national IMMIGRATION project of the National Lawyers Guild

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Practice Advisory[1]

Advocating for the Release of Detained Immigrants Based on the COVID-19 Pandemic

March 21, 2020

I. Introduction

The rapid advancement of the global COVID-19 pandemic has caused a public health emergency and presents a fatal threat to incarcerated people. Thousands of immigrants are held in the patchwork of detention facilities in the United States, which is comprised of federal immigrant detention facilities, private detention facilities, and local jails and prisons contracted by the Department of Homeland Security (DHS) to hold immigrant detainees. At the time of this writing, the Executive Office of Immigration Review (EOIR) continues to hold hearings to determine the custody of detained immigrants, and the relief from removal available to them.[2] In addition, DHS continues to detain immigrants in these facilities despite the growing danger of infection as the virus continues to spread, and despite the special vulnerability of detainees living with existing health conditions, immune suppression, or who are elderly.[3]

This practice advisory is intended to assist advocates seeking release of their clients from immigrant detention based on the threat COVID-19 presents to their life and health, using mechanisms available to them at different stages of the removal process, including humanitarian parole, motions for bond and custody determination hearings, motions for redetermination of bond and custody, and habeas petitions.[4] The practice advisory includes sample filings addressing the emergent nature of the COVID-19 pandemic and its impact on the detained immigrant population.

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[1] Copyright © 2020, the National Immigration Project of the National Lawyers Guild. This advisory is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client's case. Counsel should independently confirm whether the law in their circuit has changed since the date of this advisory. The authors of this practice advisory are Cristina Velez, NIPNLG Senior Staff Attorney, and Sirine Shebaya, NIPNLG Executive Director. The authors would like to thank the following individuals and organizations for materials included in this advisory: Andrea Saenz, Attorney-in-Charge, New York Immigrant Family Unity Project, Brooklyn Defender Services; Andrew Free, Law Office of R. Andrew Free; Allegra Love, Santa Fe Dreamers; Laura Lunn, Immigrant Advocacy Network; and The Justice Collaborative, for their collection of material relating to the dangers of COVID-19 to incarcerated people.

[2] Memorandum from James McHenry III, Director, EOIR, Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak, March 18, 2020, n. 3, https://www.justice.gov/eoir/file/1259226/download.

[3] *See* Catherine Shoichet, *Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention*, CNN Health, March 20, 2020, https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html

[4] A more complete guide to these various forms of advocacy may be found at Practitioners Guide to Obtaining Release from Immigration Detention, CLINIC, May 24, 2018 (hereinafter "CLINIC Detention Guide"), https://cliniclegal.org/resources/enforcement-and-detention/practitioners-guide-obtaining-release-immigration-detention

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II. Strategies for Seeking Release of Detained Immigrants Based on the COVID-19 Pandemic

A. Humanitarian Parole

When an immigrant is first detained, they are subject to an initial custody determination by Immigration and Customs Enforcement (ICE).[5] If denied release or issued a bond amount too high for them to overcome, they may request parole from the same agency. Section 212(d)(5)(A) of the Immigration and Nationality Act (INA) permits the Attorney General, at his or her discretion, to "parole" any noncitizen into the United States "temporarily under such conditions as [they] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[6] The COVID-19 pandemic, and its impact on incarcerated populations, presents a strong argument for release of immigrant detainees for both humanitarian and public benefit reasons.[7]

B. Bond/Custody Hearing Before Immigration Court

Whether or not ICE sets an initial bond or declines to grant parole, the Immigration Court has the authority to review the bond amount set by ICE or make a custody redetermination for those detained pursuant to section 236(a) of the INA.[8] To obtain a redetermination of custody or bond from the Immigration Court, practitioners must request one from the Immigration Judge presiding over the case.[9] In the context of the COVID-19 pandemic, practitioners should consider asking for release of their client from detention either on bond or as a matter of conditional parole.[10] In light of current circumstances, in which the danger of infection is so high in the closed environment of jail or detention, the potential impact on the detainee fatal, and the economic impact on family members of COVID-19 containment measures imposed by state and local governments, an Immigration Judge may be more willing to grant release from detention without a requirement of bond, and under certain conditions.

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5 8 CFR §§ 236.1(c)(8); 1236.1(c)(8); 287.3(d).

6 INA § 212(d)(5).

7 Additional factors that may be considered by DHS in the application of its parole discretion include "extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness, or plaintiff in civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative." Memorandum from Jeh Johnson, DHS Sec'y, Policies for the Apprehension, Detention and Removal of Undocumented Immigrants, at 6 (Nov. 6, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf

8 8 CFR §§ 1003.19(a); 236.1(d).

9 For a more extensive discussion of bond hearing procedures, please see the CLINIC Detention Guide, *supra* note 4.

10 *See* INA § 236(a)(2) ("the Attorney General…may release the [non-citizen] on: (A) bond…or (B) conditional parole").

C. Bond/Custody Redetermination Before Immigration Court

An immigrant detainee receives only one bond redetermination hearing from the Immigration Court, unless they can show that circumstances have changed materially since the prior hearing.[11] For a client who has already had a bond hearing and either been denied bond, or was granted bond in an amount beyond their capacity to pay, practitioners should request a redetermination of bond, or in the alternative, release on conditional parole, for the reasons set forth in section II.B. above.

D. Habeas Petitions

Where immigrant detainees are barred by statute from seeking bond from the Immigration Court and ICE refuses to grant parole, or a motion for bond reconsideration or parole has been unsuccessful, or the client is especially high-risk for severe illness or death from COVID-19, or the detention center has confirmed cases of COVID-19, practitioners should consider filing a habeas petition in federal court to challenge the constitutionality of their client's continued detention. Practitioners filing habeas petitions on behalf of their clients should include declarations from public health experts and factual information about the conditions of the detention center where their client is located. We have included a generic declaration in this practice advisory. Practitioners should also review the law in their own circuit; the sample petitions attached here rely on Second Circuit and Ninth Circuit case law. We will continue to add and circulate habeas petitions from other circuits as they become available.

III. Sample Materials Included

Included as appendices to this practice advisory are sample filings addressing the impact of the COVID-19 pandemic in each of these advocacy contexts. They are as follows:

Appendix A: Sample Humanitarian Parole Request to ICE (google doc available here)

Appendix B: Motion for Bond and Custody Determination

Appendix C: Motion for Bond and Custody Redetermination

Appendix D: Redacted habeas petition submitted in the Southern District of New York

Appendix E: Habeas petition in *Dawson v. Asher*

[11] 8 CFR § 1003.19(e).

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Appendix F: Public health expert declaration on dangers of COVID-19 spread in immigration detention (with expert's CV)

IV. Conclusion

Advocates, families, and medical professionals continue to express tremendous concern about the dangers posed by the rapidly spreading COVID-19 pandemic to immigrant detainees that continue to be held in ICE custody, and particularly those with heightened vulnerability to infection. This practice advisory and accompanying materials intend to provide assistance to those working to release their clients. Moreover, detainees who are appearing for final asylum hearings during this time may argue that in addition to past persecution on a protected ground, they would be vulnerable to "other serious harm" in countries struggling to contain and treat COVID-19. NIPNLG will continue to update these materials and guidance as needed.

Please do not hesitate to contact Cristina Velez at cristina@nipnlg.org or Sirine Shebaya at sirine@nipnlg.org if you have any questions or need any further information.

APPENDIX A
Sample Humanitarian Parole Request

> This sample is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. It is not intended as, nor does it constitute, legal advice. DO NOT TREAT THIS SAMPLE AS LEGAL ADVICE

.

[Date]

VIA EMAIL

[AFOD NAME AND TITLE]

PLEASE FORWARD TO APPLICANT'S DEPORTATION OFFICER

Department of Homeland Security
Immigration & Customs Enforcement

Re: REQUEST FOR PAROLE FOR *URGENT HUMANITARIAN REASONS*
for [CLIENT LAST NAME, First Name]
A [XXX-XXX-XXX]

To Whom it May Concern:

I represent [Client Name], DOB [XX/XX/XX], detained at the [Name of Detention Center]. This letter and the supporting documents outline the details of [his/her] parole request. According to section 212(d)(5)(A) of the Immigration and Nationality Act, the Department of Homeland Security has the power to parole an immigrant for urgent humanitarian reasons or significant public benefit. **The applicant's parole is merited for urgent humanitarian reasons *and* significant public benefit.** Additionally, 212(d)(5)(B)(1) of the Immigration and Nationality Act specifically notes that one scenario where humanitarian parole is justified is when the "alien has a serious medical condition in which continued detention would not be appropriate. As evident from [his/her] medical records, [here describe, the person's specific medical needs and condition as you understand it]. My client is requesting Humanitarian Parole due to the elevated risk [he/she] faces as the COVID-19 pandemic spreads. The effect of [his/her] exposure to this virus could be deadly and given what little information we have about how to treat and control this outbreak, we ask that ICE consider [his/her] parole case a priority in the highest order.

The applicant is a [Nationality] national who [here describe their status in the United States, their detention history, and procedural immigration history]

[Here go into slightly more detail about client's condition and any medical neglect or lack of access to medical needs they have had since detained]

[S/He] has a sponsor who is ready and willing to receive him; and [s/he] is not a flight risk or a danger to the community. Additionally, detention of this individual is not in the public interest, and he should be paroled as quickly as possible.

DHS should exercise its discretion to release my client under humanitarian parole for the following reasons:

I. The Applicant is Likely To Succeed on his Request for Relief

[Here add a narrative about their underlying case and the likelihood of success. ie asylum, COR, U-Visa, etc]

II. The Applicant Is Medically Vulnerable

[Another statement of health condition, also reference to any specific evidence you are able to provide]. *See Medical Documents.*

It is well documented that medical services in ICE detention facilities fall short of a basic standard of care. A recent complaint submitted to the department by many legal services organizations sheds light on the effects of growing roadblocks in access to basic healthcare in detention due to chronic systemic medical neglect and lack of oversight in detention.. While ICE has adopted three sets of detention standards, including PBNDS 2011, it does not require contractors to adopt any recent standards when it enters into new contracts or contract extensions. The result is a "patchwork system in which facilities are subject to differing standards and some are subject to no standards at all"[1], and people are outright denied access to care, delayed in receiving medical attention, and are left in conditions that exacerbate their physical and mental health ailments. In fact, in August of 2019, a class action lawsuit alleged that, "detainees with medical and mental health conditions and those with disabilities face settings so brutal, including delays and denials of medical care, overuse of solitary confinement and lack of disability accommodations, they have led to permanent harm and 24 deaths in the last two years".[2]

III. The Applicant Faces Elevated Risk to COVID-19

Detained individuals face an elevated risk of contracting COVID-19. According to Dr. Homer Venters, "When COVID-19 arrives in a community, it will show up in jails and prisons. This

1 https://immigrantjustice.org/research-items/toolkit-immigration-detention-oversight-and-accountability

2 Tr*ump Administration Sued Over Poor Medical Care in Immigration Centers*, Politico, August 19, 2019, https://www.politico.com/story/2019/08/19/trump-administration-sued-medical-care-immigration-centers-1467605

has already happened in China, which has a lower rate of incarceration than the U.S."[3] Or, as Dr. Anne Spaulding put it in a presentation to Correctional facility employees, "a prison or jail is a self-contained environment, both those incarcerated and those who watch over them are at risk for airborne infections. Some make an analogy with a cruise ship. Cautionary tale #1: think of the spread of COVID-19 on the Diamond Princess Cruise Ship, January 2020. Cautionary tale #2: Hundreds of cases diagnosed in Chinese prisons."[4]

According to Dr. Chauolin Huang, "2019-nCoV caused clusters of fatal pneumonia with clinical presentation greatly resembling SARS-CoV. Patients infected with 2019-nCoV might develop acute respiratory distress syndrome, have a high likelihood of admission to intensive care, and might die"[5] The CDC recently reported that, "Older people and people of all ages with severe underlying health conditions — like heart disease, lung disease and diabetes, for example — seem to be at higher risk of developing serious COVID-19 illness."[6]According to another source, Jialieng Chen, "[M]ost of those who have died had underlying health conditions such as hypertension, diabetes or cardiovascular disease that compromised their immune systems." [7]

Knowing that correctional facilities could be a very dangerous setting for outbreak and that immunodeficient people present a higher risk of serious illness, the applicant should be considered a priority for release from detention for their personal safety and to have access to the best possible medical care if exposed to COVID-19

IV. Detention is Not In The Public Interest

Detention is funded by our public tax dollars. Even under the best of circumstances it is a costly option when alternatives to detention exist, especially when the detained individual is neither a flight risk nor a danger to the community. It is not in the public interest to manage an outbreak in the detention center and the liability of exposing medically vulnerable people to a contagious outbreak.

V. The Applicant is Not a Flight Risk.

3 Dr. Homer Venters, *Four Ways to Protect Our Jails and Prisons from Coronavirus*, The Hill, Feb. 29, 2020, https://thehill.com/opinion/criminal-justice/485236-4-ways- to-protect-our-jails-and-prisons-from-coronavirus?rnd=1582932792

4 Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

5 Chaolin Huang, et al., *Clinical Features of Patients Infected with 2019 Novel Coronavirus in Wuhan, China*, 395 The Lancet 497 (2020), https://doi.org/10.1016/S0140-6736(20)30183-5 (also available at https://www.sciencedirect.com/science/article/pii/S0140673620301835).

6 Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), People at Higher Risk and Special Populations*, Mar. 7, 2020, https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/index.html.

7 Jieliang Chen, *Pathogenicity and transmissibility of 2019-nCoV—A Quick Overview and Comparison with Other Emerging Viruses*, Microbes and Infection, Feb. 4, 2020, https://doi.org/10.1016/j.micinf.2020.01.004. (also available at: *https://www.sciencedirect.com/science/article/pii/S1286457920300265*)

Instead of detention, the Applicant should be paroled into the United States and released to his community. As is evident by the materials attached, the applicant has identified a [status of sponsor] sponsor, who is willing to offer long-term housing, and support with immigration court.. *See Sponsor Documents*.

[Sponsor name, address, phone number]

The Applicant is committed to pursuing relief in the United States [Here you can describe again the type of relief that they are pursuing]. [His/Her] objective is to remain in the United States in a lawful manner. [S/He] has every incentive to, and will comply with, all obligations required to enable[him/her] to remain in the United States. [S/He] has already demonstrated his commitment to seeing his case through to the end by remaining in detention to fight his case in spite of the extreme mental and physical health difficulties discussed above.

[If applicable discuss if they have counsel for their case when released]

VI. The Applicant Is Not a Danger to the Community.

The Applicant is also not a danger to the community. [Describe any criminal records or lack of. If there are any criminal issues, discuss equities that mitigate their danger to the community]

Conclusion

On behalf of my client, I respectfully request that he be granted humanitarian parole and released from ICE custody.

The Exhibits you will find attached to this letter are

Exhibit A: G-28s entering counsels' appearance for the applicant.
Exhibit B: Sponsorship information for applicant.
Exhibit C: Medical Documents

[Potential other documents: reports cited in footnotes, criminal docs, declaration from applicant, psyche report, evidence showing equities, letters of support, etc]

If you would like further information, please do not hesitate to contact me. I look forward to hearing from you, and thank you in advance for your assistance in this matter. Because of the urgency of this situation, I request that ICE serve me with any decision regarding this request via email at [your email].

Sincerely,

[YOUR NAME]
Attorney at Law

APPENDIX B
Sample Motion for Bond and Custody Determination

> This sample is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. It is not intended as, nor does it constitute, legal advice. DO NOT TREAT THIS SAMPLE AS LEGAL ADVICE

[ATTORNEY] **DETAINED**
[ORGANIZATION/OFFICE]
[ADDRESS]
[TELEPHONE NUMBER]

US DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
NEW YORK, NY

----------X

In the Matter of

[RESPONDENT] **File No. A # [NUMBER]**

In Removal Proceedings

----------X

Immigration Judge: [NAME] **Master Hearing: [DATE, OR TBA]**

MOTION FOR CUSTODY AND BOND DETERMINATION
IN CONSIDERATION OF COVID-19 PANDEMIC

US DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
NEW YORK, NY

----------X

In the Matter of

[CLIENT NAME] **File No. [A #]**

In Removal Proceedings

----------X

Motion for Custody and Bond Determination
In Consideration of COVID-19 Pandemic

Respondent, through undersigned counsel, hereby respectfully requests that this Court release them from immigration detention on a bond of $1,500, or, in the alternative, on their own recognizance. In support of this motion, Counsel hereby states the following:

Applicable Standard

After an initial custody determination by the Department of Homeland Security (DHS), the Respondent may request that the Immigration Court ameliorate the conditions of their release, or determine the amount of bond, if any, under which the Respondent may be released.[1] Pursuant to INA § 236(a), this Court may release the Respondent if it determines that they do not present a danger to society, is not a threat to national security, and does not pose a flight risk.[2] The determination of this Court as to custody status or bond may be based on any information that is available to it or presented to it by the Respondent or DHS.[3]

This Court has the authority to release the Respondent on conditional parole, without payment of bond. Section 236(a)(2) of the INA states clearly that "the Attorney General…may release the [non-citizen] on: (A) bond…or (B) conditional parole." Thus, the plain language of the INA makes clear that the Immigration Judge has the authority to order the Respondent released on conditional parole – without payment of bond – and that conditional parole is a release mechanism distinct from the issuance of bond.[4]

[1] *See* 8 CFR §§ 1003.19(c); 1236.1 (2012); INA § 236(a)(2)(B)("the Attorney General…may release the [noncitizen] on bond of at least $1500…or conditional parole.").
[2] *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (citing *Matter of Adeniji*, 22 I&N Dec 1102 (BIA 1999)).
[3] *See* 8 CFR § 1003.19(d). (2012).
[4] *Matter of Castillo-Padilla*, 25 I&N Dec 257, 259 (BIA 2010).

Statement of Facts and Procedural History

[Briefly state facts and procedural history of client's appearance before the Court]

[Note if client has any underlying medical conditions or has developed any while in detention]

Argument in Support of Release of the Respondent on Bond or Conditional Parole

1. The COVID-19 Pandemic Presents an Extraordinary Circumstance Warranting Release of the Respondent from Immigration Detention

At this moment in time, the COVID-19 pandemic presents a crucial circumstance that must be considered in the Court's determination of bond or parole, [in light of the Respondent's medical condition/as an unprecedented risk to the health and safety of the Respondent].

The coronavirus known as COVID-19 began spreading around the world in December 2019, and has since reached the United States, becoming a global pandemic that has caused enormous disruption to daily life and presents a severe danger to public health.[5] The COVID-19 virus "cause[s] clusters of fatal pneumonia with clinical presentation greatly resembling SARS-CoV."[6] Those infected "might develop acute respiratory distress syndrome, have a high likelihood of admission to intensive care, and might die."[7]

Detained individuals, such as the Respondent, face an elevated risk of contracting COVID-19. Experts have previously warned that in the enclosed environment of a prison or detention facility, "both those incarcerated and those who watch over them are at risk for airborne infections."[8] Dr. Anne Spaulding has compared the spread of this contagion in a prison to that of the outbreak that overtook the Diamond Princess Cruise Ship in January 2020.[9] Indeed, health experts warn that "[a]n outbreak of the deadly virus inside the walls of a U.S. prison or jail is now a question of when, not if."[10]

[5] World Health Organization, Q&A on Coronaviruses (COVID-19), Mar. 9, 2020, https://www.who.int/news-room/q-a-detail/q-a-coronaviruses.
[6] Chaolin Huang, et al., *Clinical Features of Patients Infected with 2019 Novel Coronavirus in Wuhan, China*, 395 The Lancet 497 (2020), https://doi.org/10.1016/S0140-6736(20)30183-5 (also available at https://www.sciencedirect.com/science/article/pii/S0140673620301835).
[7] *Id.*
[8] Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.
[9] *Id.*
[10] Rich Shapiro, *Coronavirus Could "Wreak Havoc" on U.S. Jails, Experts Warn,* NBC News (Mar. 12, 2020), https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586.

Because of its enclosed environment and regimented procedures, "[p]rison and jail populations are extremely vulnerable to a contagious illness like COVID-19. Moreover, prisoners have fewer options for protecting themselves and others. They don't have the option to stay away from other people when they are sick. They can ask for medical attention, but prisons and jails have few infirmary beds and fewer rooms for medical isolation."[11] Doctors working as medical experts for DHS have come forward to urge release of immigrant detainees to curb the spread of COVID-19 in detention facilities as well as the general public.[12] In a public letter to Congress, Dr. Scott Allen and Dr. Josiah Rich argued that because the "social distancing" practices recommended by public health authorities are impossible to implement in detention settings, immigrant detainees who don't pose a risk to public safety should be released so as to avoid the overloading of local health facilities caused by a rapidly spreading outbreak within the ICE detention system.[13]

In the facility where the Respondent is held [describe any health and safety concerns that have been reported at that facility]

Because of the dangers detailed here, one federal judge in New York has already granted a motion for emergency reconsideration of bail conditions and ordered a defendant released from federal prison custody on the conditions of 24 hour home confinement and electronic location monitoring.[14] In that case, the court found that since the prior bail determination on March 6, 2020, "the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent," and that "inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop."[15] Numerous jails around the country have released inmates with underlying health conditions so as to prevent the spread of COVID-19 in the prison system.[16]

[11] Maria Morris, Are Our Prisons and Jails Ready for COVID-19?, ACLU.org, Mar. 6, 2020, https://www.aclu.org/news/prisoners-rights/are-our-prisons-and-jails-ready-for-covid-19/. *See also* Dr. Homer Venters, Four Ways to Protect Our Jails and Prisons from Coronavirus, The Hill, Feb. 29, 2020, https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus?rnd=1582932792.

[12] Catherine Shoichet, *Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention*, CNN Health, March 20, 2020, https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html

[13] *Id*. *See also* Letter from Dr. Scott Allen and Dr. Josiah Rich to Congress re: Coronavirus and Immigrant Detention, embedded in Shoichet article and available here: https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238

[14] *See US v. Stephens*, No. 15-cr-95 AJN, 2020 US Dist LEXIS 47846 (SDNY March 19, 2020).

[15] *Id*.

[16] *See, e.g.,* David Struett, Cook County Jail releases several detainees "highly vulnerable" to coronavirus, Chicago Sun-Times, March 17, 2020, https://chicago.suntimes.com/coronavirus/2020/3/17/21183289/cook-county-jail-coronavirus-vulnerable-detainees-released-covid-19; Teri Figueroa and Karen Kucher, *Jails to release some inmates, adjust booking criteria amid coronavirus concerns*, San Diego Tribune, March 16, 2020, https://www.sandiegouniontribune.com/news/public-safety/story/2020-03-16/jails-to-release-some-inmates-adjust-booking-criteria-amid-coronavirus-concerns; Ryan Autullo, *Travis County judges releasing inmates to limit coronavirus spread*, The Statesman, March 16, 2020,

If Respondent has underlying medical conditions or is in a vulnerable population (pregnant, elderly, immune compromised):

As is evident from [his/her] medical records, [here describe, the person's specific medical needs and condition]. The known impact of the COVID-19 infection includes severe and irreparable harm to those with underlying medical conditions/in vulnerable populations due to their age or pregnancy. According to the CDC, "[o]lder people and people of all ages with severe underlying health conditions – like heart disease, lung disease, and diabetes, for example – seem to be at higher risk of developing serios COVID-19 illness."[17] In addition, "most of those who have died had underlying health conditions such as hypertension, diabetes or cardiovascular disease that compromised their immune systems."[18]

Pregnant people, in particular, "experience immunologic and physiologic changes which might make them more susceptible to viral respiratory infections, including COVID-19."[19]

For the foregoing reasons, the Respondent is requesting an immediate bond redetermination due to the elevated risk they face as the COVID-19 pandemic spreads.

2. **Respondent Otherwise Warrants Release from Immigration Detention**

[Note evidence in support of additional factors relating to risk of flight and dangerousness to the community, and eligibility for relief from removal.

With regard to risk of flight and dangerousness, consider noting any conditions imposed by the state or locality to avoid further spread of COVID-19 where they will reside upon release, as it is likely their movements will be limited and easily monitored.]

https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread

[17] Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), People at Higher Risk and Special Populations*, Mar. 7, 2020, https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/index.html.

[18] Jieliang Chen, *Pathogenicity and transmissibility of 2019-nCoV—A Quick Overview and Comparison with Other Emerging Viruses*, Microbes and Infection, Feb. 4, 2020, https://doi.org/10.1016/j.micinf.2020.01.004. (also available at: *https://www.sciencedirect.com/science/article/pii/S1286457920300265*).

[19] Centers for Disease Control and Prevention, *Information on COVID-19 and Pregnant Women and Children*, Feb. 24, 2020, https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/pregnant-women.html.

WHEREFORE, Respondent, through Counsel, respectfully requests that their bond be redetermined, or in the alternative, conditional parole granted, so as to effectuate their release from immigration detention as soon as possible.

Respectfully submitted this day of , 20 .

_____

[ATTORNEY]
[ORGANIZATION]
[ADDRESS]
[ADDRESS]
Tel: [NUMBER]

(Name of alien or aliens)
A (“A number” of alien or aliens)

PROOF OF SERVICE

On (date), I (printed name of person signing below)

Served a copy of this: Motion for Custody and Bond Redetermination
(name of document)

And any attached pages to: Office of the District Counsel, Immigration and Customs Enforcement
(name of party served)

At the following address: US Department of Homeland Security,
(address of party served)

(address of party served)

By
(method of service, for example overnight courier, hand delivery, first class mail)

(signature) (date)

US DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
NEW YORK, NY

In the Matter of: [NAME] **File No. [A NUMBER]**

Order of the Immigration Judge

Upon consideration of Respondents' Motion for Custody and Bond Redetermination, it is HEREBY ORDERED that the motion be ☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ Respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the Court
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other:

Deadlines:

- ☐ The application(s) for relief must be filed by:_____.
- ☐ The Respondent must comply with DHS biometrics instructions by: _____

The next _____ hearing is set for _____ at____ AM/PM

_____ _____
Date Hon. [NAME]
US Immigration Judge

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APPENDIX C
Sample Motion for Bond and Custody Redetermination

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[ATTORNEY] **DETAINED**
[ORGANIZATION/OFFICE]
[ADDRESS]
[TELEPHONE NUMBER]

US DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
NEW YORK, NY

----------X

In the Matter of

[RESPONDENT] **File No. A # [NUMBER]**

In Removal Proceedings

----------X

Immigration Judge: [NAME] **Master Hearing: [DATE, OR TBA]**

MOTION FOR CUSTODY AND BOND REDETERMINATION
IN CONSIDERATION OF COVID-19 PANDEMIC

US DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
NEW YORK, NY

----------X

In the Matter of

[CLIENT NAME] **File No. [A #]**

In Removal Proceedings

----------X

Motion for Custody and Bond Redetermination
In Consideration of COVID-19 Pandemic

Respondent, through undersigned counsel, hereby respectfully requests that this Court re-consider its previous bond and custody determination on account of a "material change in circumstances" of Respondent's confinement pursuant to 8 CFR § 1003.19(e) in light of the public health emergency presented by the COVID-19 pandemic, and order the Respondent released on a bond of $1500 or in the alternative, on their own recognizance. In support of this motion, Counsel hereby states the following:

Applicable Standard

When conducting a bond redetermination, the Court may consider three main issues: (1) whether the applicant's circumstances have changed materially since the immigration court's initial bond determination, (2) whether the applicant poses an immediate flight risk, and (3) whether the applicant is a danger to the community.[1] The Court may further consider reducing the Respondent's bond based on the following relevant factors: Eligibility for relief from deportation, family ties in the US, lack of criminal history, complete record of appearances in court proceedings, employment history, and limited financial resources.[2]

[If prior bond decision is on appeal, note *Matter of Valles*, 21 I&N Dec. 769 (BIA 1997) (holding that an IJ has continuing jurisdiction to consider a bond redetermination request while the previous bond redetermination is on appeal)].

This Court also has the authority to release the Respondent on conditional parole, without payment of bond. Section 236(a)(2) of the INA states clearly that "the Attorney General…may release the [non-citizen] on: (A) bond…or (B) conditional parole." Thus, the plain language of

[1] *See* 8 CFR § 1003.19(e) (2012); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
[2] *Matter of Guerra*, 24 I&N Dec 37; *Matter of Patel*, 15 I&N Dec 666 (BIA 1976).

the INA makes clear that the Immigration Judge has the authority to order the Respondent released on conditional parole – without payment of bond – and that conditional parole is a release mechanism distinct from the issuance of bond.[3]

Statement of Facts and Procedural History

[Briefly restate facts and procedural history of client's appearance before the Court, including prior bond hearings]

[Note if client has any underlying medical conditions or has developed any while in detention]

Argument in Support of Release of the Respondent on Reduced Bond or Conditional Parole

Since the initial bond redetermination by this Court, the Respondent's circumstances have changed materially. The COVID-19 pandemic constitutes circumstances that must be considered [in light of the Respondent's medical condition/as an unprecedented risk to the health and safety of the Respondent].

The coronavirus known as COVID-19 began spreading around the world in December 2019, and has since reached the United States, becoming a global pandemic that has caused enormous disruption to daily life and presents a severe danger to public health.[4] The COVID-19 virus "cause[s] clusters of fatal pneumonia with clinical presentation greatly resembling SARS-CoV."[5] Those infected "might develop acute respiratory distress syndrome, have a high likelihood of admission to intensive care, and might die."[6]

Detained individuals, such as the Respondent, face an elevated risk of contracting COVID-19. Experts have previously warned that in the enclosed environment of a prison or detention facility, "both those incarcerated and those who watch over them are at risk for airborne infections."[7] Dr. Anne Spaulding has compared the spread of this contagion in a prison to that of the outbreak that overtook the Diamond Princess Cruise Ship in January 2020.[8] Indeed, health

[3] *Matter of Castillo-Padilla*, 25 I&N Dec 257, 259 (BIA 2010).
[4] World Health Organization, Q&A on Coronaviruses (COVID-19), Mar. 9, 2020, https://www.who.int/news-room/q-a-detail/q-a-coronaviruses.
[5] Chaolin Huang, et al., *Clinical Features of Patients Infected with 2019 Novel Coronavirus in Wuhan, China*, 395 The Lancet 497 (2020), https://doi.org/10.1016/S0140-6736(20)30183-5 (also available at https://www.sciencedirect.com/science/article/pii/S0140673620301835).
[6] *Id.*
[7] Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.
[8] *Id.*

experts warn that "[a]n outbreak of the deadly virus inside the walls of a U.S. prison or jail is now a question of when, not if."[9]

Because of its enclosed environment and regimented procedures, "[p]rison and jail populations are extremely vulnerable to a contagious illness like COVID-19. Moreover, prisoners have fewer options for protecting themselves and others. They don't have the option to stay away from other people when they are sick. They can ask for medical attention, but prisons and jails have few infirmary beds and fewer rooms for medical isolation."[10] Doctors working as medical experts for DHS have come forward to urge release of immigrant detainees to curb the spread of COVID-19 in detention facilities as well as the general public.[11] In a public letter to Congress, Dr. Scott Allen and Dr. Josiah Rich argued that because the "social distancing" practices recommended by public health authorities are impossible to implement in detention settings, immigrant detainees who don't pose a risk to public safety should be released so as to avoid the overloading of local health facilities caused by a rapidly spreading outbreak within the ICE detention system.[12]

In the facility where the Respondent is held [describe any health and safety concerns that have been reported at that facility]

Because of the dangers detailed here, one federal judge in New York has already granted a motion for emergency reconsideration of bail conditions and ordered a defendant released from federal prison custody on the conditions of 24 hour home confinement and electronic location monitoring.[13] In that case, the court found that since the prior bail determination on March 6, 2020, "the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent," and that "inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop."[14] Numerous jails around the country have released inmates with underlying health conditions so as to prevent the spread of COVID-19 in the prison system.[15]

[9] Rich Shapiro, *Coronavirus Could "Wreak Havoc" on U.S. Jails, Experts Warn,* NBC News (Mar. 12, 2020), https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586.

[10] Maria Morris, Are Our Prisons and Jails Ready for COVID-19?, ACLU.org, Mar. 6, 2020, https://www.aclu.org/news/prisoners-rights/are-our-prisons-and-jails-ready-for-covid-19/. *See also* Dr. Homer Venters, Four Ways to Protect Our Jails and Prisons from Coronavirus, The Hill, Feb. 29, 2020, https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus?rnd=1582932792.

[11] Catherine Shoichet, *Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention*, CNN Health, March 20, 2020, https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html

[12] *Id*. *See also* Letter from Dr. Scott Allen and Dr. Josiah Rich to Congress re: Coronavirus and Immigrant Detention, embedded in Shoichet article and available here: https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238

[13] *See US v. Stephens*, No. 15-cr-95 AJN, 2020 US Dist LEXIS 47846 (SDNY March 19, 2020).

[14] *Id*.

[15] *See, e.g.*, David Struett, Cook County Jail releases several detainees "highly vulnerable" to coronavirus, Chicago Sun-Times, March 17, 2020,

The Respondent's request for redetermination of bond or, in the alternative, release on conditional parole should be granted for similar reasons.

If Respondent has underlying medical conditions or is in a vulnerable population (pregnant, elderly, immune compromised):

As is evident from [his/her] medical records, [here describe, the person's specific medical needs and condition]. The known impact of the COVID-19 infection includes severe and irreparable harm to those with underlying medical conditions/in vulnerable populations due to their age or pregnancy. According to the CDC, "[o]lder people and people of all ages with severe underlying health conditions – like heart disease, lung disease, and diabetes, for example – seem to be at higher risk of developing serios COVID-19 illness."[16] In addition, "most of those who have died had underlying health conditions such as hypertension, diabetes or cardiovascular disease that compromised their immune systems."[17]

Pregnant people, in particular, "experience immunologic and physiologic changes which might make them more susceptible to viral respiratory infections, including COVID-19."[18]

For the foregoing reasons, the Respondent is requesting an immediate bond or custody redetermination due to the elevated risk they face as the COVID-19 pandemic spreads.

[Note evidence in support of additional factors, such as the Respondent's risk of flight and dangerousness to the community.

With regard to these factors, consider noting any conditions imposed by the state or locality to avoid further spread of COVID-19 where they will reside upon release, as it is likely their movements will be limited and easily monitored.]

https://chicago.suntimes.com/coronavirus/2020/3/17/21183289/cook-county-jail-coronavirus-vulnerable-detainees-released-covid-19; Teri Figueroa and Karen Kucher, *Jails to release some inmates, adjust booking criteria amid coronavirus concerns*, San Diego Tribune, March 16, 2020, https://www.sandiegouniontribune.com/news/public-safety/story/2020-03-16/jails-to-release-some-inmates-adjust-booking-criteria-amid-coronavirus-concerns; Ryan Autullo, *Travis County judges releasing inmates to limit coronavirus spread*, The Statesman, March 16, 2020, https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread

[16] Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), People at Higher Risk and Special Populations*, Mar. 7, 2020, https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/index.html.

[17] Jieliang Chen, *Pathogenicity and transmissibility of 2019-nCoV—A Quick Overview and Comparison with Other Emerging Viruses*, Microbes and Infection, Feb. 4, 2020, https://doi.org/10.1016/j.micinf.2020.01.004. (also available at: *https://www.sciencedirect.com/science/article/pii/S1286457920300265*).

[18] Centers for Disease Control and Prevention, *Information on COVID-19 and Pregnant Women and Children*, Feb. 24, 2020, https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/pregnant-women.html.

WHEREFORE, Respondent, through Counsel, respectfully requests that their bond be redetermined, or in the alternative, conditional parole granted, so as to effectuate their release from immigration detention as soon as possible.

Respectfully submitted this day of , 20 .

_____

[ATTORNEY]
[ORGANIZATION]
[ADDRESS]
[ADDRESS]
Tel: [NUMBER]

(Name of alien or aliens)
A
("A number" of alien or aliens)

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(address of party served)

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(signature) (date)

US DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
NEW YORK, NY

In the Matter of: [NAME] **File No. [A NUMBER]**

Order of the Immigration Judge

Upon consideration of Respondents' Motion for Bond or Custody Redetermination, it is HEREBY ORDERED that the motion be ☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ Respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the Court
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other:

Deadlines:

- ☐ The application(s) for relief must be filed by:_____.
- ☐ The Respondent must comply with DHS biometrics instructions by: _____

The next _____ hearing is set for _____ at____ AM/PM

_____ _____
Date Hon. [NAME]
US Immigration Judge

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APPENDIX D
Redacted Habeas Petition Filed in the Second Circuit

This sample is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. It is not intended as, nor does it constitute, legal advice. DO NOT TREAT THIS SAMPLE AS LEGAL ADVICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.B.C., *Petitioner*, v. THOMAS DECKER, in his official capacity as Director of the New York Field Office of U.S. Immigrations & Customs Enforcement; CHAD WOLF, in his official capacity as Acting Secretary, U.S. Department of Homeland Security, and CARL E. DUBOIS, in his official capacity as Sheriff of Orange County, New York, *Respondents.*	**Civ. No.** **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

INTRODUCTION

1. As the novel COVID-19 virus and resulting Coronavirus disease ("COVID-19") sweeps around the world, infecting more than 191,000 and killing over 7,800 to date, Immigration and Customs Enforcement ("ICE") continues to refuse to release the most vulnerable immigrants in their custody, including Petitioner A.B.C. ("Mr. A.B.C." or "Petitioner"), who face an imminent risk of death or serious injury in immigration detention if exposed to COVID-19.

2. Mr. A.B.C., a 47-year-old husband, father, and grandfather and longtime resident

of the United States, is at imminent risk in immigration detention, where he cannot be adequately protected from contracting COVID-19 due to the nature of the jail environment and because his medical conditions, including human immunodeficiency virus ("HIV") and related cognitive impairments, subject him to a heightened risk of harm and cannot be adequately addressed if or when he becomes ill.

3. Despite their inability to protect Mr. A.B.C. from near certain death or serious debilitating complications in a jail environment, and a clear path to release him, ICE obstinately disregards the only course of action that will provide Mr. A.B.C. with reasonable safety: to release Mr. A.B.C. to his loving family and supportive community who can provide a safe haven for him during this pandemic.

4. Under these circumstances, Respondents cannot provide Mr. A.B.C. with safe conditions or adequate due process. His continued detention will likely lead to death or serious medical repercussions without action by this Court. Accordingly, Mr. A.B.C. respectfully requests that this Court issue a writ of habeas corpus, ordering Respondents to promptly release him.

PARTIES

5. Mr. A.B.C. ("Mr. A.B.C.") is a 47-year-old grandfather of three U.S.-citizens who has been diagnosed with HIV for nearly the entire 30 years he has lived in the United States. He lives in West Haverstraw, NY but has been detained by Respondents at the Orange County Correctional Facility ("Orange County Jail") since November 26, 2019 in conjunction with removal proceedings at the Varick Street Immigration Court.

6. Respondent Thomas Decker is named in his official capacity as Director of the

New York Field Office for ICE. He is responsible for administration and management of ICE Enforcement Removal Operations in New York City and has jurisdiction over the decision to keep Mr. A.B.C. in detention. Respondent Decker's address is 26 Federal Plaza, 9th Floor, Suite 9-110, New York, NY 10278.

7. Respondent Chad Wolf is named in his official capacity as Acting Secretary of DHS. He is responsible for the enforcement of the immigration laws and routinely transacts business in the Southern District of New York. Respondent Wolf supervises Respondent Decker and is legally responsible for the pursuit of Petitioner's detention. Respondent Wolf's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, D.C. 20528.

8. Respondent Carl E. DuBois is the Sheriff of Orange County, New York. As Sheriff, he is responsible for overseeing the administration and management of the Jail in Goshen, New York. He is sued in his official capacity. Respondent DuBois address is Orange County Sheriff's Office, Goshen, NY, 10924.

JURISDICTION

9. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.

10. The Court has subject matter jurisdiction over this Petition pursuant to Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 2241 (habeas corpus). In addition, the Court has jurisdiction to grant injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

11. The district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

12. Venue for Mr. A.B.C.'s petition for a writ of habeas corpus properly lies in the Southern District of New York pursuant to 28 U.S.C. § 2241(d) and 28 U.S.C. § 1391(b)(2).

13. Venue is proper in this District under 28 U.S.C. § 2241(d) because Mr. A.B.C. is detained in this District by Respondent Decker, whose office is located in this District. *See, e.g.*, *Rodriguez Sanchez v. Decker*, No. 18-CV-8798 (AJN), 2019 WL 3840977, at *2 (S.D.N.Y. Aug. 15, 2019); *Cruz v. Decker*, No. 18 Civ. 9948 (GBD) (OTW), 2019 WL 6318627, at *6 (S.D.N.Y. Nov. 26, 2019).

14. Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial portion of the events or omissions giving rise to this action occurred in this District. The removal proceedings against Mr. A.B.C. are held in this District, and Mr. A.B.C. lives in this District, and his arrest, detention, and inadequate medical care are the results of actions by Respondents in this District.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Mr. A.B.C. has no administrative remedies to exhaust through ICE or the Orange County Jail because no process exists to challenge the unconstitutional conditions of his detention or the inadequate medical care he is provided. The only process available to Mr. A.B.C. is to pursue defenses to removal—a process governed by separate laws, *see* 8 U.S.C. § 1229a, controlled by the Department of Justice rather than DHS, *see id.*, and one that will take

months, if not years, to complete—particularly in light of the current pandemic that is the basis for in this action—while Mr. A.B.C. continues to suffer severe and irreparable harm exacerbated by that pandemic.

16. Even if meaningful administrative remedies were promptly available, Mr. A.B.C., as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust them under 8 U.S.C. § 2241. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009).

17. Moreover, the immigration agencies do not have jurisdiction to adjudicate the due process claims that Mr. A.B.C. raises here. *See, e.g.*, *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538–39 (S.D.N.Y. 2014) (holding that an administrative appeal challenging classification under the mandatory detention statute would be futile because the BIA "'does not have jurisdiction to adjudicate constitutional issues'") (quoting *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002)).

STATEMENT OF FACTS

18. On March 11, 2020, the World Health Organization ("WHO") declared COVID-19 a "global pandemic."

19. At the time, there were more than 118,000 cases in 114 countries, and 4,291 people had died.[1] Only seven days later, as of March 18, there have been at least 191,127 cases

[1] https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

identified in 160 countries and at least 7,807 people have died.[2]

20. Experts estimate that as many as 214 million people in the United States could be become infected, and as many as 1.7 million people could die.[3]

21. COVID-19 has already started to spread inside U.S. prisons and jails, and experts predict mass contagion is only a matter of time. *See, e.g.*, Rich Shapiro, *Coronavirus Could "Wreak Havoc" on U.S. Jails, Experts Warn,* NBC News (Mar. 12, 2020) ("An outbreak of the deadly virus inside the walls of a U.S. prison or jail is now a question of when, not if, according to health experts.")[4]; Dr. Anne C. Spaulding, MD MPH, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership* at 16, Mar. 9, 2020 ("A prison or jail is a self-contained environment, both those incarcerated and those who watch over them are at risk for airborne infections. Some make an analogy with a cruise ship. Cautionary tale #1: think of the spread of COVID-19 on the Diamond Princess Cruise Ship, January 2020. Cautionary tale #2: Hundreds of cases diagnosed in Chinese prisons.").[5] Even this morning, officials announced that

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[2] Coronavirus disease 2019 (COVID-19) Situation Report – 58, March 18, 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200318-sitrep-58-covid-19.pdf?sfvrsn=20876712_2. This increase comes despite the fact that some jurisdictions, including New York, have redirected resources from testing and identifying cases to preventing the spread and treating patients.

[3] Sheri Fink, *The Worst-Case Estimate for U.S. Coronavirus Deaths*, The New York Times (Mar. 13, 2020), https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html.

[4] https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586.

[5] https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf; *see also*, Dr. Homer Venters, *Four Ways to Protect Our Jails and Prisons from Coronavirus*, The Hill, (Feb. 29, 2020), https://thehill.com/opinion/criminal-justice/485236-4-waysto-protect-our-jails-and-prisons-from-coronavirus?rnd=1582932792 ("When COVID-19 arrives in a community, it will show up in jails and prisons. This has already happened in China, which has a lower rate of incarceration than the U.S."); *see*

a corrections officer at Bergen County Jail—where other ICE detainees are held—was diagnosed with COVID-19.

22. Despite these widespread warnings, ICE and the Orange County Jail, where Mr. A.B.C. is detained, remain woefully unprepared and incapable of taking necessary precautions to protect people in their custody, including Mr. A.B.C., against a life-threatening illness.

23. Once COVID-19 reaches the Orange County Jail, if it hasn't already, it will be nearly impossible to contain because of the close proximity between people, rules and regulations that bar some basic disease prevention measures, and restrictions that prevent people from taking steps to protect themselves from infection, such as accessing hand sanitizer or gloves.

24. Indeed, the primary recommended way to avoid the spread of the virus—social isolation—is effectively impossible in a jail setting.

25. ICE's failure to recognize this inevitability and take adequate precautions, including releasing people, demonstrates a total disregard for the constitutional rights, well-being, and humanity of immigrant detainees, including Mr. A.B.C..

26. As a person living with HIV and struggling with related cognitive difficulties, Mr. A.B.C. is particularly unsafe in the jail environment, and ICE's inability to protect him and failure to release him amount to a life-threatening violation of his constitutional right to due

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also NBC, *US Prisons, Jails on Alert for Spread of Coronavirus* (Mar. 7, 2020), https://www.nbcboston.com/news/coronavirus/us-prisons-jails-spread-of-coronavirus/2087202/ ("Coronavirus suddenly exploded in China's prisons last week, with reports of more than 500 cases spreading across five facilities in three provinces. . . . Jail operators in the U.S. are coming to the growing realization that it's only a matter of time before it strikes here.").

process.

Civil Detention During the Covid-19 Pandemic Amounts to Punishment

27. Since being first identified in late 2019, COVID-19 has infected at least 191,127 people around the world and caused at least 7,807 deaths, and the pandemic is intensifying each day.

28. New York and its surrounding areas, including Westchester County, which neighbors Orange County, have become the epicenter of the outbreak. New York currently reports 2600 number of cases, including 500 hospitalizations and 21 deaths.

29. In Orange County, New York, the government has already confirmed that 33 people have been infected with COVID-19,[6] and the Orange County Health Commissioner has advised that the best way to prevent the spread of COVID-19 is "common-sense personal hygiene, including washing your hands frequently and thoroughly . . . and avoiding unnecessary contact with others."[7]

30. Internationally, governments and jail and prison staff have recognized the threat posed by COVID-19 and released detainees. In Iran, for example, more than 70,000 people were temporarily released from jails to curb the spread of coronavirus.[8]

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[6] Orange County Health Department, https://www.orangecountygov.com/1936/COVID-19Coronavirus.

[7] Daily Freeman, Orange County Confirms three more COVID-19 Cases, Bringing Total to Six (March 14, 2020), https://www.dailyfreeman.com/news/local-news/orange-county-confirms-three-more-covid--cases-bringing-total/article_35f49df8-6624-11ea-9d62-63dc07ff9a21.html.

[8] *Iran Temporarily Releases 70,000 Prisoners as Coronavirus Cases Surge*, Reuters (Mar. 9, 2020), https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5.

31. In the United States, some jurisdictions, including Los Angeles and Chicago, have already taken steps to protect people in custody from the impending spread of COVID-19 by releasing people in an effort to reduce populations.[9]

32. In New York City, public officials, the jail oversight board, and even doctors working at Rikers Island within the City's Department of Corrector have argued that the City's jails are simply unsafe and releasing people is the only humane option.[10] Statement of New York City Board of Correction, March 17, 2020 (calling on the City to release people from criminal custody, prioritizing people over 50, those with underlying health conditions, detained for administrative reasons, and those who have been convicted and sentenced to one year or less).[11]

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[9] Thirty-one district attorneys from around the country put out a joint statement calling for a reduction in jail populations, jurisdictions in California, Illinois, and Ohio have already released people from jail, and officials in Louisiana, Oregon, Pennsylvania, Virginia, and New York have made announcements that they will begin releasing people soon. Other cities are putting plans in place to do the same. *See, e.g.* Allen Kim, *Cities in the US Move to Lower Inmate Populations as Coronavirus Fears Grow*, CNN (Mar. 16, 2020), https://www.cnn.com/2020/03/16/us/inmates-released-jail-coronavirus-trnd/index.html; Megan Cassidy, *Coronavirus: San Francisco, Contra Costa Prosecutors Join National Call for Jail Releases*, San Francisco Chronicle (Mar. 17, 2020) https://www.sfchronicle.com/crime/article/Coronavirus-San-Francisco-Contra-Costa-15137291.php.

[10] *See* Ross MacDonald (@RossMacDonaldMD), Twitter (March 18, 9:51 p.m.) https://twitter.com/RossMacDonaldMD/status/1240455796946800641 (Dr. MacDonald is the Chief Medical Officer for Correctional Health Services ("CHS"), which provides healthcare to New York City's Department of Corrections); Rachel Bedard, (@rachelbedard), Twitter (March 18, 8:34 a.m.) https://twitter.com/rachaelbedard/status/1240255196644741120 (Dr. Bedard is the Director of Geriatrics and Complex Care for CHS); Jonathan Giftos (@JonGiftosMD), Twitter (March 18, 10:37 p.m.) https://twitter.com/JonGiftosMD/status/1240467288198873088 (until January 2020, Dr. Giftos was the Clinical Director of Substance Use Treatment for CHS).

[11] New York City Board of Correction Calls for the City to Begin Releasing People from Jail as Part of Public Health Response to COVID-19 (Mar. 17, 2020),

33. As authorities across the country take increasingly drastic measures to moderate the spread of the disease, the states of New Jersey, New York, and Connecticut have coordinated severe restrictions on gatherings and recommended that individuals isolate from one another.[12]

34. COVID-19 is already threatening to wreak havoc in area jails and prisons, as the New York City Department of Correction ("DOC") and the George W. Hill Correctional Facility in Pennsylvania both announced employees tested positive for COVID-19,[13] and March 18, 2020

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https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-%20Board%20of%20Correction%20Statement%20re%20Release.pdf

[12] *E.g.*, Berkely Lovelace, Jr., *Coronavirus: NY, NJ, CT coordinate restrictions on restaurants, limit events to fewer than 50 people*, CNBC (Mar. 16, 2020), https://www.cnbc.com/2020/03/16/new-york-new-jersey-and-connecticut-agree-to-close-restaurants-limit-events-to-less-than-50-people.html.

[13] *See* Chelsia Rose Marcius, *NYC Department of Correction Employee Tests Positive for Coronavirus*, New York Daily News (Mar. 16, 2020), https://nypost.com/2020/03/16/doc-employee-is-the-first-nyc-worker-to-die-from-coronavirus/ (noting that the officer was the first COVID-19-related death in New York); Chelsia Rose Marcius, *NYC Correction Officer Tests Positive for Coronavirus*, New York Daily News (Mar. 18, 2020), https://www.nydailynews.com/coronavirus/ny-coronavirus-correction-officer-rikers-island-20200318-n6qzg4clibeinfcwtctfpbmmtq-story.html.

reports indicate that an incarcerated person in New York City tested positive as well.[14] *See also* Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues,* The New York Times (Mar. 16, 2020) (noting that "jails experience a daily influx of correctional staff, vendors, health care workers, educators and visitors — all of whom carry viral conditions at the prison back to their homes and communities and return the next day packing the germs from back home.").

35. Recent outbreaks of communicable diseases in immigration detention facilities foreshadow the impact once COVID-19 reaches these facilities: In 2019, a mumps outbreak across 57 immigration detention facilities throughout the country caused almost 900 cases of mumps overwhelmingly contracted inside the facilities[15] before the outbreak spread to surrounding communities.[16]

36. The nature of detention facilities themselves, including Orange County Jail, make exposure and spread of the virus particularly harmful. Dr. Jaimie Meyer, an expert on infectious

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[14] Aliza Chasan, *Inmate at Rikers Tests Positive for Coronavirus, Union Official Says*, Pix11 (Mar. 18, 2020), https://www.pix11.com/news/coronavirus/inmate-at-rikers-tests-positive-for-coronavirus-union-official-says.

[15] Leung J, Elson D, Sanders K, et al. *Notes from the Field: Mumps in Detention Facilities that House Detained Migrants—United States, September 2018–August 2019.* MMWR Morb Mortal Wkly, 749–750 (2019), http://dx.doi.org/10.15585/mmwr.mm6834a4external icon.

[16] *See* Terrence McDonald, Bergen County Won't Say if Mumps Outbreak Affects Only Immigrant Detainees, Northjersey.com (June 13, 2019), https://www.northjersey.com/story/news/bergen/2019/06/13/bergen-county-nj-wont-say-if-jail-mumps-outbreak-hit-only-ice-inmates/1448708001. In addition, in 2019, thousands of individuals in 39 immigration detention centers across the country were exposed to chickenpox. *See* Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (June 14, 2020), https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox.

diseases in the context of jails and prisons, recently submitted a declaration in this district noting that the risk of COVID-19 to people held in detention centers like Orange County Jail "is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected."[17]

37. It will be nearly impossible to prevent widespread infections inside the Orange County Jail once one person contracts the virus because detainees live, sleep, and use the bathroom in close proximity with others, and because "[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible."[18]

38. Similarly, it will be impossible for people, including Mr. A.B.C., to taking steps to protect himself from infection, such as washing his hands with soap or separating himself from other individuals.[19]

39. The Orange County Jail is "[p]articularly vulnerable" because county jails have fewer regulations for combating diseases than federal facilities and do not have space to isolate infected individuals in individual cells.[20]

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[17] *See* Declaration of Dr. Jaimie Meyer, Velesaca v. Wolf, 20-cv-1803, ¶ 7 (AKH) (S.D.N.Y. Feb. 28, 2020), ECF 42 ("Meyer Decl.").

[18] Blakinger and Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, the Marshall Project (Mar. 6, 2020), https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus (describing, for example, limited access to hand sanitizer and other precautionary measures).

[19] Nicole Wetsman, *Prisons and Jails Are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020), https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap.

[20] Johnathan Hogan, *As Coronavirus Spreads, Jails And Prisons Are Particularly Vulnerable*, Post Register (Mar. 9, 2020), https://www.postregister.com/news/crime_courts/as-coronavirus-spreads-jails-and-prisons-are-particularly-vulnerable/article_cf7c22ef-cb93-5a21-908f-644d7ae6c682.html.

40. Overcrowding and deficient medical care,[21] including immigrant detainees being given incorrect medication or even dying because of an inadequately treated illness,[22] at the Orange County Jail are well documented even before the crisis.[23]

41. Indeed, in February 2017, New York Lawyers for the Public Interest ("NYLPI") published a report detailing serious deficiencies in the medical care provided to immigration detainees in facilities used by ICE.[24]

42. The Office of the Inspector General ("OIG") of the Department of Homeland Security ("DHS") even concluded in a 2019 report that ICE "does not adequately hold detention facility contractors accountable for not meeting performance standards," "issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards," and "does not adequately share information about ICE detention contracts with key officials."[25]

43. Moreover, ICE has routinely failed to remedy inhumane conditions because,

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[21] *See Compliance Inspection for the Orange County Jail Goshen, New York*, U.S. Dept. of Homeland Security Office of Detention Oversight, 2 (Mar. 2017), https://www.ice.gov/doclib/foia/odo-compliance-inspections/2017-Orange%20County-Jail-Goshen-NY-Mar-21-23-2017.pdf.

[22] *See Systemic Indifference: Dangerous & Substandard Care in US Immigration Detention*, Human Rights Watch (May 8, 2017), https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention.

[23] *See* Abigayle Erickson, et al., *Behind Bars in the Empire State: An Assessment of the Immigration Detention of New Yorkers*, Immigrant Advocates Response Collaborative, 18 (Mar. 2019), https://www.immigrationadvocates.org/nonprofit/alerts/attachment.340946.

[24] *See Detained and Denied: Healthcare Access in Immigration Detention*, New York Lawyers for the Public Interest (NYLPI) (2017), https://nylpi.org/wp-content/uploads/2017/02/HJ-Health-in-Immigration-Detention-Report_2017.pdf.

[25] *See* OIG, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, 1 (Jan. 29, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf.

according to the OIG, "ICE does not adequately follow up on identified deficiencies or consistently hold facilities accountable for correcting them, which further diminishes the usefulness of inspections."[26]

44. NY-area immigration detention centers specifically are "dangerously under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which would result in severe harm to detained individuals, jail and prison staff, and the broader community." Decl. at ¶¶ 26-27. These facilities' past record on addressing individuals both with serious health needs and in need of emergency care shows that the facilities are not prepared to "identify, monitor, and treat a COVID-19 epidemic" and that will be compounded as a great number of people need care simultaneously. *Id.* at ¶¶ 33-34. Reducing the number of people in detention is critical to mitigating risk for those people both inside detention and in the surrounding communities. *Id*. at ¶ 37.

45. Now, conditions inside the Orange County Jail have already deteriorated significantly, as detainees do not have access to hand sanitizer or gloves and limited access to soap, there is rarely soap in the visitors' bathroom, and the facility does not have adequate cleaning supplies.

46. Further, the jail has accepted new pre-trial detainees from Westchester, the epicenter of the outbreak in New York, and placed them in the immigration unit.

47. The Orange County Jail has already turned away detainees from accessing the

[26] *See ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, Office of the Inspector General, 1 (June 26, 2018), https://www.oig.dhs.gov/sites/default/files/assets/20//18-06/OIG-18-67-Jun18.pdf.

medical unit due to the possible presence of COVID-19 compromised individuals.

48. For recent visitors to the Jail, the Orange County Jail "screened" for the virus by taking each visitor's temperature using the same thermometer, without changing or sanitizing the cover.

49. Nonetheless, ICE continues to arrest and detain people around the country, further putting people in immigration detention at risk. *See* Richard Hall, *Coronavirus: ICE Crackdown Stokes Fears for Safety of Undocumented Immigrants During Pandemic*, Independent (Mar. 15, 2020) (noting that "[i]n New York, immigration advocates have noted a marked increase in ICE activity in recent months, which has not slowed as the coronavirus outbreak has worsened.").[27]

50. Simultaneously, as of March 16, 2020, Mr. A.B.C. and other people detained at the Orange County Jail have lost the ability to communicate with the outside world, as the Jail has cancelled all[28] contact and non-contact visits, including for attorneys, and the video teleconferencing system often malfunctions and is unreliable at best.

51. Despite repeated requests by immigrant detainees, family members, advocates, and lawyers, neither ICE's NY Field Office nor the Orange County Jail have released detailed plans about how they will protect people from Coronavirus.

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[27] On March 18, 2020, ICE announced it would "temporarily adjust" its enforcement practices during the COVID-19 outbreak, but declined to say it would stop arresting people altogether. *See* Rebecca Klar, *ICE Pausing Most Enforcement During Coronavirus Crisis*, The Hill (Mar. 18, 2020), https://thehill.com/latino/488362-ice-pausing-most-immigration-enforcement-during-coronavirus-crisis.

[28] The Jail says that visitation is limited to "extreme need" consisting of "any event that is life concerning and would require direct communication such as birth, death, serious illness or injury." The Jail goes on to specify that "Attorneys . . . and any other outside entity wishing to contact a prisoner must do so through video conferencing." New Update on Orange County Sheriff Jail Visitation, March 15, 2020, https://twitter.com/OCSheriffNY/status/1239347616481247232/photo/1.

Mr. A.B.C.'s Ongoing Detention During the COVID-19 Pandemic is Particularly Egregious

52. Mr. A.B.C., 47-year-old devout Catholic husband, father, and grandfather of three U.S. citizens and New York resident since 1992, has been detained by ICE since November 26, 2019,[29] despite serious threats to his health and well-being and numerous requests for his release.

53. Prior to his detention, Mr. A.B.C. lived in West Haverstraw, NY and supported his family through his work in both landscaping and construction for the same company since 2013. In addition to providing for his family, Mr. A.B.C. is a devout member of his parish, St. Peter and St. Mary of the Assumption Roman Catholic Church.

54. Mr. A.B.C. has been diagnosed with HIV since the mid-nineties when, after a nine-month hospitalization, he managed to stabilize his health through diligent monitoring and regular treatment.

55. Despite his previously stable health, since being detained by ICE, Mr. A.B.C. has been diagnosed with Unspecified Neurocognitive Disorder Likely Caused By Chronic HIV Disease after a cognitive functioning evaluation found that he had an IQ of 67, lower than 99%

[29] ICE arrested Mr. A.B.C. on November 26, 2019 without a judicial warrant as he was leaving a court appearance at the Spring Valley Village Court and the government charged him as removable for being in the United States without being admitted or paroled, pursuant to Immigration and Nationality Act ("INA") §212(a)(6)(A)(i) and placed him in removal proceedings at the Varick Street Immigration Court. Mr. A.B.C., through his attorney, filed a motion to suppress any evidence derived from Mr. A.B.C.'s courthouse arrest and terminate the proceedings against him on grounds that, should the evidence be suppressed, ICE would fail to meet its burden to prove Mr. A.B.C.'s alienage. On March 16, the immigration judge denied the motion to terminate and set a competency hearing for April 21, along with Mr. A.B.C.'s bond hearing March 26. Mr. A.B.C. has been arrested once, in 2018, and was released on bail. In February 2020, he pled guilty to NYPL § 140.20, Burglary in the Third Degree, and received a non-jail sentence of five years' probation. Any other charges are set to be dismissed.

of his peers.

56. As people like Mr. A.B.C. age, the HIV virus attacks the central nervous system, creating neurocognitive deficits. *See* Crystal Watkins and Glenn Treisman.[30]

57. People experiencing HIV are severely immunocompromised because HIV "attacks the body's immune system" and damage to the immune system caused by HIV "makes it harder and harder for the body to fight off infections and some other diseases."[31]

58. Because Mr. A.B.C. has experienced HIV for so long, he has begun to experience grave symptoms due to long-term HIV exposure in addition to a compromised immune system.

59. As an individual with a compromised immune system because of his HIV and cognitive difficulties that may impede his ability to take even basic precautionary measures, Mr. A.B.C. is at high risk of contracting Coronavirus and at a much higher risk of serious illness or death than the general population as a result.

60. According to the World Health Organization, "[P]ersons with pre-existing medical conditions [like Mr. A.B.C.] . . . appear to develop serious illness more often than others."[32]

61. Further, those with immune deficiencies like Mr. A.B.C.'s are among those most

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[30] *Cognitive impairment in patients with AIDS—prevalence and severity*, HIV AIDS (Auckl) (Jan. 29, 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4319681/

[31] *About HIV/AIDS*, Centers for Disease Control, accessed Mar. 16, 2020, https://www.cdc.gov/hiv/basics/whatishiv.html.

[32] *Q&A on Coronaviruses (COVID-19)*, World Health Organization (Mar. 9, 2020), https://www.who.int/news-room/q-a-detail/q-a-coronaviruses.

likely to die from coronavirus.[33]

ICE'S Failure to Release Mr. A.B.C. During the COVID-19 Pandemic Violates His Constitutional Rights

62. Although ICE detained Mr. A.B.C. under the Discretionary Detention Statute, 8 U.S.C. § 1226(a), which allows a person to be detained or released on bond, recognizance, or other conditions, the agency has refused to release him. 8 C.F.R § 236.1(c)(8).

63. ICE often releases individuals with significant medical or humanitarian needs pursuant to this authority, regardless of the detention statute under which the individuals are held.

64. ICE also releases individuals on various alternatives to detention ("ATDs"), such as check-in appointments or electronic monitoring, which can result in nearly perfect compliance rates. *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that one of ICE's ATD programs, the Intensive Supervision Appearance Program, "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings").

65. Upon learning of the dangerous results if he develops Coronavirus, Mr. A.B.C. filed a release request on March 10, 2020, asking that ICE exercise either its discretion or parole authority under 8 C.F.R § 215.5(b) to immediately release him on recognizance, bond, or reasonable conditions of release because of the urgent risks posed to him by COVID-19.

66. Mr. A.B.C. also submitted his request to the Assistant U.S. Attorneys who handle immigration cases in the Southern District of New York on Monday, March 16.

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[33] Jieliang Chen, *Pathogenicity and Transmissibility of 2019-nCoV—A Quick Overview and Comparison with Other Emerging Viruses*, Microbes and Infection (Feb. 4, 2020), https://doi.org/10.1016/j.micinf.2020.01.004

67. On March 18, 2020, the Assistant U.S. Attorneys responded that they had no substantive answer or timeframe for ICE's response to Mr. A.B.C.'s request.

68. To date, ICE has not provided an answer to Mr. A.B.C.'s release request.

69. Nonetheless, despite these repeated requests and the heightened risk to Mr. A.B.C.'s health and well-being, ICE has continued to detain him.

LEGAL FRAMEWORK

Punitive Conditions of Confinement, Including Failure to Provide Adequate Medical Care, for Civil Detainees Violate the U.S. Constitution

70. The U.S. Constitution prohibits pretrial and civil detainees from being detained in punitive conditions of confinement because the purpose of such detention is allegedly not punitive. *Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017). As a result, these detainees, including immigrant detainees, "may not be punished in any manner—neither cruelly and unusually nor otherwise." *Id.* (explaining that protections for pretrial detainees, who may not be punished at all, are broader than those for convicted prisoners, for whom the Eighth Amendment provides protection against cruel and unusual punishment).

71. As a result, due process rights of civil detainees such as immigrant detainees "are at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983); *see also Darnell*, 849 F.3d at 33 (noting that in the Second Circuit, due process conditions of confinement jurisprudence "generally mirrors" Eighth Amendment jurisprudence).

72. Because the rights of these detainees are broader than those guaranteed under the Eighth Amendment, the Due Process Clauses of the Fifth and Fourteenth Amendments governs the claims of immigrant detainees who challenge punitive or otherwise unsafe or inhumane

conditions. *Charles v. Orange County*, 925 F.3d 73, 82; *Darnell*, 849 F.3d 17, 29; *see also DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989) ("[W]hen the State . . . so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.").

73. Immigrant detainees establish a due process violation for unconstitutional conditions of confinement by showing that a government official "knew, or should have known" of a risk to a condition of confinement that "posed an excessive risk to health." *Darnell*, 849 at 35; *Charles*, 925 F.3d at 87 (noting that due process violations can be proven, in part, by showing that government officials either "*knew* that failing to provide the complained of medical treatment would pose a substantial risk to his health" or "*should have known*") (emphasis in original); *see also Darnell* at 29 (describing the elements of a due process conditions of confinement claim as a subjective prong—that an officer acted with "at least deliberate indifference" and an objective prong—towards conditions that "pose an unreasonable risk of serious damage to [one's] health"); *see also Charles*, 925 F.3d at 86 ("[T]hose in civil detention . . . are also afforded a right to be free from deliberate indifference to their serious medical needs.").

74. Where a risk is obvious, such as during a contagious disease outbreak, it is fair for a factfinder to assume that the government official was aware of the risk. *See, e.g.*, *Charles*, 925 F.3d 73, 87 ("A factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.") (citing *Farmer v. Brennan*, 511 U.S. 825, 842 (1994)); *see*

also Helling v. McKinney, 509 U.S. 25, 33 (1993) (expressing "great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems" where those authorities "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year," such as "exposure of inmates to a serious, communicable disease").

75. When considering whether a condition amounts to a serious medical need or poses an excessive risk to health, one of the key identifiers for courts in the Second Circuit is "a condition of urgency such as one that may produce death, degeneration, or extreme pain." *Charles*, 925 F.3d at 86; *see also id.* at 86 (listing factors that indicate a serious medical need to include "whether a reasonable doctor or patient would find the injury important and worthy of treatment, whether the medical condition significantly affects an individual's daily activities, and whether the illness or injury inflicts chronic and substantial pain).

76. An immigrant detainee need not demonstrate that "they actually suffered from serious injuries" to show a due process violation. *Darnell*, 849 F.3d at 31; *Helling*, 509 U.S. at 33. Rather showing conditions that "pose an unreasonable risk of serious damage to [one's] future health" may be sufficient. *Phelps v. Kapnolas*, 308 F.3d 180, 185 (2d Cir. 2002) (quoting *Helling*, 509 U.S. at 35).

77. Further, immigrant detainees may establish a constitutional violation through "mutually enforcing" aggregate conditions where the existence of one condition, such as unsanitary conditions or a communicable disease outbreak, exacerbates an "identifiable human need," such as food or medical care. *See Darnell*, 849 F.3d at 30-31.

Release is the Appropriate Remedy Where the Petitioner Raises Substantial Claims and Extraordinary Circumstances Exist.

78. Where a habeas petitioner is deprived of safe conditions and adequate care for his conditions, the Court must order the petitioner's immediate release.

79. This Court has "inherent authority to grant bail to habeas petitioners." *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001); *see also Ostrer v. United States*, 584 F.2d 594, 596 n.1 (2d Cir. 1978) ("A district court has inherent power to enter an order affecting the custody of a habeas petitioner who is properly before it contesting the legality of his custody."); *Elkimya v. Dep't of Homeland Sec.*, 484 F.3d 151, 153-54 (2d Cir. 2007) (recognizing federal courts' "inherent authority to admit to bail petitioners in immigration cases") (quoting *Mapp*, 241 F.3d at 226); *cf. Vacchio v. Ashcroft*, 404 F.3d 663, 673 (2d Cir. 2005) (explaining that a prior panel released petitioner on bail under *Mapp* during the pendency of the appeal of his habeas petition challenging mandatory detention); *cf., D'Alessandro v. Mukasey*, No. 08-cv-914 (RJA) (VEB), 2009 WL 799957, at *4 (W.D.N.Y. Mar. 25, 2009) (conducting a bail hearing under *Mapp* and ordering the petitioner's release under conditions of supervision in the context of prolonged detention under 8 U.S.C. § 1231).

80. Granting release under *Mapp* is appropriate where (1) "the habeas petition raise[s] substantial claims," and 2) "extraordinary circumstances exist[ ] that make the grant of bail necessary to make the habeas remedy effective." *Mapp*, 241 F.3d at 229 (internal quotation marks and citations omitted).

81. When assessing whether substantial claims exist, the district court must assess whether "the [habeas] petition present merits that are more than slightly in petitioner's favor."

Richard v. Abrams, 732 F. Supp. 24, 25 (S.D.N.Y. 1990) (citing *Rado v. Manson*, 435 F. Supp. 349, 350–51 (D. Conn. 1977)).

82. The "extraordinary circumstances" element is satisfied where the petitioner, like here, alleges serious medical concerns or irreparable harm. *See, e.g.*, *Vacchio*, 404 F.3d at 673 (granting release under *Mapp* during the pendency of petitioner's appeal of his mandatory detention habeas petition because "extraordinary circumstances found in the instant case are analogous to a showing of irreparable harm"); *cf. United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994) (in the criminal prisoner context, noting that extraordinary circumstances warranting bail for habeas petitioners "include a serious deterioration of health while incarcerated").

83. Applying this Circuit's *Mapp* framework in *D'Alessandro v. Mukasey*, the court found release under conditions of supervision the appropriate remedy in the 8 U.S.C. § 1231 context where the petitioner suffered with "a number of serious, potentially debilitating health problems," which continued to deteriorate in ICE detention. No. 08-cv-914, 2009 WL 799957, at *3 (W.D.N.Y. March 25, 2009). The court concluded that the petitioner's "chronic and debilitating health conditions, while not 'emergent,' . . . certainly constitute exceptional circumstances setting his case apart and making bail necessary to make the habeas remedy effective, and to prevent further deterioration of his health." *Id.* at *4; *see also S.N.C. v. Sessions*, No. 18-cv-7680 (LGS), 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018) (finding extraordinary circumstances and ordering release where the petitioner was suffering with Post Traumatic Stress Disorder, "a condition that the detention environment aggravates," as well as depression and physical pain in ICE custody); *Kiaddii v. Sessions*, 18-cv-1584, at *3 (Dkt. No. 9)

(S.D.N.Y. Mar. 2, 2018) (finding extraordinary circumstances under *Mapp* and ordering release where the petitioner presented evidence that "her health has deteriorated while in ICE's custody").

84. The COVID-19 pandemic unquestionably presents exceptional circumstances warranting release. To be sure, just yesterday, Judge Nathan ordered a federal criminal pre-trial detainee's release on conditions in light of COVID-19. *See United States v. Stephens*, 1:15-cr-00095 (AJN), Doc. No. 2798 (S.D.N.Y March 19, 2020) (explaining that "the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent" and that "inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop").

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION: RESPONDENTS' FAILURE TO ADEQUATELY PROTECT MR. A.B.C. IN LIGHT OF THE COVID-19 OUTBREAK VIOLATES DUE PROCESS

85. Petitioner repeats and re-alleges paragraphs 1-84 of this petition.

86. The Due Process Clauses guarantees immigrant detainees the right to be detained in a safe situation, free from punitive conditions of confinement. *See* U.S. Const. Amend V, XIV. The government violates that guarantee where a widespread outbreak of a contagious disease subjects detainees to inhumane conditions without adequate protection.

87. Because of the conditions in the county jails that serve as immigration detention facilities, Mr. A.B.C. is not able to take steps to protect himself—such as social distancing, using hand sanitizer, or washing his hands regularly—and the government has not provided adequate protections. When COVID-19 reaches the immigrant detention facilities in a matter of days as experts predict, the already deplorable conditions in these facilities will be exacerbated, and the

ability to protect oneself will become even more impossible.

88. The government's failure to adequately protect Petitioners from these punitive conditions, or release them from the conditions altogether, constitutes an egregious violation of Petitioners' due process rights.

SECOND CAUSE OF ACTION:
RESPONDENTS' FAILURE TO PROVIDE ADEQUATE MEDICAL CARE AND PROTECTION TO PEOPLE, SUCH AS MR. A.B.C., AT HIGH RISK OF SERIOUS HARM FROM COVID-19 VIOLATES DUE PROCESS

89. Petitioner repeats and re-alleges paragraphs 1-84 of this petition.

90. The Due Process Clauses guarantees immigrant detainees the right to be provided with adequate medical care. *See* U.S. Const. Amend V, XIV. The government violates that guarantee where they are unable to address serious medical needs during an outbreak of a contagious disease, and that contagion exacerbates the existing medical condition.

91. Mr. A.B.C.'s HIV status, compromised immune system, and related cognitive impairments place him at a heightened risk of contracting COVID-19 and suffering serious medical harm, or even death, as a result.

92. Because Respondents are aware that failing to adequately protect Mr. A.B.C. could have tragic results and yet have not taken necessary or appropriate precautions, Respondents have acted with deliberate indifference to his serious medical needs in violation of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1) Assume jurisdiction over this matter;

2) Enjoin Respondents from moving the Petitioner from the New York City area while habeas proceedings are pending;

3) Under the Court's inherent powers as detailed in *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), order Respondents to immediately release Mr. A.B.C., under any appropriate conditions, to end the violations of his due process rights and resulting harm he is suffering, including the risk of severe illness or death upon being infected by COVID-19 in a jail setting;[34]

4) Order Respondents not to re-detain Mr. A.B.C. pending the culmination of removal proceedings against him, including all administrative or judicial appeals;

5) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and

6) Grant any other and further relief that this Court deems just and proper.

Dated: March 19, 2020
Brooklyn, New York

Respectfully submitted,

/s/ Brooke Menschel

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[34] If the Court determines that immediate release pursuant to *Mapp* is not justified at this time, Mr. A.B.C. respectfully requests that the Court conduct a bail hearing where Respondents must prove, by clear and convincing evidence, that Mr. A.B.C.'s ongoing detention is necessary and does not violate his due process because Respondents have not acted with deliberate indifference towards Mr. A.B.C.'s serious medical needs and risk of severe illness or death if exposed to COVID-19. *See Celestin v. Decker*, 17-Civ.-2419, Tr. at 13-14 (S.D.N.Y. Apr. 17, 2017) (bench decision) (Abrams, J.) (district court holding bond hearing for immigration habeas petitioner, noting that "[t]he federal courts have inherent authority to admit to bail individuals properly within their jurisdictions, including in the immigration context." (*quoting Mapp v. Reno*, 241 F.3d at 226)).

Counsel for Petitioner

APPENDIX E
Sample Habeas Petition (Ninth Circuit)

This sample is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. It is not intended as, nor does it constitute, legal advice. DO NOT TREAT THIS SAMPLE AS LEGAL ADVICE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

KARLENA DAWSON; ALFREDO ESPINOZA-ESPARZA; NORMA LOPEZ NUNEZ; MARJORIS RAMIREZ-OCHOA; MARIA GONZALEZ-MENDOZA; JOE HLUPHEKA BAYANA; LEONIDAS PLUTIN HERNANDEZ; KELVIN MELGAR-ALAS; JESUS GONZALEZ HERRERA,

Petitioners-Plaintiffs,

v.

NATHALIE ASHER, Director of the Seattle Field Office of U.S. Immigration and Customs Enforcement; MATTHEW T. ALBENCE, Deputy Director and Senior Official Performing the Duties of the Director of the U.S. Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; STEVEN LANGFORD, Warden, Tacoma Northwest Detention Center,

Respondents-Defendants.

Case No. 2:20-cv-409

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE RELIEF

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I. INTRODUCTION

The novel coronavirus that causes COVID-19 has led to a global pandemic. In only a few months, 153,517 people worldwide have received confirmed diagnoses of COVID-19, and over 5,735 of those people have died. There is no vaccine against COVID-19, and there is no known cure. No one is immune. COVID-19 is most likely to cause serious illness and elevated risk of death for older adults and those with certain medical conditions or underlying disease. The COVID-19 virus can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage tissues in other vital organs including the heart and liver. Patients with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity. The only known effective measures to reduce the risk for vulnerable people of serious illness or death caused by COVID-19 are social distancing and improved hygiene, which have led to unprecedented public health measures around the world. According to preliminary data from China, 20 percent of people in high risk categories who contracted COVID-19 there died.

People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships and nursing homes. People who are confined in prisons, jails, and detention centers will find it virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, even with the best-laid plans. For this reason, correctional public health experts have recommended the release from custody of people most vulnerable to COVID-19. Release protects the people with

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the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation for all people held or working in a prison, jail, or detention center. Release of the most vulnerable people from custody also reduces the burden on the region's limited health care infrastructure, as it lessens the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.

Petitioners-Plaintiffs (hereinafter Plaintiffs) are people who are particularly vulnerable to serious illness or death if infected by COVID-19 and who are held in civil detention by Immigration and Customs Enforcement (ICE) at the Tacoma Northwest Detention Center (NWDC) in Tacoma, Washington as they await the adjudication of their immigration cases. Plaintiffs are older adults or have medical conditions that lead to high risk of serious COVID-19 infection, including lung disease, heart disease, diabetes, epilepsy, kidney disease, autoimmune disorders, asthma, and hypertension. The NWDC is located in the Seattle, Washington metropolitan area, the epicenter of the largest COVID-19 outbreak in the United States, and one of the largest known outbreaks in the world. As detailed below, the danger posed by Plaintiffs' detention during the current outbreak of COVID-19 is "so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk" and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

II. PARTIES

1. Petitioner-Plaintiff Karlena Dawson is a citizen of Jamaica who has been detained by ICE at the NWDC since February of 2019. She suffers from cholangitis, an autoimmune liver disease. As a consequence, she is at high risk for severe illness or death if she contracts COVID-19.

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2. Petitioner-Plaintiff Alfredo Espinoza Garza is citizen of Mexico who is detained by ICE at NWDC. While detained at the facility, he has suffered acute chest pain that required hospitalization to receive treatment for a heart attack. As a consequence of his health condition, he is at a high risk for severe illness or death if he contracts COVID-19.

3. Petitioner-Plaintiff Norma Lopez Nunez is a citizen of Mexico who is detained by ICE at the NWDC. She is 65 years old and suffers from hypertension and heart disease, in addition to other ailments. As a consequence, she is at high risk for severe illness or death if she contracts COVID-19.

4. Petitioner-Plaintiff Marjoris Ramirez Ochoa is a citizen of Cuba who is detained by ICE at the NWDC. She suffers from chronic high blood pressure, kidney disease, and epilepsy, among other conditions. As a consequence, she is at high risk for severe illness or death if she contracts COVID-19.

5. Petitioner-Plaintiff Maria Gonzalez Mendoza is a citizen of Mexico who is detained by ICE at the NWDC. She suffers from diabetes, high blood pressure, and asthma. As a consequence, she is at high risk for severe illness or death if she contracts COVID-19.

6. Petitioner-Plaintiff Joe Hlupheka Bayana is a citizen of Zimbabwe who has been detained by ICE at the NWDC since October of 2018. He is 57 years old and suffers from diabetes and seizures. As a consequence, he is at high risk for severe illness or death if he contracts COVID-19.

7. Petitioner-Plaintiff Leonidas Plutin Hernandez is a citizen of Cuba who is detained by ICE at the NWDC. He is 59 years old and suffers from high blood pressure. As a consequence of his health condition, he is at a high risk for severe illness or death if he contracts COVID-19.

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8. Petitioner-Plaintiff Kelvin Melgar Alas is a citizen of El Salvador who has been detained by ICE at the NWDC since July of 2018. He has been confined to a wheelchair since 1995, requires a colonoscopy bag and catheter, and has been transferred to the hospital multiple times for pneumonia while detained at the NWDC. As a consequence of his fragile health condition, he is at high risk for severe illness or death if he contracts COVID-19.

9. Petitioner-Plaintiff Jesus Gonzalez Herrera is a citizen of Mexico who has been detained by ICE since July of 2019 and is currently detained at the NWDC. He suffers from diabetes and high blood pressure. As a consequence of his health condition, he is at a high risk for severe illness or death if he contracts COVID-19.

10. Respondent-Defendant Nathalie Asher (Asher) is the Field Officer Director for the Seattle Field Office of ICE. The Seattle Field Office is responsible for carrying out ICE's immigration detention operations at the NWDC. Defendant Asher is a legal custodian of Plaintiffs. She is sued in her official capacity.

11. Respondent-Defendant Matthew T. Albence (Albence) is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Defendant Albence is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. Defendant Albence is a legal custodian of Plaintiffs. He is sued in his official capacity.

12. Respondent-Defendant ICE is a federal law enforcement agency within the Department of Homeland Security. ICE is responsible for the criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. Enforcement and Removal Operations (ERO), a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiffs.

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13. Respondent-Defendant Stephen Langford is employed by the private corporation the GEO Group, Inc. as Warden of the Tacoma Northwest Detention Center, where Plaintiffs are detained. Defendant Langford is a legal custodian of Plaintiffs. He is sued in his official capacity.

III. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 2241 (habeas jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

15. Venue lies in the United States District Court for the Western District of Washington, the judicial district in which Plaintiffs are currently in custody. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391, as venue is proper in any district in which a defendant resides.

IV. FACTS

A. COVID-19 Poses Grave Risk of Harm, Including Serious Illness or Death, to Persons Over Age 50 and Those with Certain Medical Conditions.

16. COVID-19 is a coronavirus that has reached pandemic status. As of March 16, 2020, at least 153,517 people worldwide have confirmed diagnoses, including over 3,400 people in the United States. Over 5,735 people have died as a result of COVID-19 worldwide, including at least 66 in the United States. The transmission of COVID-19 is expected to grow exponentially.

17. People over the age of fifty and those with certain medical conditions face greater chances of serious illness or death from COVID-19. Certain underlying medical conditions increase the risk of serious COVID-19 disease for people of any age, including lung disease,

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heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and pregnancy.

18. In many people, COVID-19 causes fever, cough, and shortness of breath. But for people over the age of fifty or with medical conditions that increase the risk of serious COVID-19 infection, shortness of breath can be severe.

19. The COVID-19 virus can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases, can cause a permanent loss of respiratory capacity. COVID-19 may also target the heart muscle, causing a medical condition called myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure that limits exercise tolerance and the ability to work.

20. Emerging evidence suggests that COVID-19 can also trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury.

21. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.

22. Even some younger and healthier people who contract COVID-19 may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and

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in extreme cases, extracorporeal mechanical oxygenation. Most people in higher risk categories who develop serious disease, however, will need advanced support. This level of supportive care requires highly specialized equipment that is in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. This level of support can quickly exceed local health care resources.

23. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from influenza. According to recent estimates, the fatality rate of people infected with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems. For people in the highest risk populations, the fatality rate of COVID-19 infection is about 15 percent. Preliminary data from China showed that 20 percent of people in high-risk categories who have contracted COVID-19 there have died.

24. Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation for profound reconditioning, loss of digits, neurologic damage, and the loss of respiratory capacity.

25. There is no vaccine against COVID-19, nor is there any no known medication to prevent or treat infection from COVID-19. The only known effective measures to reduce the risk for vulnerable people from injury or death from COVID-19 are to prevent them from being infected in the first place. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures for protecting vulnerable people from COVID-19.

26. Nationally, projections by the Centers for Disease Control and Prevention (CDC) indicate that over 200 million people in the United States could be infected with COVID-

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19 over the course of the epidemic without effective public health intervention, with as many as 1.5 million deaths in the most severe projections.

B. People Detained at the Northwest Detention Center Face an Elevated Risk of COVID-19 Transmission.

27. The NWDC is located in the Seattle, Washington metropolitan area, the epicenter of the largest COVID-19 outbreak in the United States at this time, and one of the largest known outbreaks in the world.

28. As of March 15, 2020, there were 769 confirmed cases of COVID-19 and 42 deaths from COVID-19 in Washington State.

29. The COVID-19 outbreak in Washington State has resulted in unprecedented health measures to facilitate and enforce social distancing. Immigration courts and the ICE field office in Seattle have already closed in the past month due to staff exposure to COVID-19. It is highly likely, and perhaps inevitable, that COVID-19 will reach the NWDC.

30. People who live in institutional settings such as immigration detention centers and who are over the age of 50 or are any age with medical conditions that put them at high risk of illness if infected by COVID-19 are at grave risk of severe illness and death.

31. Immigration detention facilities are "congregate environments," or places where people live and sleep in close proximity. Infectious diseases that are communicated by air or touch are more likely to spread in these environments. This presents an increased danger for the spread of COVID-19 if and when it is introduced into a facility.

32. Enclosed group environments, like cruise ships or nursing homes, have become the sites for the most severe outbreaks of COVID-19. The highest known person-to-person transmission rate for COVID-19 took place in a skilled nursing home facility in Kirkland, Washington, and on afflicted cruise ships in Japan and off the coast of California.

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33. The conditions of immigration detention facilities pose a heightened public health risk for the spread of COVID-19 that is even greater than in non-carceral institutions. Immigration detention facilities have even greater risk of infectious spread because of crowding, the proportion of vulnerable people detained, and often scant medical care resources. People live in close quarters and as a result, cannot achieve the "social distancing" needed to effectively prevent the spread of COVID-19. They may be unable to maintain the recommended distance of 6 feet from others and may share or touch objects used by others. Toilets, sinks, and showers are shared, without disinfection between each use. Food preparation and service is communal with little opportunity for surface disinfection. Staff arrive and leave on a shift basis, and there is limited ability to adequately screen staff for new, asymptomatic infection.

34. Many immigration detention facilities lack adequate medical infrastructure to address the spread of infectious disease and treatment of people most vulnerable to illness in detention. During the H1N1 influenza epidemic in 2009, jails and prisons were sites of severe outbreaks. It is reasonable to expect COVID-19 will also readily spread in detention centers, especially when people cannot engage in proper hygiene and isolate themselves from infected residents or staff.

C. People Most Vulnerable to COVID-19 Should Be Released from ICE Detention.

35. Because risk mitigation is the only known strategy that can protect vulnerable groups from COVID-19, public health experts with experience in immigration detention and correctional settings have recommended the release of vulnerable detainees from custody.

36. Dr. Marc Stern, a correctional health expert, has as concluded that "[f]or detainees who are at high risk of serious illness or death should they contract the COVID-19 virus, release

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from detention is a critically important way to meaningfully mitigate that risk." For that reason, Dr. Stern has recommended the "release of eligible individuals from detention, with priority given to the elderly and those with underlying medical conditions most vulnerable to serious illness or death if infected with COVID-19."

37. Dr. Robert Greifinger, a correctional health expert, has concluded that "even with the best-laid plans to address the spread of COVID-19 in detention facilities, the release of high-risk individuals is a key part of a risk mitigation strategy. Accordingly, "[i]n [his] opinion, the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage."

38. In the event that a scenario where vulnerable detainees have already been exposed to COVID-19, these experts recommend testing where possible, and the release of detainees to a quarantine setting outside of detention in coordination with local health authorities.

D. Plaintiffs Are Particularly Vulnerable to Serious Illness or Death If Infected by COVID-19 and Should Be Released from Custody.

39. Plaintiffs in this case are people who are particularly vulnerable to serious illness or death if infected by COVID-19 who are currently detained at the NWDC as they await the adjudication of their civil immigration cases.

40. **Karlena Dawson.** Ms. Dawson is a 48-year-old citizen of Jamaica. Ms. Dawson has been detained by ICE at the NWDC since February of 2019. Ms. Dawson was previously deported from the United States but returned after learning that her children, who remained in the United States, had suffered physical and sexual abuse at the hands of their foster father. She was ordered removed, but has since filed a petition for review challenging the removal order. She has also filed a U visa application based on the abuse suffered by her children, which remains

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pending before U.S. Citizenship and Immigration Services (USCIS). If that application is approved, she will be granted permission to remain in the United States with lawful status.

41. Ms. Dawson has been diagnosed with cholangitis, a progressive liver disease. She has been informed that she has a life expectancy of 10-12 years. She must take ursodiol twice a day to suppress enzymes because of her auto-immune disease. She also has diabetes, which requires her to take insulin and metformin.

42. Ms. Dawson is critically vulnerable to COVID-19 because of her autoimmune disease and diabetes.

43. **Alfredo Espinoza Esparza.** Mr. Espinoza is a 41-year-old citizen of Mexico who was living in Spokane, Washington, with his family, when he was arrested in October of 2019, by Border Patrol at the restaurant where he works. He has been detained by ICE at the NWDC since that time. He is applying for cancellation of removal and adjustment of status to lawful permanent residence before the immigration court.

44. On or about January 16, 2020, while detained at the NWDC, Mr. Espinoza suffered acute chest pain that required hospitalization to receive treatment for a heart attack. He was subsequently returned to the NWDC, where he is currently detained. He also suffers from a rectal hemorrhage which requires medication. Mr. Espinoza also suffers from joint and nerve damage in his elbow, from when he was handcuffed by Border Patrol agents. This medical workers at the NWDC have diagnosed the elbow pain as a result of a lesion to his ulnar nerve and multiple small osteochondral joint bodies. This has caused persistent numbness in his forearm and finger, and consistent aches and pain in his arm, wrist, and hand.

45. Mr. Espinoza is critically vulnerable to COVID-19 because of his significant health problems.

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46. **Norma Lopez Nunez.** Ms. Lopez is a 65-year-old citizen of Mexico. She is detained by ICE at the NWDC. She was issued a removal order that she is now challenging on a petition for review before the Ninth Circuit Court of Appeals.

47. Ms. Lopez suffers from hypertension and heart disease, in addition to major depression and other mental impairments.

48. Ms. Lopez is critically vulnerable to COVID-19 because of her age and her significant health problems.

49. **Marjoris Ramirez Ochoa.** Ms. Ramirez is a 43-year-old citizen of Cuba. She is detained by ICE at the NWDC. She last entered the United States in 2002 and is appealing a decision by the Immigration Judge denying her applications for withholding of removal and protection under the Convention Against Torture.

50. Ms. Ramirez suffers from chronic high blood pressure, kidney disease and epilepsy. While detained she has suffered five seizures, but has not been referred to medical care outside of the detention center. She also suffers from respiratory problems and has contracted pneumonia in the past. Finally, she suffers from depression, gastritis, and an ovarian cyst, among other conditions.

51. Ms. Ramirez is critically vulnerable to COVID-19 because of her significant health problems.

52. **Maria Gonzalez Mendoza.** Ms. Gonzalez is a 49-year-old citizen of Mexico. She is detained by ICE at the NWDC. She has lived in the United States since 1986 and has three children, all of whom are U.S. citizens. She is applying for cancellation of removal and adjustment of status to lawful permanent residence before the immigration court.

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53. Ms. Gonzalez suffers from high blood pressure, diabetes, and asthma. She receives medication for her asthma, in addition to depression and mental illness.

54. Ms. Gonzalez is critically vulnerable to COVID-19 because of her significant health problems.

55. **Joe Hlupheka Bayana.** Mr. Bayana is a 57-year-old citizen of Zimbabwe. He has been detained by ICE at the NWDC since October of 2018. He has filed a petition for review to the Ninth Circuit Court of Appeals challenging the Board of Immigration Appeals' denial of his motion to reopen immigration proceedings.

56. Mr. Bayana suffers from type II diabetes. He takes insulin three times a day to treat his condition. He receives medication to treat seizures, as well as depression.

57. Mr. Bayana is critically vulnerable to COVID-19 because of his age and significant health problems.

58. **Leonidas Plutin Hernandez.** Mr. Plutin is a 59-year-old citizen of Cuba. He has been detained by ICE since August of 2019. He is currently detained at the NWDC.

59. Mr. Plutin suffers from chronic high blood pressure, for which he receives daily medication.

60. Mr. Plutin is critically vulnerable to COVID-19 because of his age and chronic high blood pressure.

61. **Kelvin Melgar Alas.** Mr. Melgar is 41-year-old citizen of El Salvador. He has been detained by ICE since July of 2018. He was issued an order of removal that he is now challenging on a petition for review before the Ninth Circuit Court of Appeals, which issued a stay of removal.

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62. Mr. Melgar has been confined to a wheelchair since 1995, when he was shot in the spinal cord. In addition, he requires a colonoscopy bag and a catheter. While detained at the NWDC, he has been transferred for hospitalization on five separate occasions, including multiple times for suspected pneumonia.

63. Mr. Melgar is critically vulnerable to COVID-19 because of his significant health problems.

64. **Jesus Gonzalez Herrera.** Mr. Gonzalez is a 46-year-old citizen of Mexico who has been detained by ICE since July of 2019. He has been living in the United States since 2003 and has six children, all of whom are U.S. citizens. He is applying for cancellation of removal and adjustment of status to lawful permanent residence before the immigration court.

65. Mr. Gonzalez suffers from diabetes and high blood pressure, which require him to take three different types of medication daily.

66. Mr. Gonzalez is critically vulnerable to COVID19 because of his significant health problems.

V. LEGAL FRAMEWORK

A. Plaintiffs Have a Constitutional Right to Reasonable Safety in Custody.

67. Whenever the government detains or incarcerates someone, it has an affirmative duty to provide conditions of reasonable health and safety. As the Supreme Court has explained, "when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As a result, the government must provide those in its custody with "food, clothing, shelter, medical care, and reasonable safety." *Id.* at 200.

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68. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment's prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. The Eighth Amendment requires that "inmates be furnished with the basic human needs, one of which is 'reasonable safety.'" *Helling v. McKinney*, 509 U.S. at 33 (quoting *DeShaney*, 489 U.S. at 200). Accordingly, "[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Id.*

69. The Supreme Court has explicitly recognized that the risk of contracting a communicable disease may constitute such an "unsafe, life-threatening condition" that threatens "reasonably safety." *Id.*

70. These principles also apply in the context of immigration detention. Immigrant detainees, even those with prior criminal convictions, are *civil detainees* held pursuant to civil immigration laws. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

71. Because detained immigrants are civil detainees, their constitutional protections while in custody are derived from the Fifth Amendment, which provides protections even greater than the Eighth Amendment. The Eighth Amendment, which applies to persons convicted of criminal offenses, allows punishment as long as it is not cruel and unusual. But the Fifth Amendment's due process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished.").

72. The Ninth Circuit has applied this principle to make clear that that civil detainees, like Plaintiffs here, are entitled to conditions of confinement that are superior to those of convicted prisoners and to those of criminal pretrial detainees. *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005); *see also King v. Cnty. of Los Angeles*,

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885 F.3d 548, 557 (9th Cir. 2018) (finding presumption of punitive, and thus unconstitutional, treatment where conditions of confinement for civil detainees are similar to those faced by pre-trial criminal detainees).

73. Moreover, because civil detention is governed by the Fifth Amendment rather than the Eighth Amendment, the "deliberate indifference" standard required to establish a constitutional violation in the latter context does not apply to civil detainees like Plaintiffs. *Jones*, 393 F.3d at 934. Instead, a condition of confinement for a civil immigration detainee violates the Constitution "if it imposes some harm to the detainee that significantly exceeds or is independent of the inherent discomforts of confinement and is not reasonably related to a legitimate governmental objective or is excessive in relation to the legitimate governmental objective." *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016), *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017).

B. ICE Has the Authority to Release Detained People in Its Custody.

74. It is well within ICE's authority to comply with these constitutional requirements by releasing people who are vulnerable to severe illness or death if they contract COVID-19. For example, the regulations governing ICE's release authority state that serious medical conditions are a reason to parole an individual, as "continued detention would not be appropriate" in such cases. 8 C.F.R. § 212.5(b)(1).

75. ICE not only has the authority to exercise discretion to release individuals from custody, but has routinely exercised this discretion to release particularly vulnerable detainees like Plaintiffs.

76. High level ICE officials corroborate this fact. As former Deputy Assistant Director for Custody Programs in ICE Enforcement and Removal Operations Andrew Lorenzen-

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Strait explains, "ICE has exercised and still exercises discretion for purposes of releasing individuals with serious medical conditions from detention." In fact, "ICE exercises humanitarian parole authority *all the time* for serious medical reasons."

77. This exercise of discretion comes from a long line of agency directives explicitly instructing officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating against detention.

78. ICE's discretion applies regardless of the statutory basis for a noncitizen's detention.

C. This Court Has Authority to Order Plaintiffs' Release to Vindicate Their Fifth Amendment Rights, and Such Relief Is Appropriate Here.

79. While the circumstances of this case are novel and emerging, the Court's authority to order Plaintiffs' release to ensure their constitutional rights are protected is not. "Federal courts possess whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights." *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992). As a result, "[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison's population." *Brown v. Plata*, 563 U.S. 493, 511 (2011).

80. Courts have regularly exercised this authority to remedy to remedy constitutional violations caused by overcrowding. *Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

81. The same principle applies here. As the constitutional principles and public health experts make clear, releasing Plaintiffs is the only viable remedy to ensure their safety from the threat to their health that COVID-19 poses. Plaintiffs are older adults and people with medical

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conditions who are at particularly grave risk of severe illness or death if they contract COVID-19.

82. In the face of this great threat, social distancing and hygiene measures are Plaintiffs' only defense against COVID-19. Those protective measures are exceedingly difficult, if not impossible, in the environment of an immigration detention center, where Plaintiffs share toilets, sinks, and showers, eat in communal spaces, and are in close contact with the many other detainees and officers around them. These conditions pose even greater risk of infectious spread, and as a result, Plaintiffs face unreasonable harm from continued detention.

VI. CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Substantive Due Process (Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement)

83. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment or does not ensure those detainees' safety and health.

84. Defendants' conditions of confinement subject Plaintiffs to heightened risk of contracting COVID-19, for which there is no vaccine, known treatment, or cure. Because of Plaintiffs' particular vulnerabilities, they risk serious illness and death if infected with COVID-19. Defendants are subjecting Plaintiffs to a substantial risk of serious harm, in violation of Plaintiffs' rights under the Due Process Clause.

85. As public health experts in correctional medical care and infectious disease agree, people vulnerable to COVID-19 who are held in immigration detention "are at grave risk of

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severe illness and death." Accordingly, Defendants are subjecting Plaintiffs to detention conditions that amount to punishment and that fail to ensure their safety and health.

86. For these reasons, Defendants' ongoing detention of Plaintiffs violates the Due Process Clause.

VII. PRAYER FOR RELIEF

WHEREFORE Plaintiffs request that the Court grant the following relief:

a. Issue a Writ of Habeas Corpus and order Plaintiffs' immediate release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause;

b. In the alternative, issue injunctive relief ordering Defendants to immediately release Plaintiffs, with appropriate precautionary public health measures, on the grounds that their continued detention violates the Due Process Clause;

c. Issue a declaration that Defendants' continued detention in civil immigration custody of individuals at increased risk for severe illness, including all people over fifty years old and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;

d. Award Plaintiffs their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court may deem fit and proper.

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RESPECTFULLY SUBMITTED 16th of March, 2020.

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APPENDIX F
Public Health Expert Declaration

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Anschutz Medical Campus

Carlos Franco-Paredes, MD, MPH
Division of Infectious Diseases
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March 19, 2020

To Whom It May Concern:

The Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), is a newly emerging zoonotic agent initially identified in December 2019 that causes the Coronavirus Disease 2019 (COVID-19), formerly known as the 2019 novel Coronavirus (2019nCoV). Infection with COVID-19 is associated with significant morbidity especially in patients with chronic medical conditions. Based on a recently published systematic review of the literature in which I am a co-author of the study, at least one fifth of infected cases require supportive care in medical intensive care units. Equally concerning is the fact that despite the implementation of optimal supportive interventions, case fatality rate among hospitalized patients is more than 10 percent.

As an infectious disease clinician with a public health degree in the dynamics of infectious diseases epidemics and pandemics, I am concerned about the treatment of immigrants inside detention centers which could make the current COVID-19 epidemic worse in the U.S. by having a high case fatality rate among detainees and potentially spreading the outbreak into the larger community. This epidemic has the potential to become the Coming Prison Plague.

Experience Working with People in DHS Custody

I have experience providing care to individuals in a civil detention center and have performed approximately two medical forensic examinations and fifteen medical second opinion evaluations for patients in the custody of the Department of Homeland Security. Based on my conversations with patients, my own observations, and information that exists regarding the resources available within immigration detention facilities as detailed by the ICE Health Services Corps, it is my professional opinion that the medical care available in DHS custody cannot properly accommodate the needs of patients should there be an outbreak of COVID-19 in an immigration detention facility.

Persons Considered High Risk

People who are considered at high risk of severe illness and death should they be infected with the coronavirus include the following:

- People age 50 or older
- Anyone diagnosed with cancer, autoimmune disease (including lupus, rheumatoid arthritis, psoriasis, Sjogren's, Crohn's), chronic lung disease (including asthma, COPD, bronchiectasis, idiopathic pulmonary fibrosis), history of cardiovascular disease (MI), chronic arthritis (rheumatoid, psoriatic), chronic liver or kidney disease, diabetes, hypertension, heart failure, HIV, chronic steroids to treat chronic conditions
- People with a history of smoking

I can also certify that many of the detainees from the Aurora Immigration detention facility that I have cared for as an infectious diseases clinician either at the infectious diseases clinic and inpatient hospital services of the Anschutz Medical Center of the University of Colorado or while performing second opinion evaluations within the Aurora detention facility have chronic medical conditions that place them at high risk of developing severe coronavirus disease and potentially dying from this infection. Some of these medical conditions include HIV/AIDS, uncontrolled diabetes mellitus, chronic obstructive pulmonary disease, and other conditions. Many of them are also malnourished due to poorly nutritional diets.

Risk Factors Present in Immigration Detention

Detention of any kind allows for large groups of people to be held together in a confined space and creates the worst type of setting for curbing the spread of a highly contagious infection such as COVID-19. Under the current circumstances, incomplete adherence to infection prevention protocols including the appropriate use of personal protective equipment is insufficient to contain the spread of this disease.

In order to adequately contain any type of outbreak, there must be sufficient resources allocated to determining the risk of infection. Namely, the facility should be testing people who are symptomatic in order to determine whether they have COVID-19. Based on news reports, it is my understanding that DHS is not testing people in its custody. The effective institution of interventions to mitigate an outbreak will fail without having the ability to test those infected inside detention centers.

Should an outbreak occur, the number of isolation rooms in a given detention facility is insufficient to comply with the recommended airborne/droplet isolation guidelines. Another important consideration that complicates disinfection and decontamination practices in detention facilities is the ability of this coronavirus to survive in aerosol and metal surfaces which are highly prevalent security materials. The current outbreak requires multiple routine disinfection and decontamination of all surfaces of the facility. With a large population of detainees and staff coming in and out of any given facility, it is highly unlikely to maintaining optimal infection prevention practices.

Responding to this outbreak calls for highly-trained staff to correctly institute and enforce isolation and quarantine procedures, and to have the training to wear personal protective equipment. It is required that during the outbreak, sufficient nursing and medical staff need to be trained in infection control prevention practices, in implementing triage protocols, and adequate training in the medical management of suspect, probable and confirmed cases of coronavirus infection. This same personnel would have to initiate the management of those with severe disease. Since these are closed facilities, the number of exposed, infected, and ill detainees may prove to rapidly overwhelm staff and resources within a detention center. As a result, many patients would need transfer to hospitals near detention centers potentially overwhelming surrounding healthcare systems which are already functioning at full-capacity caring for the general community.

Likely Outcome if COVID-19 Spreads in Immigration Detention

Given the large population density of immigration detention centers, and the ease of transmission of this viral pathogen, the attack rate may take exponential proportions. Behind the walls of a detention center, the basic reproductive rate of the infection ($R_{0=2}$) may be responsible for infecting between 30-50% of detainees and staff within a facility. Of these one-fifth will require hospital admission, and about 10% will develop severe disease requiring intensive care unit. For an immigration detention center that holds 1500 detainees, we can estimate that 500-650 may acquire the infection. Of these, 100 to 150 individuals may develop severe disease potentially requiring admission to an intensive care unit. Of these, 10-15 individuals may die from respiratory failure. The cost of care of in the intensive care unit is in the order of $5000 to $8,000 dollars per day for those requiring mechanical ventilation.

Risk Minimization Through Release from Detention

In contrast, releasing those in the high risk age groups and those with underlying medical conditions with lessen the impact of an outbreak of COVID-19. The main reason is that those in these groups at risk carry the highest concentration of virus in their respiratory secretions and act as human incubators of the virus. Additionally, by having a reduced number of people and held together in a confined space, there is a reduced number of networks of transmission of the infection. This intervention is the public interest since the release people from detention will minimize the number of people infected with COVID-19 that may potentially spread to the surrounding communities around detention centers.

Conclusion

Besides the humanitarian premise and the moral justification for the release of detainees in the midst of the ongoing epidemic in the U.S., the potential medical impact that COVID-19 may produce among detainees may become devastating and require major financial

investment by ICE. Therefore, anticipating the impact of this epidemic inside immigration detention facilities justifies exploring alternative strategies to reduce its impact in U.S. soil. **The prompt release on parole of detainees with medical conditions at risk of severe disease and death due to coronavirus infection may reduce the impact of this outbreak among detention facilities. This intervention may also effectively reduce the potential spillover of the outbreak from a detention center into the community.**

Sincerely,

Carlos Franco-Paredes, MD, MPH, DTMH (Gorgas)
Associate Professor of Medicine
Division of Infectious Diseases
Department of Medicine
Division of infectious Diseases
Program Director Infectious Disease Fellowship
Training Program, University of Colorado

Carlos Franco-Paredes, MD, MPH

Revised: 03/16/2020

PERSONAL INFORMATION

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U.S. Citizen and Mexican Citizen
Languages: English and Spanish

CURRENT PROFESSIONAL POSITION AND ACTIVITIES:

- Associate Professor of Medicine, Division of Infectious Diseases, University of Colorado Denver School of Medicine, Anschutz Medical Campus and Infectious Diseases (July 2018 - ongoing).
- Fellowship Program Director, Division of Infectious Diseases, University of Colorado Denver School of Medicine, Anschutz Medical Campus (March 2019- ongoing).

EDUCATION

1989 -1995	M.D. - La Salle University School of Medicine, Mexico City, Mexico
1996-1999	Internship and Residency in Internal Medicine, Emory University School of Medicine Affiliated Hospitals, Atlanta, GA
1999-2002	Fellowship in Infectious Diseases, Emory University School of Medicine Affiliated Hospitals, Atlanta, GA
1999-2002	Fellow in AIDS International Training and Research Program, NIH Fogarty Institute, Rollins School of Public Health, Emory University, Atlanta, GA
1999 - 2002	Masters Degree in Public Health (M.P.H.) Rollins School of Public Health, Emory University, Atlanta, GA, Global Health Track
2001-2002	Chief Medical Resident, Grady Memorial Hospital, Emory University School of Medicine, Atlanta, GA
2006	Diploma Course in Tropical Medicine, Gorgas. University of Alabama, Birmingham and Universidad Cayetano Heredia, Lima Peru

CERTIFICATIONS

1999-Present	Diplomat in Internal Medicine American Board of Internal Medicine (Recertification 11/2010-11/2020)
2001-present	Diplomat in Infectious Diseases, American Board of Internal Medicine, Infectious Diseases Subspecialty (Recertification 04/2011-04/2021)
2005-present	Travel Medicine Certification by the International Society of Travel Medicine
2007-present	Tropical Medicine Certification by the American Society of Tropical Medicine – Diploma in Tropical Medicine and Hygiene (DTMH - Gorgas)

EMPLOYMENT HISTORY:

- 2002 - 2004 - Advisor to the Director of the National Center for Child and Adolescent Health and of the National Immunization Council (NIP), Ministry of Health Mexico; my activities included critical review of current national health plans on vaccination, infectious diseases, soil-transmitted helminthic control programs; meningococcal disease outbreaks in the jail system, an outbreak of imported measles in 2003-2004 and bioterrorism and influenza pandemic preparedness. I represented the NIP at meetings of the Global Health Security Action Group preparation of National preparedness and response plans for Mexico
- 2005 – 2011- Co-Director Travel Well Clinic, Emory University
  Emory Midtown Hospital
- 2004- 8/2009 -Assistant Professor of Medicine
  Department of Medicine, Division of Infectious Diseases
  Emory University School of Medicine, Atlanta GA
- 3/2008-10/2009 Consultant WHO, HQ, Geneva, Influenza Vaccine
- 9/2009- 3/2011 Associate Professor of Medicine
  Department of Medicine, Division of Infectious Diseases
  Emory University School of Medicine, Atlanta GA
- 1/2007 – 3/2011 Assistant Professor of Public Health
  Hubert Department of Global Health
  Rollins School of Public Health, Emory University, Atlanta GA
- 4/2011 –5/2013 - Associate Professor of Public Health in Global Health
  Hubert Department of Global Health
  Rollins School of Public Health, Emory University, Atlanta GA
- 2010 - WHO HQ Consultant for a 4-month-period on the Deployment of H1N1 influenza vaccine in the African Region, Jan to March 2010, Switzerland Geneva, WHO HQ 2010 sponsored by John Snow Inc. USAID, Washington, D.C.
- 2014-2015 - Consultant International Association of Immunization Managers, Regional Meeting of the Middle Eastern and North African Countries and Sub Saharan Africa, held in Durban South Africa, Sept 2014; and as rapporteur of the Inaugural Conference, 3-4 March 2015, Istanbul, Turkey.
- 3/2011- 5/2017 - Phoebe Physician Group –Infectious Diseases Clinician Phoebe Putney Memorial Hospital, Albany, GA.
- 5/2015 - 9/2015 - Consultant Surveillance of Enteric Fever in Asia (Pakistan, Indonesia, Bangladesh, Nepal, India) March 2015-October 2015.
- June 19, 2017-June 31, 2018–Visiting Associate Professor of Medicine, Division of Infectious Diseases, University of Colorado Denver, Anschutz Medical Campus
- June 2004- present - Adjunct Professor of Pediatrics, Division of Clinical Research, Hospital Infantil de México, Federico Gómez, México City, México. Investigador Nacional Nivel II, Sistema Nacional de Investigadores (12/2019); SNI III Sistema Nacional de Investigadores (1/2020-); Investigador Clínico Nivel E, Sistema Nacional de Hospitales

HONORS AND AWARDS

1995 Top Graduating Student, La Salle School of Medicine
1997 Award for Academic Excellence in Internal Medicine, EUSM
1999 Alpha Omega Alpha (AOA) House staff Officer, EUSM
2002 Pillar of Excellence Award. Fulton County Department of Health and Wellness Communicable Disease Prevention Branch, Atlanta GA
2002 Emory University Humanitarian Award for extraordinary service in Leadership Betterment of the Human Condition the Emory University Rollins School of Public Health
2002 Winner of the Essay Contest on the Health of Developing Countries: Causes and Effects in Relation to Economics or Law, sponsored by the Center for International Development at Harvard University and the World Health Organization Commission on Macroeconomics Health with the essay "*Infectious Diseases, Non-zero Sum Thinking and the Developing World"*
2002 *"James W. Alley"* Award for Outstanding Service to Disadvantaged Populations, Rollins School of Public Health of Emory University May 2002. Received during Commencement Ceremony Graduation to obtain the Degree of Masters in Public Health
2006 Golden Apple Award for Excellence in Teaching, Emory University, School of Med
2006 Best Conference Award Conference, "*Juha Kokko*" Best Conference Department of Medicine, EUSM
2007 "*Jack Shulman*" Award Infectious Disease fellowship, Excellence in Teaching Award, Division of Infectious Diseases, EUSM
2007 Emerging Threats in Public Health: Pandemic Influenza CD-ROM, APHA's Public Health Education and Health Promotion Section, Annual Public Health Materials Contest award
2009 National Center for Preparedness, Detection, and Control of Infectious Diseases. Honor Award Certificate for an exemplary partnership in clinical and epidemiologic monitoring of illness related to international travel. NCPDCID Recognition Awards Ceremony, April 2009. CDC, Atlanta, GA
2012 The ISTM Awards Committee, directed by Prof. Herbert DuPont, selected the article "Rethinking typhoid fever vaccines" in the Journal of Travel Medicine (Best Review Article)
2012 Best Clinical Teacher. Albany Family Medicine Residency Program
2018 Outstanding Educator Award – Infectious Diseases Fellowship, Division of Infectious Diseases, University of Colorado, Anschutz Medical Center, Aurora Colorado

EDITORSHIP AND EDITORIAL BOARDS

2007-Present Deputy/Associate Editor PLoS Neglected Tropical Disease Public Library of Science
2017-2018 Deputy Editor, Annals of Clinical Microbiology and Antimicrobials BMC
2007-2019 Core Faculty International AIDS Society-USA -Travel and Tropical Medicine/HIV/AIDS

INTERNATIONAL COMMITTEES

2018- Member of the Examination Committee of the International Society of Travel Medicine.

Developing Examination Questions and Proctoring the Certificate in Traveler's Health Examination
Proctor Certificate of Traveler's Health Examination (CTH) as part of the International Society of Travel Medicine– 12th Asia-Pacific Travel Health Conference, Thailand 21-24 March 2019
Proctor Certificate of Traveler's Health Examination (CTH), Atlanta, GA, September, 2019

PRESENTATIONS AT NATIONAL/INTERNATIONAL MEETINGS

2017- Meeting of the Colombian Society of Infectious Diseases, August 2017:
Discussion of Clinical Cases Session, Influenza, MERS-Coronavirus, Leprosy, Enteric Fever
2018 – Cutaneous Mycobacterial Diseases, Universidad Cayetano Heredia,
Lima, Peru, Mayo 2018
2018 – Scientific Writing Seminar, ACIN, Pereira, Colombia, August 2-4, 2018
2019 – First International Congress of Tropical Diseases ACINTROP 2019. March 21, 2019, Monteria, Colombia, Topic: Leishmaniasis
2019 – One Health Symposium of Zoonoses, Pereira Colombia, August 16-17, 2019, Topic: Zoonotic Leprosy
2019 – Congress Colombian Association of Infectious Diseases (ACIN), Topic: Leprosy in Latin America, Cartagena, Colombia, August 21-24, 2019
2019 – World Society Pediatric Infectious Diseases, Manila Philippines, November 7-9, 2019 - Tropical Medicine Symposium: Diagnosis, Treatment, and Prevention of Leprosy.
2019 – FLAP. Federacion Latino Americana de Parasitologia, Panama, Panama, November 26, 2019, Oral Transmission of Leprosy Symposium
2019 – FLAP. Federacion Latino Americana de Parasitologia, Panama, Panama, November 27, 2019, Leprosy Situation in the Americas.

PUBLICATIONS

BOOKS

Franco-Paredes C, Santos-Preciado JI. Neglected Tropical Diseases in Latin America and the Caribbean, Springer-Verlag, 2015. ISBN-13: 978-3709114216 ISBN-10: 3709114217
Franco-Paredes C. Core Concepts in Clinical Infectious Diseases, Academic Press, Elsevier, March 2016. ISBN: 978-0-12-804423-0

RESEARCH ORIGINAL ARTICLES (clinical, basic science, other) in refereed journals:

1. Del Rio C, **Franco-Paredes C**, Duffus W, Barragan M, Hicks G. Routinely Recommending HIV Testing at a Large Urban Urgent-Care Clinic – Atlanta, GA. *MMWR Morbid Mortal Wkly Rep* 2001; 50:538-541.
2. Del Rio C, Barragán M, **Franco-Paredes C**. *Pneumocystis carinii* Pneumonia. *N Engl J Med* 2004; 351:1262-1263.
3. Barragan M, Hicks G, Williams M, **Franco-Paredes C**, Duffus W, Del Rio C. Health Literacy is Associated with HIV Test Acceptance. *J Gen Intern Med* 2005; 20:422-425.
4. Rodriguez-Morales A, Arria M, Rojas-Mirabal J, Borges E, Benitez J, Herrera M, Villalobos C, Maldonado A, Rubio N, **Franco-Paredes C**. Lepidopterism Due to the Exposure of the Moth *Hylesia metabus* in Northeastern Venezuela. *Am J Trop Med Hyg* 2005; 73:991-993.
5. Rodriguez-Morales A, Sánchez E, Arria M, Vargas M, Piccolo C, Colina R, **Franco-Paredes C**. White Blood Cell Counts in *Plasmodium vivax*. *J Infect Dis* 2005; 192:1675-1676.

6. **Franco-Paredes C**, Nicolls D, Dismukes R, Kozarsky P. Persistent Tropical Infectious Diseases among Sudanese Refugees Living in the US. *Am J Trop Med Hyg* 2005; 73: 1.
7. Osorio-Pinzon J, Moncada L, **Franco-Paredes C**. Role of Ivermectin in the Treatment of Severe Orbital Myiasis Due to *Cochliomyia hominivorax. Clin Infect Dis* 2006; 3: e57-9.
8. Rodriguez-Morales A, **Franco-Paredes C**. Impact of *Plasmodium vivax* Malaria during Pregnancy in Northeastern Venezuela. *Am J Trop Med Hyg* 2006; 74:273-277.
9. Rodriguez-Morales A, Nestor P, Arria M, **Franco-Paredes C**. Impact of Imported Malaria on the Burden of Malaria in Northeastern Venezuela. *J Travel Med* 2006; 13:15-20.
10. Rodríguez-Morales A, Sánchez E, Vargas M, Piccolo C, Colina R, Arria M, **Franco-Paredes C.** Is anemia in *Plasmodium vivax* More Severe and More Frequent than in *Plasmodium falciparum? Am J Med* 2006; 119:e9-10.
11. Hicks G, Barragan M, **Franco-Paredes C**, Williams MV, del Rio C. Health Literacy is a Predictor of HIV Knowledge. *Fam Med J* 2006; 10:717-723.
12. Cardenas R, Sandoval C, Rodriguez-Morales A, **Franco-Paredes C**. Impact of Climate Variability in the Occurrence of Leishmaniasis in Northeastern Colombia. *Am J Trop Med Hyg* 2006; 75:273-7.
13. **Franco-Paredes C**, Nicolls D, Dismukes R, Wilson M, Jones D, Workowski K, Kozarsky P. Persistent and Untreated Tropical Infectious Diseases among Sudanese Refugees in the US. *Am J Trop Med Hyg* 2007; 77:633-635.
14. Rodríguez-Morales AJ, Sanchez E, Arria M, Vargas M, Piccolo C, Colina R, **Franco-Paredes C**. Hemoglobin and haematocrit: The Threefold Conversion is also Non Valid for Assessing Anaemia in *Plasmodium vivax* Malaria-endemic Settings. *Malaria J* 2007; 6:166.
15. **Franco-Paredes C**, Jones D, Rodriguez-Morales AJ, Santos-Preciado JI. Improving the Health of Neglected Populations in Latin America. *BMC Public Health* 2007; 7.
16. Kelly C, Hernández I, **Franco-Paredes C**, Del Rio C. The Clinical and Epidemiologic Characteristics of Foreign-born Latinos with HIV/AIDS at an Urban HIV Clinic. *AIDS Reader* 2007; 17:73-88.
17. Hotez PJ, Bottazzi ME, **Franco-Paredes C**, Ault SK, Roses-Periago M. The Neglected Tropical Diseases of Latin America and the Caribbean: Estimated Disease Burden and Distribution and a Roadmap for Control and Elimination. *PLoS Negl Trop Dis* 2008; 2:e300.
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19. Rodriguez-Morales AJ, Olinda, **Franco-Paredes C**. Cutaneous Leishmaniasis Imported from Colombia to Northcentral Venezuela: Implications for Travel Advice. *Trav Med Infect Dis* 2008; 6(6): 376-9.
20. Jacob J, Kozarsky P, Dismukes R, Bynoe V, Margoles L, Leonard M, Tellez I, **Franco-Paredes C**. Five-Year Experience with Type 1 and Type 2 Reactions in Hansen's Disease at a US Travel Clinic. *Am J Trop Med Hygiene* 2008; 79:452-454.
21. Delgado O, Silva S, Coraspe V, Ribas MA, Rodriguez-Morales AJ, Navarro P, **Franco-Paredes C**. Epidemiology of Cutaneous Leishmaniasis in Children and Adolescents in Venezuela. *Trop Biomed.* 2008; 25(3):178-83.
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24. Museru O, **Franco-Paredes C**. Epidemiology and Outcomes of Hepatitis B Virus Infection among Refugees Seen at U.S. Travel Medicine Clinic: 2005-2008. *Travel Med Infect Dis* 2009; 7: 171-179.

25. Rodriguez-Morales AJ, Olinda M, **Franco-Paredes C**. Imported Cases of Malaria Admitted to Two Hospitals of Margarita Island, Venezuela: 1998-2005. *Travel Med Infect Dis* 2009: (1): 48-45.
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27. Carranza M, Newton O, **Franco-Paredes C**, Villasenor A. Clinical Outcomes of Mexican Children with Febrile Acute Upper Respiratory Infection: No Impact of Antibiotic Therapy. *Int J Infect Dis* 2010; 14(9): e759-63.
28. Museru O, Vargas M, Kinyua M, Alexander KT, **Franco-Paredes C,** Oladele A. Hepatitis B Virus Infection among Refugees Resettled in the U.S.: High Prevalence and Challenges in Access to Health Care. *J Immigrant Minor Health* 2010;
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37. Kashef Hamadani BH, **Franco-Paredes C**, MCollister B, Shapiro L, Beckham JD, Henao-Martinez AF. Cryptococcosis and cryptococcal meningitis- new predictors and clinical outcomes at a United States Academic Medical Center. *Mycoses* 2017; doi: 10.1111/myc.12742.
38. Chastain DB, **Franco-Paredes C**, Wheeler SE, Olubajo B, Hawkins A. Evaluating Guideline Adherence regarding Empirical Vancomycin use in patients with neutropenic fever. *Int J Infect Dis* 2018; Feb 22. pii: S1201-9712(18)30052-3. doi: 10.1016/j.ijid.2018.02.016. PMID: 29477362
39. Parra-Henao G, Amioka E, **Franco-Paredes C**, Colborn KL, Henao-Martinez AF. Heart failure symptoms and ecological factors as predictors of Chagas disease among indigenous communities in the Sierra

Nevada de Santa Marta, Colombia. *J Card Fail* 2018; Mar 26. pii: S1071-9164(18)30119-2. doi: 10.1016/j.cardfail.2018.03.007.
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41. Chastain DB, Henao-Martinez AF, **Franco-Paredes C**. A clinical pharmacist survey of prophylactic strategies used to prevent adverse events of lipid-associated formulations of amphotericin B. *Infect Dis* 2019;
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FORMAL TEACHING

Medical Student Teaching

2001 - 2002	Clinical Methods, Emory University School of Medicine
2001 - 2002	Clinical Instructor Harvey Cardiology Course, Emory University School of Medicine
2001 - 2002	Problem-Based Learning for Second year Medical Students, EUSM
2005-2011	Clinical Methods Preceptor, ECLH
2006-2008	Medical Spanish - Instructor for M2, EUSM
2006-2007	Directed Study on Social Determinants of Infectious Diseases for M2 students (Lindsay Margolis and Jean Bendik), EUSM
2007-2011	Instructor - Global Health for M2 Students, EUSM
2007-2008	Presentation-Case Discussion – Social Determinants of Diseases – Coordinated by Dr. Bill Eley – Emory School of Medicine New Curriculum.
2018-	Small Group: Parasitic Diseases, Microbiology Course for First Year Medical Students, University of Colorado, Anschutz Medical Center.
2019-	MS-2 Small group discussion Microbiology, University of Colorado, Anschutz Medical Center: Parasitic Diseases, CNS Infections, Septic Arthritis-Cat Bite
2019-	Class Global Health and Underserved Populations of the New SOM CU Curriculum. Course Co-Director. Pilot Class (Jan 6-Jan 17, 2020).
2020-	MS-2 Small group discussion Microbiology, University of Colorado, Anschutz Medical Center: Parasitic Diseases, CNS Infections, Septic Arthritis-Cat Bite

Graduate Program

Training programs

2006-2011	Professor - GH511 (Global Health 511) International Infectious Diseases Prevention and Control, Rollins School of Public Health
2009-2011	Professor – GH500 D – Key Issues in Global Health, Career MPH Program
2006-2011	Thesis Advisor to students Global Health Track – Hubert Department of Global Health, Rollins School of Public Health of Emory University
2008-2011	Coordinator International Exchange between Rollins School of Public Health and National Institute of Public Health, Cuernavaca, Mexico – Supported by the Global Health Institute

of Emory University

Residency and Fellowship Program:

2004-2011 Resident Report – Noon Conferences Emory Crawford Long Hospital and Grady Memorial Hospital

2004-2011 Didactic Lectures on Parasitic Diseases and Non-tuberculous mycobacterial diseases for Internal Medicine Residents and Infectious Disease Fellows

2005-2008 Coordinator Journal Club Infectious Disease Division

2005-2011 Travel Medicine Elective, Internal Medicine Residents (2 internal residents per month)

2005 Grand Rounds – EUH - Department of Medicine: "Travel Medicine"

2006 Grand Rounds – ECLH – Department of Medicine: "Malaria"

2008 Grand Rounds - ECLH – Department of Medicine: "Leprosy"

2008-2011 Journal Club Coordinator, Internal Medicine Residency Program – ECLH

2009 Grand Rounds - EUH – Department of Medicine: "Leprosy a Modern Perspective of an Ancient Disease"

2009 Grand Rounds – Pulmonary and Critical Care Division – Neglected Tropical Diseases of the Respiratory Tract, June 16, 2009

2017 Grand Rounds – Leprosy, University of Colorado, Anschutz Medical Center, Division of Infectious Diseases, December 2017

2017 Grand Rounds – Infections associated with Secondary Antiphospholid Syndrome, University of Colorado, Anschutz Medical Center, Division of Rheumatology,

2018 Didactic Session – Travel Medicine (Pretravel and Postravel) Infectious Diseases Fellowship Anschutz Medical Center, Division of Infectious Diseases

2017-2019 Infectious Diseases Fellows Clinic, University of Colorado, Anschutz Medical Center, IDPG. Invited Speaker: Travel Medicine, Pretravel/Postravel Care, Physician Assistant Program, September 12, 2019, University of Colorado, Anschutz Medical Center

Other categories:

2000-2002 Physician Assistant Supervision during Fellowship/Junior Faculty, Emory University

2004-2007 Mentoring of four College Students to enter into Medical School (Emory, Southern University, and Dartmouth):
Lindsay Margolis 2004-Emory University
Michael Woodworth 2005 – Emory University
Peter Manyang 2007 – Southern University
Padraic Chisholm 2007 – Southern University/Emory University

2009-2011 Project Leader. Partnership – Emory Global Health Institute – University-wide - Emory Travel Well Clinic and is titled Hansen's disease in the state of Georgia: A Modern Reassessment of an Ancient Disease".
http://www.globalhealth.emory.edu/fundingOpportunities/projectideas.php. Students: 5 MPH students (RN/MPH, MD/MPH)

2017- Infectious Diseases Fellowship Program, University of Colorado, Anschutz Medical Center. Teaching activities Inpatient and outpatient (ID Fellows Weekly Clinic)

2019- Infectious Diseases Fellowship Program Director University of Colorado, Aurora Colorado

Supervisory Teaching:

Ph.D. students directly supervised:

Global Health, Rollins School of Public Health - PhD Task Force Member – 2007-2009
Residency Program:
Emory University: Internal Medicine Residents and Infectious Disease Fellows Supervision – Inpatient Months – 3-4 months per year on Grady Wards. I participated in the presentation and discussion of clinical cases, and discussion of peer-reviewed journal with medical students, residents, and fellows. Overall evaluations: Outstanding Teacher. (Anna Von 2005-2006; Seth Cohen 2008, Susana Castrejon 2007; Lindsay Margoles 2007-2008; Jean Bendik 2006-2008; Meredith Holtz 2007-2008)
University of Colorado, Anschutz Medical Center (since June 2017- present). Case discussion in infectious diseases during clinical rounds inpatient services (ID Gold, ID Blue, ID Orthopedics).
2004-2009 Thesis advisor – MPH Students – Hubert Department of Global Health – Concentration Infectious Diseases: Brenda Thompson 2004; Katrina Hancy 2004; Trina Smith 2006; Melissa Furtado 2007-2008; Oidda Museru 2008-2009; Hema Datwani 2010; Ruth Moro 2010; Talia Quandelacy 2010
2015 – Class GH511, Topic: "Leprosy" as part of the International Infectious Diseases, Global Health Track, Rollins Schoolf of Public Health, Emory University, Atlanta GA
2017 – Class GH511, Topic: "Leprosy" as part of the International Infectious Diseases, Global Health Track, Rollins School of Public Health, Emory University, Atlanta GA
2019 - Project Mentorship – Diffuse lepromatous leprosy. Undergraduate Student, University of Colorado, Boulder. Mikali Ogbasselassie. Project was carried out in Collaboration with the Dermatology Center of the Hospital General de Mexico.
Poster presentation by Mikali Ogbasselassie September 22, 2019, UMBC, Baltimore, Maryland.