunt Co.*, 80 N.H. 236, 241, 116 A. 34, 37 (N.H. 1921) (same); *Francken v. State*, 190 Wis. 424, 434, 209 N.W. 766, 769 (Wis. 1926) (same).

In this case, the petitioner's jury was told: "It is *for you to determine whether* the defendant committed any uncharged sexual misconduct." (Emphasis added.) However, the jury was never instructed on *any* standard of proof—not even the believe standard—for making that factual determination. Yet under Connecticut law, the jury was permitted to use the evidence of uncharged sexual misconduct for "propensity" purposes. See *State v. DeJesus*, 288 Conn. 418, 470-74, 953 A.2d 45, 77-79 (2008).[8]

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[8] The United States Supreme Court has noted the dangers of "propensity" evidence; see *Michelson v. United States*, 335 U.S. 469, 475-76 (1948); *Old Chief v. United States*, 519 U.S. 172, 181 (1997); but has yet to rule on its constitutionality. In *Estelle v. McGuire*, *supra*, the court "express[ed] no opinion on whether a state law would violate the Due Process Clause if it permitted the use of 'prior crimes' evidence to show propensity to commit a charged crime." *Id.*, 75 n. 5. See *Coningford v. Rhode Island*,

Although *Huddleston* was not a constitutional ruling, its holding gives rise to the petitioner's constitutional claim, i.e., that it violates due process to permit uncharged sexual misconduct to be admitted as propensity evidence without any requirement that the uncharged acts be proved by at least a preponderance of the evidence. In order for the petitioner to prevail on this *Huddleston*-related claim, the Connecticut Supreme Court's *Cutler* decision would have to be modified or overruled. However, the Appellate Court is bound by Connecticut Supreme Court precedent and cannot overrule or question it. See *Stuart v. Stuart*, 297 Conn. 26, 45-46, 996 A.2d 259, 271 (2010) ("it is manifest to our hierarchical judicial system that this court has the final say on matters of Connecticut law and that the Appellate Court and Superior Court are bound by our precedent"); *State v. Johnson*, 143 Conn. App. 617, 628, 70 A.3d 168, 174 ("as an intermediate court of appeal, we are unable to overrule, reevaluate or reexamine controlling precedent of our Supreme Court"), cert. denied, 310 Conn. 950, 82 A.3d 625 (2013). For that reason, the petitioner moved to transfer his appeal to the Connecticut Supreme Court *so that he could* argue for *Cutler*'s overruling. But the motion to transfer was denied, see Exhibit W, at A39, thereby leaving petitioner's federal constitutional claim, at least for the moment, in suspended animation.

If the petitioner prevails in the Appellate Court on any issue that that court is authorized to consider, the state could thereafter file a petition for certification for review, asking the Connecticut Supreme Court to review the defense-favorable decision. See Conn. Gen. Stat. § 51-197f; Conn. Practice Book § 84-1. If petitioner does not prevail in the Appellate Court, he will be eligible to file a petition for certification for

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640 F.3d 478, 484-85 (1st Cir.) (the Supreme Court has "expressly declined" to answer that question), cert. denied, 565 U.S. 954 (2011); *Gomes v. Silva*, 958 F.3d 12, 25 n. 9 (1st Cir. 2020) (same).

review, asking the Connecticut Supreme Court to review the unfavorable Appellate Court decision. If the Connecticut Supreme Court were to grant either party's petition, the ensuing proceedings in that court (full briefing and oral argument) would normally take at least a year.

Petitioner is serving a twelve-year term of imprisonment. Under current law and Department of Correction policy, he will be eligible for release on parole after serving 50% of that term, i.e., six years, less any statutory "risk reduction credits" that he is awarded for good conduct and behavior (up to five days per month, amounting to a reduction of two months in each calendar year). Conn. Gen. Stat. §§ 18-98e and 51-125a. Assuming good behavior on petitioner's part, he could be eligible for parole after approximately five years of imprisonment. As of October 1, 2021, the petitioner has been incarcerated for 453 days, approximately fifteen months. He has thus served about 25% of his anticipated five-year minimum term. Although petitioner's sentence is not so short that it "might make the case moot before state appeals are exhausted and a petition for certiorari can be filed"; S. Shapiro et al., *op. cit.*, p. 17-57; he will presumably serve a significant portion of his sentence before he is able to present his federal claim to the United States Supreme Court by way of a petition for a writ of certiorari. Bail pending appeal is therefore warranted in order to preserve, in a meaningful way, his right to pursue that course of action.

VI. THE DENIAL OF BAIL PENDING APPEAL WAS UNREASONABLE

Petitioner recognizes that bail decisions by trial courts or lower federal courts are generally accorded "great deference" by individual Justices of the Supreme Court. See, e.g., *Reynolds v. United States*, 80 S. Ct. 30, 32 (1959) (Justice Douglas, as Circuit

Justice); *Harris v. United States*, 404 U.S. 1232 (1971) (Justice Douglas, as Circuit Justice); *Mecom v. United States*, 434 U.S. 1340, 1341 (1977) (Powell, J., as Circuit Justice). Still, individual Justices have sometimes made "independent determinations" of bail applications. See, e.g., *Reynolds*, *supra*, 32 ("Yet where the reasons for the action below clearly appear, a Circuit Justice has a non-delegable responsibility to make an independent determination of the merits of the application."); *Harris*, *supra*, 1232 (quoting same); *Mecom v. United States*, *supra*, 1341 ("A Circuit Justice, however, has a responsibility to make an independent determination on the merits of the application.")

The trial judge in this case denied bail pending appeal for one reason only—he believed the defendant presents a "serious and substantial" flight risk. That belief is amply refuted by all the relevant factors, including: (1) the petitioner's age (eighty-one); (2) his family status (married for fifty years, with five children and twenty-five grandchildren); (3) his educational background (Princeton University and Yale Law School); (4) his strong ties to the community (a forty-year resident of New Haven, and his service as president of nonprofit housing corporations that have been instrumental in renovating multi-family houses in New Haven and renting them to low and moderate income families; and (5) his lack of a prior criminal record.

As far as petitioner's medical health is concerned, it is noteworthy that a physician who serves as a regional medical director for the Connecticut Department of Correction, acknowledged in a letter that the petitioner "suffers from many significant health issues." Exhibit X, at A40. The letter states that "[f]rom a purely medical perspective, . . . the DOC preference would be that [petitioner] continue to be treated at his own expense, while on release during his appeal period." *Id.*

Of course, the single most important factor—the factor that *proves* that custody *is not necessary* to insure the petitioner's future appearance in court—is that on three occasions since his conviction (once in the period between conviction and sentence, and twice since sentence was imposed), he has been temporarily released. During his periods of release, he complied with all bail conditions, see Exhibit Y (Probation Supervision Progress Reports dated 11/20/19, 5/29/20, 6/1/20, 7/16/20, and 3/4/21), at A41-48, and he surrendered to be taken into custody whenever asked to do so. The petitioner has thus demonstrated that he is "bailworthy." See, e.g., *Lopez v. United States*, 404 U.S. 1213, 1214 (1971) (Justice Douglas, as Circuit Justice) (the "applicant has proved himself to be bailworthy, as he has twice before been ordered released on his personal recognizance in connection with this litigation"); *Harris v. United States*, *supra*, 1236 ("The moving papers further indicate that applicant was at liberty after sentencing, pursuant to a stay of execution granted by the Court of Appeals, and that he voluntarily submitted to the authorities upon the expiration of the stay. There is not such 'substantial evidence' in this record to justify denying bail on the ground that applicant is a flight risk."); *Ellis v. United States*, 79 S. Ct. 428 (1959) (Warren, C.J., as Circuit Justice) (admitting petitioner to bail pending appeal to the Court of Appeals where, *inter alia*, petitioner "has responded to date to the orders of the court and there is little likelihood of his absconding"); *Brussel v. United States*, 396 U.S. 1229, 1231 (1969) (Marshall, J., as Circuit Justice) (ordering petitioner's release pending appeal where, *inter alia*, petitioner "has complied with previous orders to appear"); *Cohen v. United States*, 82 S. Ct. 8 (1961) (Douglas, J., as Circuit Justice) (granting bail pending appeal to the Court of Appeals, where, *inter alia*, "[t]he applicant has been out on bail for some

months and has never failed to respond").

"Admission to bail always involves a risk that the accused will take flight. That is a calculated risk which the law takes as the price of our system of justice." *Stack v. Boyle*, 342 U.S. 1, 8 (1951) (Jackson and Frankfurter, JJ., concurring). There is, however, a vast and fundamental difference between the *opportunity* for flight, and an *inclination* to flee. See *Hung v. United States*, 439 U.S. 1326 (1978) (Justice Brennan, as Circuit Justice). In *Hung*, the petitioner was a Vietnamese citizen convicted of espionage-related offenses, whose bail on appeal had been revoked. Justice Brennan noted that the petitioner "maintained contact with the Vietnamese Ambassador in Paris," "has not established a permanent residence in this country," and if he fled to Vietnam, the United States would have no means to procure his return." *Id.*, 1329. "But if these considerations suggest opportunities for flight, they hardly establish any inclination on the part of applicant to flee. And other evidence supports the inference that he is not so inclined." *Id.* Justice Brennan concluded that there was insufficient basis for revoking the petitioner's bail pending appeal, and ordered that his bail should be continued. *Id.*, 1330.

In the present case, the petitioner's actions clearly establish that he has no inclination to flee. The trial judge's denial of bail pending appeal, on an unfounded rationale, was unjustifiable and unreasonable. The petitioner prays for appropriate relief.

Respectfully Submitted,

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INDEX TO APPENDIX

Exhibit A

NO. NNH CR23-177934	:	STATE OF CONNECTICUT
STATE OF CONNECTICUT	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF NEW HAVEN
DANIEL GREER	:	OCTOBER 4, 2019

REVISED CONDITIONS OF RELEASE

At the defendant's request, the court met in chambers on October 4, 2019 with the State, attorneys for the defendant and representatives from bail and probation to discuss revising the conditions of the defendant's release. The court and the parties have agreed to the following conditions of release which the court hereby issues as orders of the court:

1) The defendant shall not commit a federal, state, or local crime.

2) Electronic monitoring through GPS.

3) House arrest except the defendant may go to his attorney's office, medical appointments, and religious services but the synagogue must be disclosed to the Bail Commissioner who will verify that a synagogue is located at that address. The synagogue may change but it must remain in Connecticut.

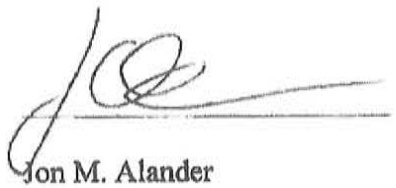
4) The defendant will be provided a curfew exception to allow him to attend to the managing of his properties and business. The exception shall be from 11 a.m. until 3:00 p.m., Monday through Friday. An inclusion zone will be established by Bail Services encompassing the business properties and a reasonable area of travel related to the defendant's home and his business locations. The defendant will be required to maintain a manual handwritten log as to where, when, and with whom he visits during his curfew exception. The defendant is only allowed off house arrest under this curfew exception to attend specific business dealings. If the

defendant requires travel outside of the established inclusion zone for a business related reason, said travel must be approved in advance by Bail Services or Adult Probation.

5) The Court allows Bail Services and Adult Probation to authorize reasonable exceptions to the curfew exceptions as they determine appropriate.

6) The defendant shall not be alone with any minor under the age of sixteen.

BY THE COURT



Jon M. Alander

Judge of the Superior Court

Exhibit B

APPELLATE COURT

STATE OF CONNECTICUT

NNH CR17 0177934 T

STATE OF CONNECTICUT

v.

DANIEL GREER

DECEMBER 23, 2019

O R D E R

THE PETITION OF THE DEFENDANT, FILED DECEMBER 12, 2019, FOR REVIEW OF TRIAL COURT ORDER DENYING MOTION TO SET BAIL PENDING APPEAL, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** THAT REVIEW IS GRANTED, BUT THE RELIEF REQUESTED THEREIN IS DENIED. IT IS FURTHER ORDERED THAT THE REQUEST FOR A HEARING IS DENIED.

BY THE COURT,

/S/
LUKE MATYI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: DECEMBER 23, 2019
COUNSEL OF RECORD
HON. JON M. ALANDER
CLERK, SUPERIOR COURT, NNH CR17 0177934 T

193253

Exhibit C

AFFIDAVIT

I, ROBERT RANFONE, do hereby depose and swear:

1. I am over the age of eighteen and believe in the obligation of an oath.

2. I am a Surety Bail Bond Agent licensed by the State of Connecticut. My office address is 575 Main Street, East Haven, CT 06512-2701.

3. On September 25, 2019, I posted a surety bond in the case of *State of Connecticut v. Daniel Greer*, Docket No. NNH-CR17-0177934. The surety bond was in the amount of six hundred fifty thousand dollars ($650,000), and it was posted on behalf of Daniel Greer, a resident of 133 West Park Avenue, New Haven, CT 06511.

4. The premium for the surety bond was paid by check and credit card, over the course of several months, and was not paid by cash.

Robert Ranfone
ROBERT RANFONE

Subscribed and sworn to before me, this 29th day of January, 2020.

Notary Public
Exp 9/30/23

Exhibit D

AFFIRMATION

I, SARAH GREER, do hereby affirm:

1. I am over the age of eighteen.

2. I reside at 133 West Park Avenue, New Haven, CT 06511. I am the wife of Daniel Greer, who is the defendant in the case of *State of Connecticut v. Daniel Greer*, Docket No. NNH-CR17-0177934.

3. On September 25, 2019, Robert Ranfone, a Surety Bail Bond Agent doing business at 575 Main Street, East Haven, CT 06512-2701, posted a surety bond in my husband's case. The surety bond was in the amount of six hundred fifty thousand dollars ($650,000).

4. No payments toward the premium charged in connection with the surety bond were made in cash. All payments were made either by credit card or check, over the course of several months.

5. I did not pay tens of thousands of dollars in cash, either on September 25, 2019, or any other day, to secure my husband's release on bond following his conviction.

SARAH GREER

Subscribed and affirmed, before me, this 27TH day of January, 2020.

Notary Public

HALIM OMAR
NOTARY PUBLIC
MY COMMISSION EXPIRES OCT. 31, 2020

Exhibit E

NO. NNH CR23-177934

STATE OF CONNECTICUT

v.

DANIEL GREER

STATE OF CONNECTICUT

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW HAVEN

MARCH 2, 2020

ORDER

The defendant has filed a motion to reconsider the court's denial of his motion to set bond pending appeal of his criminal conviction. The defendant has not presented a persuasive reason for the court to change its finding that there exists a serious and substantial risk that the defendant will flee to avoid serving his sentence and that the denial of an appeal bond is necessary to ensure his future appearance in court. The fact that no cash was involved when the defendant paid the substantial bond which was imposed prior to sentencing does not alter the court's conclusion that the defendant possesses the financial means to flee. Accordingly, the motion to reconsider is hereby denied.

BY THE COURT

Jon M. Alander

Judge of the Superior Court

Judicial District of New Haven
SUPERIOR COURT
FILED

MAR - 2 2020

CHIEF CLERK'S OFFICE

Exhibit F

APPELLATE COURT

STATE OF CONNECTICUT

AC 43726

STATE OF CONNECTICUT

v.

DANIEL GREER

MARCH 25, 2020

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT, FILED MARCH 12, 2020, FOR REVIEW OF TRIAL COURT ORDER DENYING RENEWED MOTION TO SET BAIL PENDING APPEAL, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** THAT REVIEW IS GRANTED, BUT THE RELIEF REQUESTED THEREIN IS DENIED. THE REQUEST FOR A HEARING IS DENIED.

BY THE COURT,

/S/
CORY DAIGE
ASSISTANT CLERK-APPELLATE

NOTICE SENT: MARCH 25, 2020
HON. JON M. ALANDER
COUNSEL OF RECORD
CLERK, SUPERIOR COURT, NNH-CR17-0177934-T

194052

Exhibit G

APPELLATE COURT

STATE OF CONNECTICUT

AC 43726

STATE OF CONNECTICUT

v.

DANIEL GREER

APRIL 15, 2020

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT, FILED APRIL 1, 2020, FOR RECONSIDERATION OF ORDER DENYING DEFENDANT'S PETITION FOR REVIEW OF TRIAL COURT ORDER DENYING RENEWED MOTION TO SET BAIL PENDING APPEAL, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D THAT RECONSIDERATION IS GRANTED, BUT THE RELIEF REQUESTED THEREIN IS DENIED WITHOUT PREJUDICE TO THE DEFENDANT FILING A NEW MOTION IN THE SUPERIOR COURT TO SET BAIL PENDING APPEAL. IF SUCH A MOTION IS FILED, A HEARING SHOULD BE SCHEDULED ON SUCH MOTION AS SOON AS PRACTICABLE.

BY THE COURT,

/S/
SUSAN REEVE
DEPUTY CHIEF CLERK

NOTICE SENT: APRIL 15, 2020
HON. JON M. ALANDER
COUNSEL OF RECORD
CLERK, SUPERIOR COURT, NNH-CR17-0177934-T

194161

Exhibit H

NNH-CR17-0177934-T

STATE OF CONNECTICUT

V.

DANIEL GREER

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW HAVEN

AT NEW HAVEN

APRIL 24, 2020

ORDER

The defendant has filed a motion entitled "renewed emergency motion for release on bond based on pandemic health threat" dated April 16, 2020 in which he asks to be released from custody due to the presence of COVID-19 in the Connecticut prison system. The defendant specifically asks that he be released on bond pending his appeal of his criminal conviction or, in the alternative, that he be temporarily released under house arrest conditions for a period of at least thirty days, subject to periodic review as the emergency situation evolves. The State has filed a response objecting to the defendant's request.

The defendant is 79 years old and has chronic asthma. His age and his medical condition result in a higher risk for developing more serious complications from COVID-19 illness. See https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html (last accessed April 23, 2020). The virus is present in the Connecticut prison system at a rate substantially higher than in the state's general population. See https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/COVID-19-Memo-from-Commissioner-PPEs-04142020.pdf?la=en (last accessed April 23, 2020). Moreover, the congregate nature of the housing makes consistent social distancing, which is a recognized method of curtailing the spread of the virus, impractical. At present, the Department of Correction also apparently lacks an adequate supply of personal protective equipment (PPE) for its staff, including masks, a shortfall which further impedes its ability to limit the infection rate of the virus. See

https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/COVID-19-Memo-from-Commissioner-PPEs-04142020.pdf?la=en (last accessed April 23, 2020).

I previously denied the defendant's request for a bond pending appeal because I was convinced that there existed a serious and substantial risk that the defendant would flee during the appeal process. That risk remains, though it has been lessened to some degree by the stay-at-home orders issued in Connecticut and in the tri-state area and by current domestic and international flight restrictions.

We live in extraordinary times. Extraordinary times require extraordinary measures. Given the present high incident of COVID-19 within Connecticut's prisons and the current lack of sufficient PPE for its staff, the defendant's advanced age and underlying medical condition warrant his temporary release from prison until the crisis abates. Accordingly, I hereby order the temporary release of the defendant from incarceration on a conditional promise to appear with the following conditions:

- Intensive pretrial supervision.
- Electronic monitoring through GPS and/or RF monitoring by the Office of Adult Probation.
- House arrest except that the defendant may, with prior approval by the probation officer or bail commissioner, travel to his attorney's office, medical appointments, and religious services. The synagogue must be disclosed to the bail commissioner who will verify that a synagogue is located at that address. The synagogue must be located in the greater New Haven area. Any other exceptions must by pre-approved by the probation officer or bail commissioner and are limited to essential and unforeseen needs not previously outlined.

- Do not travel outside the greater New Haven area.
- Surrender passport to Office of Adult Probation or the Bail Commissioner.
- No contact with male children under the age of 16 years old.
- Do not violate the criminal law.

The temporary release of the defendant will continue for 45 days until June 8, 2020, unless extended or terminated by the court.

BY THE COURT

408383

JON M. ALANDER
JUDGE OF THE SUPERIOR COURT

Exhibit I

NNH-CR17-0177934-T

STATE OF CONNECTICUT

V.

DANIEL GREER

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW HAVEN

AT NEW HAVEN

JUNE 4, 2020

ORDER

On April 24, 2020, I ordered the temporary release of the defendant from incarceration due to the high incident of COVID-19 within Connecticut's prisons, the current lack of sufficient PPE for its staff, and the defendant's advanced age and underlying medical condition The court's temporary order is scheduled to expire on June 8, 2020. The defendant has asked that the temporary order be extended. The State objects to the defendant's request.

The incidence of COVID-19 amongst the staff and inmate population within Connecticut's prisons has not sufficiently abated for the return of the defendant to prison. See https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Health-Information-and-Advisories (last accessed June 4, 2020). Accordingly, I hereby extend my April 24, 2020 order granting the defendant temporary release from incarceration for an additional 45 days until July 23, 2020. The conditions of release set forth in the April 24, 2020 order remain in effect. The temporary release of the defendant will continue until July 23, 2020, unless extended or terminated by the court.

Judicial District of New Haven
SUPERIOR COURT
FILED
JUN 05 2020
CHIEF CLERK'S OFFICE

BY THE COURT

408383

JON M. ALANDER
JUDGE OF THE SUPERIOR COURT

Emailed by Judge on 6/4/2020 - Court closed.
Copies mailed to parties 6/5/2020.

Exhibit J

NNH-CR17-0177934-T

STATE OF CONNECTICUT

V.

DANIEL GREER

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW HAVEN

AT NEW HAVEN

JULY 14, 2020

ORDER

The temporary release of the defendant is scheduled to expire on July 23, 2020. The defendant has indicated that he intends to request an extension of his release. In order to provide sufficient time for the defendant to file his request and the state to file its response, the defendant's temporarty release is hereby extended to July 30, 2020,unless further extended or terminated by the court. The defendant is ordered to file his motion and supporting brief by July 20, 2020 and the state is ordered to file its objection by July 24, 2020.

BY THE COURT

408383

JON M. ALANDER
JUDGE OF THE SUPERIOR COURT

Judicial District of New Haven
SUPERIOR COURT
FILED

JUL 14 2020

CHIEF CLERK'S OFFICE

Exhibit K

NNH-CR17-0177934-T	SUPERIOR COURT
STATE OF CONNECTICUT	JUDICIAL DISTRICT OF NEW HAVEN
V.	AT NEW HAVEN
DANIEL GREER	JULY 28, 2020

ORDER

On April 24, 2020, I ordered the temporary release of the defendant from incarceration due to the high incident of COVID-19 within Connecticut and its prisons. The court's temporary order is scheduled to expire on July 30, 2020. The defendant has asked that the temporary order be extended. The State objects to the defendant's request.

I granted the defendant a temporary release from prison because the high incident of COVID-19 within Connecticut's prisons combined with the then existing lack of sufficient PPE for correction staff resulted in a unacceptably high risk of the defendant developing serious complications from COVID-19 illness due to his advanced age and asthma. Those conditions no longer exist to the degree necessary to warrant an extension of the defendant's temporary release from incarceration.

The incidence of individuals testing postive for COVID-19 within Connnecticut and, most importantlly, within its prisons has fallen dramatically. In April, when the court granted the defendant a temporary release from prison, Connecticut was experiencing in excess of 1,000 new cases of COVID-19 each day. That figure has now decreased to less than 100 each day. See https://data.ct.gov/stories/s/COVID-19-data/wa3g-tfvc/. (Last accessed July 26, 2020). The number of incarcerated individuals known to be ill with the virus has also decreased substantially with only 2 inmates currently known to have the coronavirus. See https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Health-Information-and-

Advisories. (last accessed July 27, 2020). In addition, the Connecticut Department of Correction (DOC) has taken steps to guard against the spread of the virus within its facilities. DOC has entered into a settlement agreement resolving litigation concerning the presence of Covid-19 in its prisons. The agreement establishes a five-person panel to monitor the provision of sanitation, hygiene supplies, personal protective equipment, testing, quarantining, medical monitoring and treatment of COVID-19 for people in DOC custody. *McPherson v Lamont*, Civil No. 3:20cv534 (JBA) (D. Conn.) (July 20, 2020). DOC will test each person in each facility for the virus, unless a person has tested positive for it in the past fourteen days or does not consent to be tested, and will quarantine every incarcerated person who comes into a prison for fourteen days. DOC will also provide increased medical monitoring of people who test positive for the virus. While the defendant's increased risk regarding COVID-19 due to his advanced age and medical condition has not changed, DOC's ability to provide reasonable protections against that risk has been substantially strengthened

For the foregoing reasons, the defendant's request for an extension of the court's order granting the defendant a temporary release from incarceration is hereby denied. The defendant is ordered to return to prison on July 30, 2020 upon the expiration of the court's prior order. The defendant is ordered to appear at Superior Court at 235 Church Street in New Haven at 10 a.m. on July 30, 2020 so that he can be transported back to the custody of the Department of Correction.

The defendant's request that the release order be extended to allow the defendant to seek appellate review and to receive medical treatment is hereby denied.

BY THE COURT

408383

JON M. ALANDER
JUDGE OF THE SUPERIOR COURT

Exhibit L

APPELLATE COURT

STATE OF CONNECTICUT

AC 43726

STATE OF CONNECTICUT

v.

DANIEL GREER

JULY 29, 2020

O R D E R

THE EMERGENCY MOTION OF THE DEFENDANT-APPELLANT, FILED JULY 29, 2020, FOR STAY OF EXECUTION OF TRIAL COURT ORDER TERMINATING THE DEFENDANT'S TEMPORARY RELEASE FROM CUSTODY, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** DENIED.

BY THE COURT,

/S/
LUKE MATYI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: JULY 29, 2020
HON. JON M. ALANDER
CLERK, SUPERIOR COURT, NNH CR17 0177934 T
COUNSEL OF RECORD

202201

Exhibit M

SUPREME COURT

STATE OF CONNECTICUT

NNH CR17 0177934 T

STATE OF CONNECTICUT

v.

DANIEL GREER

September 9, 2020

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT, FILED AUGUST 14, 2020, FOR TRANSFER OF PETITION FOR REVIEW OF BAIL FROM THE APPELLATE COURT TO THE SUPREME COURT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** DENIED.

BY THE COURT,

/S/
LUKE MATYI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: September 10, 2020
COUNSEL OF RECORD
CLERK, SUPERIOR COURT, NNH CR17 0177934 T
HON. JON M. ALANDER

200055

Exhibit N

APPELLATE COURT

STATE OF CONNECTICUT

AC 43726

STATE OF CONNECTICUT

v.

DANIEL GREER

September 10, 2020

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT, FILED AUGUST 7, 2020, FOR REVIEW OF TRIAL COURT ORDER DENYING EXTENSION OF RELEASE ORDER AND TERMINATING BOND PENDING APPEAL, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **O R D E R E D** THAT REVIEW IS GRANTED, BUT THE RELIEF REQUESTED THEREIN IS DENIED.

BY THE COURT,

/S/
LUKE MATYI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: September 10, 2020
HON. JON M. ALANDER
COUNSEL OF RECORD
CLERK, SUPERIOR COURT, NNH CR17-0177934-T

202290

Exhibit O

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DANIEL GREER,
Petitioner,

v.

COMMISSIONER OF THE CONNECTICUT DEPARTMENT OF CORRECTION,
Respondent.

No. 3:20-cv-1568 (JAM)

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Daniel Greer is a prisoner of the Connecticut Department of Correction following his criminal conviction in Connecticut state court. Greer has filed this federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 contending that the Connecticut state courts have unconstitutionally denied him release on bail or bond pending appeal. Because I conclude that there is a rational basis in the state court record for the denial of bail or bond pending appeal, I will deny the petition.

BACKGROUND

Greer was convicted after a jury trial in Connecticut state court in September 2019 on four counts of risk of injury to a child. On December 2, 2019, Connecticut Superior Court Judge Jon Alander sentenced Greer to a total effective term of 20 years of imprisonment, execution suspended after 12 years and to be followed by 10 years of probation. Doc. #11-1 at 32.

Prior to his sentencing, Greer was on pre-trial release and subject to a bond of $750,000. *Id.* at 38. After imposing Greer's sentence, Judge Alander heard argument from counsel on Greer's motion for release on bond pending appeal. For the crimes at issue in this case, Connecticut law provides that a criminal defendant "may be released pending final disposition of the case, unless the court finds custody to be necessary to provide reasonable assurance of such

person's appearance in court," and subject to other conditions such as payment of a bond or other security. *See* Conn. Gen. Stat. § 54-63f.

Greer's counsel argued for bond pending appeal on the ground that his client had surrendered his passport and was not a risk of flight because he was 79 years old, had lived in New Haven for more than 40 years, and had complied with all previous conditions of release, including conditions of strict house arrest and electronic monitoring that were imposed since the jury returned its guilty verdicts. Doc. #11-1 at 35-36. By contrast, the prosecutor argued for denial of bond pending appeal, contending that the imposition of sentence meant that "circumstances have drastically changed[,]" because "[t]he punishment is no longer nebulous with the possibility of a completely suspended sentence," and that Greer would be an increased "risk of flight because now he knows exactly what he is facing." *Id.* at 39.

Judge Alander agreed with the prosecution that the imposition and length of sentence constituted a "substantial change in circumstances" and that "there exists a serious and substantial risk that the defendant will flee to avoid serving that sentence." *Id.* at 40. Judge Alander noted that the prison sentence imposed exceeded Greer's life expectancy and that "there is no greater incentive to flee than the cold realization that otherwise you will spend all of the remaining years of your life prison." *Ibid.*

Judge Alander further found that Greer "has the financial means to flee." *Ibid.* He stated his "understanding that when I raised the defendant's bond to $750,000.00 after his conviction[,] his wife paid a bondsman tens of thousands of dollars in cash that very day" and that "[t]he defendant clearly has access to resources to finance an escape from accountability." *Ibid.* Accordingly, Judge Alander found "that the denial of an appeal bond is necessary to ensure the Defendant's future appearance in court pending his appeal." *Ibid.*

Greer appealed the denial of bond pending appeal. The Connecticut Appellate Court denied relief without a statement of reasons in December 2019. Doc. #1-4 at 2.

Greer then moved for reconsideration of Judge Alander's denial of bond on the ground that there was no evidence to support Judge Alander's conclusion that his wife paid cash to the bondsman. On March 2, 2020, Judge Alander entered an order re-affirming his decision to deny bond pending appeal. Doc. #1-7 at 2. He concluded that "[t]he defendant has not presented a persuasive reason for the court to change its finding that there exists a serious and substantial risk that the defendant will flee to avoid serving his sentence and that the denial of an appeal bond is necessary to ensure his future appearance in court." *Ibid.* He added that "[t]he fact that no cash was involved when the defendant paid the substantial bond which was imposed prior to sentencing does not alter the court's conclusion that the defendant possesses the financial means to flee." *Ibid.*

Greer appealed this denial in March 2020, noting as well the danger that COVID-19 posed to him in a prison setting. Doc. #1 at 11 (¶ 28). The Connecticut Appellate Court again denied relief without a statement of reasons. Doc. #1-8 at 2. Greer then moved for reconsideration principally on arguments related to the spread of COVID-19, and the Appellate Court again denied relief but stated that its denial was "without prejudice to the defendant filing a new motion in the superior court to set bail pending appeal" and that "[i]f such a motion is filed, a hearing should be scheduled on such motion as soon as practicable." Doc. #1-9 at 2.

Greer followed by filing a new motion for release based on the serious risk that COVID-19 posed to him due to his age and pre-existing conditions. Doc. #1 at 12 (¶ 34). On April 24, 2020, Judge Alander decided to grant Greer temporary release for 45 days, concluding that "the present high incident rate of COVID-19 within Connecticut's prisons and the current lack of

sufficient PPE for its staff, the defendant's advanced age and underlying medical condition warrant his temporary release from prison until the crisis abates." Doc. #1-10 at 3. He noted his prior conclusion that there was "a serious and substantial risk that the defendant would flee during the appeal process," and that "[t]hat risk remains, though it has been lessened to some degree by the stay-at-home orders issued in Connecticut and in the tri-state area and by current domestic and international flight restrictions." *Ibid.* Greer was released subject to intensive pretrial supervision, electronic monitoring, and house arrest conditions. *Ibid.*

Greer's temporary release was extended twice until July 30 due to the continued high incidence of COVID-19 in Connecticut's prisons. Docs. #1-11, #1-12. Ultimately, however, Judge Alander ruled on July 28, 2020 that the conditions related to COVID-19 "no longer exist to the degree necessary to warrant an extension." Doc. #1-14 at 2. While Greer's "increased risk regarding COVID-19 due to his advanced age and medical condition has not changed, DOC's ability to provide reasonable protections against that risk has been substantially strengthened." *Id.* at 3.

Greer returned to prison and appealed the denial of the further extension of his temporary release. The Connecticut Supreme Court denied review, and the Connecticut Appellate Court denied relief again without a statement of reasons. Docs. #1-15, #1-16. Greer has now filed this federal petition for writ of habeas corpus to seek his release on bond pending appeal.

DISCUSSION

A state prisoner may seek relief in a federal court by way of a petition for writ of habeas corpus if the prisoner alleges that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The prisoner, however, must ordinarily exhaust any available remedies in the state courts before seeking relief from a federal court. §

2254(b)(1). Here, the Commissioner expressly waived the exhaustion requirement through counsel at oral argument for Greer's claim challenging the state court's denial of bond pending appeal under the Eighth and Fourteenth Amendments. *See* § 2254(b)(3).

Even if a prisoner has properly exhausted state court remedies or if the exhaustion requirement has been waived, § 2254 requires a federal court to grant great deference to a state court's determinations of law and fact. A federal court may not grant relief "with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim" either "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." § 2254(d)(1)-(2). Moreover, to the extent that a prisoner seeks to dispute any finding of fact by a state court judge, "a determination of a factual issue made by a State court shall be presumed to be correct[,]" and "[t]he applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." § 2254(e)(1).

Greer acknowledges that there is no freestanding federal constitutional right for a state defendant to be released on bail or bond pending appeal of a criminal conviction. Doc. #9 at 8. Instead, he relies on a Second Circuit holding that recognizes a conditional constitutional right to bail pending appeal—that "once a state makes provision for such bail [pending appeal], the Eighth and Fourteenth Amendments require that it not be denied arbitrarily or unreasonably." *Finetti v. Harris*, 609 F.2d 594, 599 (2d Cir. 1979). In *Finetti*, the Second Circuit ruled that "the mere failure of the state court to articulate reasons for its denial of bail pending appeal does not create a presumption of arbitrariness," but that state court decisions "carry a presumption of

regularity" which "may be overcome" only if "the defendant bears the burden of showing that there is no rational basis in the record for the denial of bail." *Id.* at 601 (cleaned up).

As noted above, § 2254 dually allows for a grant of federal habeas corpus relief on grounds of a state court's unreasonable error of *law* under § 2254(d)(1) or a state court's unreasonable error of *fact* under § 2254(d)(2). At oral argument the parties agreed that Greer's petition does not present a cognizable error of law under § 2254(d)(1). That is because the text of § 2254(d)(1) requires that a claimed error of law be one involving clearly established precedent of the United States Supreme Court. *See White v. Woodall*, 572 U.S. 415, 419 (2014). Notwithstanding the Second Circuit's ruling in *Finetti*, there does not appear to be any Supreme Court precedent recognizing a federal constitutional right of a state criminal defendant to be granted bond pending appeal. *See, e.g., Dorsey v. Martuscello*, 2016 WL 552954, at *5 (N.D.N.Y. 2016). Therefore, Greer has no grounds to complain of an error of law that is cognizable under § 2254(d)(1).

Greer relies instead on a claimed factfinding error under § 2254(d)(2). The statute's reference in § 2254(d)(1) to rights that have been clearly established by the Supreme Court is conspicuously absent from § 2254(d)(2). Indeed, the text of § 2254(d)(2) allows for relief to be granted simply for a "claim" that "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." That subpart is silent about whether an unreasonable determination of facts must in turn have resulted in a violation of *any* legal right, much less a right that has been clearly established by a decision of the United States Supreme Court.

Nevertheless, the Supreme Court has made clear that § 2254(d)(2) "does not repeal the command of § 2254(a) that habeas relief may be afforded to a state prisoner 'only on the ground'

that his custody violates federal law." *Wilson v. Corcoran*, 562 U.S. 1, 6 (2010) (*per curiam*). Thus, relief may lie under § 2254(d)(2) for a state court's unreasonable determination of the facts only if this unreasonable determination of the facts results in turn in a violation of federal law. Greer argues, and I assume for the purpose of this ruling, that such a violation includes even federal rights—like the conditional constitutional right to bail recognized by the Second Circuit in *Finetti*—that have not risen to the particularity and prominence to qualify as clearly established law of the United States Supreme Court.

And there is yet another twist here: the federal constitutional right that the Second Circuit recognized in *Finetti* was made conditional on the pre-existence of an underlying state law right for criminal defendants to be granted bail pending appeal. *See* 609 F.2d at 599. Therefore, when deciding if the Connecticut state courts engaged in an unreasonable determination of the facts such that there was an unconstitutionally arbitrary or unreasonable denial of bail, I must keep in mind the underlying state law factual standard for the grant of bail pending appeal—that is, whether "custody" is "necessary to provide reasonable assurance of [the defendant's] appearance in court." Conn. Gen. Stat. § 54-63f.

But my role is not to decide if I agree in the first instance with Judge Alander's factual findings. As the Supreme Court has noted, "a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010). "Instead, § 2254(d)(2) requires that [the federal habeas court] accord the state trial court substantial deference. If reasonable minds reviewing the record might disagree about the finding in question, on habeas review that does not suffice to supersede the trial court's determination." *Brumfield v. Cain*, 576 U.S. 305, 314 (2015) (cleaned up).

Moreover, even to the extent that doubts might remain about the correctness of any state court fact determinations, *Finetti* makes clear that a federal court may evaluate the entire record which was before the state court apart from any explicit findings and that no constitutional violation lies unless "the defendant bears the burden of showing that there is no rational basis *in the record* for the denial of bail." 609 F.2d at 601 (emphasis added). Under *Finetti*, "federal district courts do not sit as appellate courts to review the use or abuse of discretion of state courts in the granting or withholding of bail pending appeal." *Id.* at 600 (cleaned up).

In light of this somewhat intricate legal framework, it is clear that Greer falls well short of establishing valid grounds for habeas corpus relief. Because the Connecticut Supreme Court and the Connecticut Appellate Court have issued orders denying review or relief without explanation in this case, it is proper for me to "look through" to the reasons stated in Judge Alander's orders. *See Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018).

There was quite plainly at least a rational basis in the record for Judge Alander's decision not to grant bail pending appeal. It was rational for Judge Alander to conclude that the imposition of a lengthy prison sentence beyond Greer's life expectancy furnished a powerful incentive for him to flee. *See, e.g., United States v. Madoff*, 316 F. App'x 58, 59 (2d Cir. 2009) ("[a]s to the incentive to flee (based on his age and exposure to a lengthy imprisonment), we consider that such an incentive naturally bears upon and increases the risk of flight"). It was rational as well for Judge Alander to conclude that Greer had access to financial resources to make flight possible. And Greer has not shown that Judge Alander's conclusion was based on any unreasonable factual findings.

The most that Greer has done is point to countervailing factors—such as Greer's age, his community ties, and his track record of compliance with conditions of release while he was on

release—to suggest that his imprisonment is not necessary to reasonably assure his future presence at court proceedings. He makes some strong arguments why he is not a likely risk of flight. But the procedural limits of my review under § 2254 as well as the substantive bounds of the constitutional right at issue as stated in *Finetti* do not allow me to conduct my own re-weighing of all the release factors. Because there is a rational basis in the record for Judge Alander's decision and because Greer has not shown that Judge Alander made any unreasonable determination of the facts, Greer has not shown grounds to grant his petition for writ of habeas corpus.

The last issue to address is COVID-19. Greer argues that he is in jeopardy while imprisoned of contracting COVID-19 in light of his age and health condition. But Greer does not explain how any threat from COVID-19 relates to his claim under *Finetti* to a constitutional right to bail. The constitutional right recognized by *Finetti* is premised on the existence of a state law right to bail, and the state law at issue—Conn. Gen. Stat. § 54-63f—conditions the right to bail solely on consideration of factors that bear on ensuring a convicted defendant's future appearance in court, not on additional factors such as the risks to a defendant's health from imprisonment or the likelihood of success on appeal. Therefore, to the extent that a Connecticut state court may decline or fail to take into consideration a convicted defendant's health concerns when deciding if bail should be granted pending appeal, the failure to do so does not amount to an arbitrary or unreasonable deprivation of the limited constitutional right to bail pending appeal as recognized in *Finetti*.

Greer's counsel stated at oral argument that he did not assert grounds for the petition for writ of habeas corpus other than a constitutional right to bail under the Eighth and Fourteenth Amendments as recognized in *Finetti*. Accordingly, there is no occasion at this time to consider

whether Greer has alleged sufficient facts to give rise to a conditions-of-confinement claim for release on the ground of the threat to his health posed by COVID-19. Ordinarily, a sentenced prisoner seeking to raise such a claim under the Eighth Amendment would be required to show not only a serious risk to health or safety but also that prison officials acted with a subjectively reckless state of mind akin to criminal recklessness (*i.e.*, reflecting actual awareness of a substantial risk that serious harm to the prisoner would result). *See, e.g., Morgan v. Dzurenda*, 956 F.3d 84, 89 (2d Cir. 2020); *Collazo v. Pagano*, 656 F.3d 131, 135 (2d Cir. 2011) *(per curiam).* Greer has not presented an Eighth Amendment deliberate-indifference-to-health-or-safety claim, and it is unclear to what extent such a claim would be subject to exhaustion requirements specific to his facility of confinement, *see e.g., Griffin v. Cook*, 2020 WL 2735886 (D. Conn. 2020), and possibly subject to preclusion altogether by the class action settlement in *McPherson v. Lamont*, 3:20-cv-534-JBA (D. Conn. 2020).

CONCLUSION

The petition for writ of habeas corpus (Doc. #1) is DENIED. Because Greer has not made a substantial showing of the denial of a constitutional right, *see* 28 U.S.C. § 2253(c)(2), no certificate of appealability shall enter. The Clerk is directed to enter judgment in favor of the respondent and to close this case.

It is so ordered.

Dated at New Haven this 18th day of November 2020.

/s/ Jeffrey Alker Meyer
Jeffrey Alker Meyer
United States District Judge

Exhibit P

NO. NNH CR23-177934 : STATE OF CONNECTICUT

STATE OF CONNECTICUT : SUPERIOR COURT

v. : JUDICIAL DISTRICT OF NEW HAVEN

DANIEL GREER : DECEMBER 10, 2020

ORDER OF TEMPORARY RELEASE

The defendant has filed a motion entitled "motion for renewed release order"in which he asks to again be released from custody pending his appeal of his criminal convictions due to the increased rate of COVID-19 infections in Connecticut. The State has filed a response objecting to the defendant's request.

Connecticut is currently experiencing a dramatic and unprecedented surge in the number of COVID-19 infections among its residents and, most importantly, within its correctional facilities, particularly, the Cheshire Correctional Institution, where the defendant is presently incarcerated. On July 28, 2020, when I issued my decision ordering the defendant's return to prison, Connecticut was experiencing less than 100 new COVID-19 cases each day and only two incarcerated individuals were known to be ill with the virus. On December 9, 2020, the daily infection rate for Connecticut residents was 2,290.

See https://data.ct.gov/stories/s/COVID-19-data/wa3g-tfvc/ (last accessed December 9, 2020). Over a two week period from November 21, 2020 through December 4, 2020, 268 inmates at the Cheshire Correctional Institution tested positive for the coronavirus. See Second Supplemental Declaration of Carey Freson, MD, CCHP appended to the state's opposition to the defendant's temporary release. In light of the defendant's advanced age and comorbidities, his temporary release from incarceration until the current surge abates or a vaccine is available is warranted.

Accordingly, I hereby order the temporary release of the defendant from incarceration on a conditional promise to appear with the following conditions:

• Intensive pretrial supervision.

• Electronic monitoring through GPS and/or RF monitoring by the Office of Adult Probation.

• House arrest except that the defendant may, with prior approval by the probation officer or bail commissioner, travel to his attorney's office, medical appointments, and religious services. The synagogue must be disclosed to the bail commissioner who will verify that a synagogue is located at that address. The synagogue must be located in the greater New Haven area. Any other exceptions must by pre-approved by the probation officer or bail commissioner and are limited to essential and unforeseen needs not previously outlined.

• Do not travel outside the greater New Haven area.

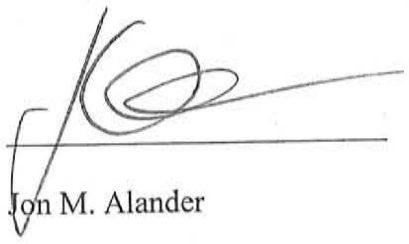
• Surrender passport to Office of Adult Probation or the Bail Commissioner.

• No contact with male children under the age of 16 years old.

• Do not violate the criminal law.

The temporary release of the defendant will continue until February 1, 2021, unless extended or terminated by the court.

BY THE COURT



Jon M. Alander

Judge of the Superior Court

Exhibit Q

NNH-CR17-0177934-T	SUPERIOR COURT
STATE OF CONNECTICUT	JUDICIAL DISTRICT OF NEW HAVEN
V.	AT NEW HAVEN
DANIEL GREER	JANUARY 25, 2021

ORDER

The defendant's motion for an extension of his temporary release is hereby granted. The defendant's temporary release from incarceration is extended to March 16, 2021 in order to allow the defendant to receive a Covid-19 vaccine and to allow for immunization to take effect.

BY THE COURT

408383

JON M. ALANDER
JUDGE OF THE SUPERIOR COURT

Exhibit R

NNH-CR17-0177934-T	SUPERIOR COURT
STATE OF CONNECTICUT	JUDICIAL DISTRICT OF NEW HAVEN
V.	AT NEW HAVEN
DANIEL GREER	MARCH 8, 2021

ORDER

The defendant's motion for an extension of his temporary release is hereby granted. The defendant's temporary release from incarceration is extended to April 8, 2021 in order to allow the defendant to receive his second dose of the Covid-19 vaccine and to allow for immunization to take effect.

BY THE COURT

408383

JON M. ALANDER
JUDGE OF THE SUPERIOR COURT

Exhibit S

NO. NNH CR23-177934

STATE OF CONNECTICUT

V.

DANIEL GREER

STATE OF CONNECTICUT

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW HAVEN

APRIL 7, 2021

ORDER

On December 10, 2020, I ordered the temporary release of the defendant from incarceration due to a surge in the number of COVID-19 infections among prisoners in Connecticut's correctional facilities and particularly within the Cheshire Correctional Institution where the defendant was incarcerated. I twice extended the defendant's temporary release, on January 25, 2021 and March 8, 2021, to allow the defendant to receive the COVID-19 vaccine and to allow for immunization to take full effect. The defendant's temporary release is scheduled to expire on April 8, 2021. The defendant has moved to extend the order of release until the appeal of his criminal conviction is determined. The state objects to the defendant's request.

I previously denied the defendant's request for an appeal bond finding that there exists a serious and substantial risk that the defendant will flee to avoid serving the substantial term of imprisonment imposed upon him. The defendant argues that his record of compliance during his temporary release, the issuance of a federal court order restricting payment of funds to the defendant by various housing entities which he controls, his existing medical issues, and the ongoing presence of COVID-19 in our prisons warrant continued release from incarceration pending his appeal of his criminal conviction. I am not persuaded.

Traveling during the defendant's temporary release was greatly restricted, both domestically and internationally, due to the pandemic. As the pandemic abates, the defendant's ability to travel and the corresponding risk of flight increases. The existence of the temporary court order issued by the federal court restricting payments to the defendant from various

housing entities does not prevent the defendant from using other financial resources to fund an escape or preclude the defendant from violating the court order and tapping into the restricted funds in order to flee. It is not unexpected that an 80 year old individual will have health issues and medical needs where it would be preferable to receive treatment through continued care by his personal physicians. That does not mean that those health issues cannot be appropriately addressed by the medical staff of the Department of Correction. Significantly, none of the defendant's health issues are immediately life threatening. Finally, while COVID-19 has not been completely eradicated within the state's correctional facilities, the surge which prompted the defendant's most recent temporary release has abated and the defendant is now fully vaccinated and immunized.

The court remains convinced that a substantial and serious risk of flight continues to exist and the defendant's custody during his appeal is necessary to provide reasonable assurance of his appearance in court. Accordingly, the defendant's request to extend his temporary release from incarceration is hereby denied. The defendant is ordered to return to prison on April 8, 2021 upon the expiration of the court's prior order. The defendant is ordered to appear at the Superior Court at 235 Church Street in New Haven at 10 a.m. on April 8, 2021 so that he can be transported back to the custody of the Department of Correction.

BY THE COURT

Jon M. Alander (#408383)

Jon M. Alander

Judge of the Superior Court

Exhibit T

APPELLATE COURT

STATE OF CONNECTICUT

AC 43726

STATE OF CONNECTICUT

v.

DANIEL GREER

APRIL 7, 2021

ORDER

THE EMERGENCY MOTION OF THE DEFENDANT-APPELLANT, FILED APRIL 7, 2021, FOR STAY OF EXECUTION OF TRIAL COURT ORDER TERMINATING THE DEFENDANT'S TEMPORARY RELEASE FROM CUSTODY, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** DENIED.

BY THE COURT,

/S/
LUKE MATYI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: APRIL 7, 2021
HON. JON M. ALANDER
COUNSEL OF RECORD
CLERK, SUPERIOR COURT, NNH CR17 0177934 T

203793

Exhibit U

APPELLATE COURT

STATE OF CONNECTICUT

AC 43726

STATE OF CONNECTICUT

v.

DANIEL GREER

JUNE 4, 2021

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT, FILED APRIL 19, 2021, FOR REVIEW OF TRIAL COURT ORDER DENYING EXTENSION OF RELEASE ORDER AND TERMINATING BOND PENDING APPEAL, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** THAT REVIEW IS GRANTED, BUT THE RELIEF REQUESTED THEREIN IS DENIED.

BY THE COURT,

/S/
LUKE MATYI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: JUNE 4, 2021
HON. JON M. ALANDER
COUNSEL OF RECORD
CLERK, SUPERIOR COURT, NNH-CR17-0177934-T

203843

Exhibit V

STATE OF CONNECTICUT

SUPREME COURT
APPELLATE COURT

CARL D. CICCHETTI
CHIEF CLERK

RENÉ L. ROBERTSON
DEPUTY CHIEF CLERK

231 CAPITOL AVENUE
HARTFORD, CT 06106

TEL. (860) 757-2200

June 25, 2021

Re: NNH-CR17-0177934-T *State of Connecticut v. Daniel Greer*

Dear Counsel of Record:

Today, Chief Justice Richard A. Robinson denied your Application for Certification to Appeal pursuant to Connecticut General Statute § 52-265a, which was filed on June 18, 2021.

Very truly yours,

/s/
L. Jeanne Dullea
Assistant Clerk-Appellate

Notice sent: June 25, 2021
Counsel of Record
Hon. Jon M. Alander
Clerk, Superior Court, NNH-CR17-0177934-T

200347

Exhibit W

SUPREME COURT

STATE OF CONNECTICUT

AC 43726

STATE OF CONNECTICUT

v.

DANIEL GREER

June 1, 2021

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT, FILED MARCH 25, 2021, FOR TRANSFER OF APPEAL FROM APPELLATE COURT TO SUPREME COURT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** DENIED.

BY THE COURT,

/S/
LUKE P. MATYI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: June 1, 2021
COUNSEL OF RECORD
CLERK, SUPERIOR COURT, NNHCR170177934T
HON. JON M. ALANDER

200276

Exhibit X

STATE OF CONNECTICUT
DEPARTMENT OF CORRECTION
24 Wolcott Hill Road
Wethersfield, CT 06109

Date: 4/5/2021

Ref: Daniel Greer

To Whom it may concern:

This letter is written to summarize patient Daniel Greer current medical state.
After careful review of Mr. Daniel Greer's #00433222 Dept. of Correction (DOC) and community health records: He is currently being treated by his urologist, for possible prostate cancer and bladder obstruction issues. He is also being seen by cardiologist, for symptoms of congestive heart failure (CHF); the CHF was diagnosed after his December release, though the symptoms (mainly lower extremity swelling and shortness of breath) predates his release.
Mr Greer sees a pulmonologist (lung specialist), for breathing issues secondary to fluid congestion of his lungs. The records high light history of periodic choking episodes at night.

Finally, he is also being treated by an ophthalmologist (eye doctor) for periodic injections due to macular degeneration, in an attempt to preserve vision in his one "good eye".
It is clear the Mr. Greer, at 80 years of age, suffers from many significant health issues. None are immediately life-threatening, but all require regular monitoring by primary care providers and most in importantly specialists, in order to preserve his health.
Dealing with the medical needs of elderly inmates is always a challenge to, and burden on, the correctional system. The COVID-19 pandemic has significantly increased that challenge, as travel restrictions make it harder to arrange the type of periodic monitoring that Mr. Greer's conditions require.

I do not know all the factors the court must take into account in deciding whether to allow a defendant to be released pending appeal. From a purely medical perspective, though, the DOC preference would be that he continue to be treated at his own expense, while on release during his appeal period.

Professionally,
Johnny C. Wright, MD, DPM, CCHP
Regional Medical Director
Connecticut Dept. of Corrections

Johnny C. Wright, MD, DPM CCHP
CT Department of Correction
Health Services Unit
(860) 692-6282

CA 2019-268035 Exhibit Y

PROBATION SUPERVISION PROGRESS REPORT IN RESPONSE TO A NEW ARREST
JD-AP-163 New 2-11

STATE OF CONNECTICUT
COURT SUPPORT SERVICES DIVISION
ADULT PROBATION
www.jud.ct.gov

Date	Name of person on probation	Date of birth
11/20/2019	**Daniel Greer**	**06/15/1940**

Pending case docket number(s)
NNH-CR17-0177934-T

The person named above is currently on probation until _____ for:

Docket number	Total effective sentence
Charges	
Docket number	Total effective sentence
Charges	
Docket number	Total effective sentence
Charges	

Adjustment To Supervision/Compliance With Conditions

☒ Satisfactory ☐ Unsatisfactory

Specifically:

Since last meeting with the Honorable Judge Alander, Greer has remained in compliance with GPS monitoring. He continues to communicate with Probation regarding his whereabouts and activities as directed.

Response/Recommendation

☐ Violation of Probation Warrant

☐ Motion for a Violation of Probation (see attached)

☐ Other:

☐ Recommendation:

Name of Probation Officer	Signature of Probation Officer	Date signed
Tricia Belin		**11/20/2019**
Address		Telephone number
867 State St New Haven, CT		**2037897876**

PROBATION SUPERVISION PROGRESS REPORT IN RESPONSE TO A NEW ARREST
JD-AP-163 New 2-11

STATE OF CONNECTICUT
COURT SUPPORT SERVICES DIVISION
ADULT PROBATION
www.jud.ct.gov

Date	Name of person on probation	Date of birth
05/29/2020	Daniel Greer	06/15/1940

Pending case docket number(s)
N/A

The person named above is currently on probation until _____ for:

Docket number	Total effective sentence
NNH-CR17-0177934-T	20 years, e/s/a 12 years with 10 years probation
Charges: 4 counts of Illegal Sexual Contact-victim<age 16; 53-21(a)(2)	
Docket number	Total effective sentence
Charges	
Docket number	Total effective sentence
Charges	

Adjustment To Supervision/Compliance With Conditions

☒ Satisfactory ☐ Unsatisfactory

Specifically:

On 4/24/2020, Greer was released from the Department of Correction and placed on a GPS monitor. To date he has had five (5) approved leaves - 4/29/2020, 5/8/2020, 5/9/2020, 5/20/2020, and 5/22/2020. No violation activity has been observed.

Please don't hesitate to reach out if you have any further questions.

Response/Recommendation

☐ Violation of Probation Warrant

☐ Motion for a Violation of Probation (see attached)

☐ Other:

☐ Recommendation:

Name of Probation Officer	Signature of Probation Officer	Date signed
Tricia Bellin		05/29/2020
Address: 867 State Street New Haven, CT		Telephone number: 8608172878

PROBATION SUPERVISION PROGRESS REPORT IN RESPONSE TO A NEW ARREST
JD-AP-163 New 2-11

STATE OF CONNECTICUT
COURT SUPPORT SERVICES DIVISION
ADULT PROBATION
www.jud.ct.gov

Date	Name of person on probation	Date of birth
06/01/2020	Daniel Greer	08/15/1940

Pending case docket number(s)
N/A

The person named above is currently on probation until _____ for:

Docket number	Total effective sentence
NNH-CR17-0177934-T	20 years, s/e/a 12 years with 10 years probation
Charges: 4 counts of Illegal Sexual Contact-victim<age 16; 53-21(a)(2)	
Docket number	Total effective sentence
Charges	
Docket number	Total effective sentence
Charges	

Adjustment To Supervision/Compliance With Conditions

☒ Satisfactory ☐ Unsatisfactory

Specifically:

On 4/24/2020, Greer was released from the Department of Correction and placed on a GPS monitor. To date he has had five (5) approved leaves -

On 4/29/2020 he went to the Sex offender registry,
On 5/8/2020 he went to the eye dr for his injections,
On 5/9/2020 he went to the Yeshiva,
On 5/20/2020 he went to see Dr. Calamari, his urologist,
On 5/22/2020 he went to Quest laboratory for blood work.

No violation activity has been observed.

Please don't hesitate to reach out if you have any further questions.

Response/Recommendation

☐ Violation of Probation Warrant

☐ Motion for a Violation of Probation (see attached)

☐ Other:

☐ Recommendation:

Name of Probation Officer	Signature of Probation Officer	Date signed
Address		Telephone number

Date	Name of person on probation	Date of birth
06/01/2020	Daniel Greer	06/15/1940

Pending case docket number(s)

N/A

Recommendation *(Continued)*

PROBATION SUPERVISION PROGRESS REPORT IN RESPONSE TO A NEW ARREST
JD-AP-163 New 2-11

STATE OF CONNECTICUT
COURT SUPPORT SERVICES DIVISION
ADULT PROBATION
www.jud.ct.gov

Date	Name of person on probation	Date of birth
07/16/2020	Daniel Greer	06/15/1940

Pending case docket number(s)
N/A

The person named above is currently on probation until _____ for:

Docket number	Total effective sentence
NNH-CR17-0177934-T	20 years, e/s/a 12 years with 10 years probation
Charges: 4 counts of Illegal Sexual Contact-victim<age 16; 53-21(a)(2)	
Docket number	Total effective sentence
Charges	
Docket number	Total effective sentence
Charges	

Adjustment To Supervision/Compliance With Conditions

☒ Satisfactory ☐ Unsatisfactory

Specifically:

Since his last progress report Greer has had seven (7) approved leaves -
On 6/3/2020 Dr. appointment - Pulmonologist,
On 6/11/2020 Dr. appointment - Internist,
On 6/19/2020 Dr. appointment,
On 6/24/2020 Dr. appointment - Cardiologist,
On 7/1/2020 Dr. appointment - Cardiologist,
On 7/15/2020 Dr. appointment - Urologist
On 7/16/2020 Sex Offender Registry

No violation activity has been observed.

Please don't hesitate to reach out if you have any further questions.

Response/Recommendation

☐ Violation of Probation Warrant

☐ Motion for a Violation of Probation (see attached)

☐ Other:

☐ Recommendation:

Name of Probation Officer	Signature of Probation Officer	Date signed
Tricia Bellin		07/16/2020
Address: 867 State Street New Haven, CT		Telephone number: 860-817-2678

Date	Name of person on probation	Date of birth
07/16/2020	Daniel Greer	06/16/1940

Pending case docket number(s)

N/A

Recommendation *(Continued)*

PROBATION SUPERVISION PROGRESS REPORT IN RESPONSE TO A NEW ARREST
JD-AP-163 New 2-11

STATE OF CONNECTICUT
COURT SUPPORT SERVICES DIVISION
ADULT PROBATION
www.jud.ct.gov

Date	Name of person on probation	Date of birth
03/04/2021	Daniel Greer	06/15/1940

Pending case docket number(s)
NNH-CR17-0177934-T

The person named above is currently on probation until _____ for:

Docket number	Total effective sentence
NNH-CR17-0177934-T	20 years, e/s/s 12 years, with 10 years Probation
Charges: 4 counts of Risk of Injury	
Docket number	Total effective sentence
Charges	
Docket number	Total effective sentence
Charges	

Adjustment To Supervision/Compliance With Conditions

☒ Satisfactory ☐ Unsatisfactory

Specifically:

Greer was released from the Department of Correction on 12/10/2020.

Since 12/10/2020 Greer has had sixteen (16) approved leaves -
On 12/22/2020 Attorney appointment,
On 12/29/2020 Dr. appointment - Pulmonologist and Internist,
On 12/30/2020 Dr. appointment - Dentist,
On 1/4/2021 Dr. appointment - Cardiologist,
On 1/5/2021 Dr. appointment - Dentist,
On 1/12/2021 Dr. appointment - Urologist and to get blood drawn,
On 1/14/2021 Dr. appointment - Ophthalmologist,
On 1/15/2021 Dr. appointment - Urologist
On 1/19/2021 Dr. appointment - Urologist and Dentist,
On 2/4/2021 Dr. appointment - Ophthalmologist,
On 2/9/2021 Mediation for civil suit with Atty Grudberg,
On 2/10/2021 Mediation for civil suit with Atty Grudberg,
On 2/23/2021 Dr. appointment - Urologist,
On 2/26/2021 Yale West campus for his COVID 19 vaccine,
On 3/2/2021 Dr. appointment - Dermatologist,
On 3/4/2021 Mediation for civil suit with Atty Grudberg,

No violation activity has been observed.

Please don't hesitate to reach out if you have any further questions.

Response/Recommendation

☐ Violation of Probation Warrant

Name of Probation Officer	Signature of Probation Officer	Date signed
Address		Telephone number

Date	Name of person on probation	Date of birth
03/04/2021	Daniel Greer	06/15/1940

Pending case docket number(s)
NNH-CR17-0177934-T

☐ Motion for a Violation of Probation (see attached)

☐ Other:

☐ Recommendation: