## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

ABDY NIZEYIMANA, on behalf of ) himself and all others similarly situated, ) Petitioners, ) v. ) ANTONE MONIZ, Superintendent of the ) Plymouth County Correctional Facility, ) Respondent. )

C.A. No. 20-10685-ADB

## PETITIONERS' RESPONSE TO RESPONDENT'S NOTICE OF SUPPLEMENTAL AUTHORITY IN FURTHER SUPPORT OF HIS OPPOSITION TO PETITIONERS' <u>MOTION FOR DISCOVERY</u>

In its Notice of Supplemental Authority in Further Support of His Opposition to

Petitioners' Motion for Discovery (D.E. 240), the Department of Justice takes the position that:

- "[A]ny attempt to equate noncompliance with public health guidelines with deliberate indifference under the Constitution is doomed to fail"; and
- "Public health guidelines are not an appropriate yardstick to measure deliberate indifference . . . ."

See D.E. 240 at 3, 4.

James Bond may have a license to kill, but ICE does not. The authorities in this Circuit uniformly recognize that the Constitution requires that prisoners receive medical services and protection at "a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards." *See, e.g., Reaves v. Dep't of Corr.*, 392 F. Supp. 3d 195, 206 (D. Mass. 2019) (collecting authorities and quoting *United States v.* 

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*DeCologero*, 821 F.2d 39, 43 (1st Cir. 1987)). It is therefore no surprise that District Courts in this Circuit have relied on public health guidance to conclude that ICE's civil detention facilities are likely not providing constitutionally adequate protection from the COVID-19 pandemic. *See, e.g., Savino v. Souza*, No. CV 20-10617-WGY, 2020 WL 3529664, at \*2-\*3 (D. Mass. June 18, 2020); *Yanes v. Martin*, No. 120CV00216MSMPAS, 2020 WL 3047515, at \*3-\*5; (D.R.I. June 2, 2020); *Gomes v. US Dep't of Homeland Sec., Acting Sec'y*, No. 20-CV-453-LM, 2020 WL 2514541, at \*12-\*13 (D.N.H. May 14, 2020). As the government acknowledges, the Supreme Court has not altered these requirements.

The government's mistaken assertion that it is constitutionally immune from compliance with public health standards raises serious questions about whether the Plymouth County Correctional Facility is implementing adequate safety measures and is further good cause for allowing Petitioners' motion for expedited discovery (D.E. 176).

Dated: August 25, 2020

Respectfully submitted,

/s/ Laura K. McCready

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