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Attorney for Defendant NATHAN NEPHI ZITO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>NATHAN NEPHI ZITO,</p> <p style="text-align: right;">Defendant.</p>	<p>Cause No.: CR 22-113-BLG-SPW</p> <p style="text-align: center;">BRIEF IN SUPPORT OF MOTION TO AMEND PROBATION CONDITIONS</p>
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NATHAN NEPHI ZITO, by and through counsel, submits this brief in support of his Motion to Amend Probation Conditions.

Mr. Zito makes this Motion pursuant to 18 U.S.C. § 3563(c) and Federal Rule of Criminal Procedure 32.

Background

On March 29, 2023, Mr. Zito was sentenced to three years of probation subject to a number of conditions—including a six-month home confinement condition. (Doc. 21). Since his sentencing date, Mr. Zito has paid all his court ordered financial obligations, has followed the home arrest rules, and has been totally compliant with all other probationary conditions.

Recently, Mr. Zito's father has been placed into hospice and given months to live. Mr. Zito desires to spend more time with his father in his final months, but that is difficult to do with the home arrest condition in place.

Mr. Zito understands the need for continued accountability for his offense, and proposes that instead of striking the condition entirely, that the Court convert his home arrest condition to a curfew condition requiring him to be at his residence from 10:00 pm until 5:00 AM daily.

Also, Mr. Zito seeks permission to briefly leave the district of Montana from August 7-16 for family travel. Specifically, he would like to attend a family wedding in North Platte, Nebraska, and then assist his wife at dropping their son off at college in St. George, Utah.

The government objects to amending his home release condition.

The government has no objection to his proposed out of District travel in August.

Discussion

A district court may modify probation conditions upon defendant's motion. *18 U.S.C. 3563 (c); Fed. Rule Crim. P. 32.1(c)*. In modifying conditions, a court considers the factors that guided the initial setting of the conditions. *18 U.S.C. § 3563(c); see id. § 3563(b)* (referring to the factors set forth in *18 U.S.C. §§ 3553(a)(1)-(2)*). "When weighing these factors, the Court 'enjoys discretion to consider a wide range of circumstances.'" *United States v. Fischer*, No. CR17-69RSL, 2018 U.S. Dist. LEXIS 141927, at *2 (W.D. Wash. Aug. 21, 2018).

A. Home Arrest Condition Modification.

Mr. Zito was placed on home arrest on March 29, 2023 for six months. Mr. Zito has completed over half of his term of home arrest, and has been completely compliant with that condition and all others.

Mr. Zito seeks a modification of the home arrest condition so that he can more easily spend time with his father, who suffers from heart

failure, and has been recently placed in hospice care. Doctors expect that Mr. Zito's father only has a few months to live.

While probation has been gracious and allows Mr. Zito to schedule time out of his home to visit with his father, Mr. Zito would obviously like to spend as much time with his father as possible in the coming months. This is difficult to do with the home arrest condition currently in place because Mr. Zito is not certain at the beginning of each week (when he makes his home arrest schedule) which hours during the coming week his father will be most lucid and awake.

Mr. Zito respectfully asks that in light of that circumstance, his exemplary compliance with probation thus far, and his completion of slightly more than half of the original home arrest term, that the Court strike the home arrest condition and replace the condition with a curfew requiring Mr. Zito to be at his residence from 10:00 pm to 5:00 am.

B. Temporary Travel Restriction Modification.

Mr. Zito seeks a temporary modification of his conditions to allow him to travel out of the District from August 7-16 for a family wedding and to accompany his son to his college orientation. Mr. Zito requests an Order from the Court allowing travel on those dates, and allowing him

to not be subject to home arrest on those dates (if the condition is not modified as requested above).

The government has no objection to this travel request.

DATED this 11th day of July, 2023.

DATSOPOULOS, MacDONALD & LIND, P.C.

By: /s/ Peter F. Lacny
Peter F. Lacny
Attorney for Nathan Nephi Zito

CERTIFICATE OF SERVICE

L.R. 5.2(b)

I, Peter F. Lacny, attorney for Defendant, hereby certifies that a copy of the Defendant's foregoing Brief in Support of Motion to Amend Conditions of Release was served on these persons by the following means:

- 1, 2 CM/ECF
- Hand Delivery
- Mail
- Overnight Delivery Service
- Fax
- 3,4 Email

1. Clerk, U.S. District Court
2. Bryan Dake and Jeremy Goldstein, U.S. Attorney Office
3. U.S. Probation Office
4. Nathan Nephi Zito

DATED this 11th day of July, 2023.

By: /s/ Peter F. Lacny
Peter Lacny