

2. COVID-19 has been detected within the Plymouth County Correctional Facility (the “PCCF”). Multiple PCCF staff members have tested positive for the virus, as has at least one prisoner. The PCCF houses numerous civil immigration detainees in close quarters where “physical distancing,” avoiding shared surfaces and objects, and normal hygiene are impossible.

3. Petitioners Cleberson Quadrelli, Evens Dry, and Abdy Nizeyimana are civil immigration detainees at the PCCF. Mr. Dry and Mr. Nizeyimana have never been convicted of any crimes, and no final decision has been made as to whether or not they will be allowed to remain in the United States. Mr. Quadrelli has no criminal record except for non-violent motor vehicle offenses that occurred roughly a decade ago, and has a Petition for Review pending before the U.S. Court of Appeals for the First Circuit.

4. To protect themselves, these detainees seek immediate release to a location where they may safely self-isolate for the duration of the COVID-19 outbreak. Their release can be subject to GPS monitoring and any other conditions that the Court deems appropriate.

PARTIES

5. Petitioner Cleberson Quadrelli has been held in civil immigration detention since May 2019. He is currently detained at the PCCF in Plymouth, Massachusetts. On information and belief, he is detained in Unit C-3 within the facility.

6. Petitioner Evens Dry has been held in civil immigration detention since July 2019. He is currently detained at the PCCF in Plymouth, Massachusetts. On information and belief, he is detained in Unit C-3 within the facility.

7. Petitioner Abdy Nizeyimana has been held in civil immigration detainee since September 2019. He is currently detained at the PCCF in Plymouth, Massachusetts. On information and belief, he is detained in Unit C-3 within the facility.

8. Respondent Antone Moniz is the Superintendent of the Plymouth County Correctional Facility and is petitioners' immediate custodian. He is sued in his official capacity only.

JURISDICTION AND VENUE

9. This Court has jurisdiction, including pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. Venue is proper because each petitioner is detained in Massachusetts.

FACTS

A. COVID-19 poses a grave risk of serious illness and death to everyone, and especially to people over 50 and those with certain medical conditions.

11. The novel coronavirus responsible for the illness COVID-19 has led to a global pandemic. As of May 5, 2020, according to the World Health Organization, more than 3.5 million people have been diagnosed with COVID-19 around the world and almost 250,000 have died.² In the United States alone, there are well over a million confirmed COVID-19 infections, resulting in nearly 70,000 deaths.³ In Massachusetts, there have been 69,087 confirmed cases, and more than 4,000 people have died in just the last month and a half.⁴ These numbers are likely a substantial underestimate, due to the lack of availability of testing, as well as the multi-day incubation period during which people are infected but asymptomatic.

² <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

³ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁴ <https://www.mass.gov/doc/covid-19-dashboard-may-4-2020/download>. The fatality rate over the last 45 days in Massachusetts alone is roughly the equivalent of a commercial airline crash occurring every other day.

12. The rates of infection are exponential, not linear, meaning that for each person infected one day, the next day we should expect to see not one, but many more infections.

13. The virus is transmitted through droplets and on contaminated surfaces. Airborne transmission has also been documented. The average incubation period (time from infection to symptoms) has generally been reported to be around five days. Both symptomatic and asymptomatic people can transmit the virus.

14. Outcomes from COVID-19 vary from asymptomatic infection to death. In particularly vulnerable populations, the fatality rate is about 15 percent—meaning about one out of every seven people in this group who contract the illness will die. An even higher percentage will suffer serious illness.

15. Those who do not die may experience long-term harm. COVID-19 can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases, can cause a permanent loss of respiratory capacity.

16. People over the age of 50 and those with certain medical conditions face elevated risk of severe illness and death from COVID-19. The medical conditions that increase the risk of serious COVID-19 disease include lung disease (including asthma), heart disease, chronic liver or kidney disease (including hepatitis and dialysis), 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.

17. There is no approved and available vaccine to prevent contracting COVID-19. There is no known cure or anti-viral treatment for COVID-19 at this time. The only way to

protect vulnerable people from serious health outcomes, including death, is to prevent them from being infected with the coronavirus.

18. Preventing infection currently requires steps such as “social distancing” (such as remaining physically separated from other people, and avoiding the use of shared objects and surfaces) and vigilant hygiene (such as frequently washing or sanitizing the hands). Distancing must occur *before* individuals display symptoms, as they may be contagious before they are symptomatic.

19. To reduce the spread of infection, state and federal governments have undertaken extraordinary measures to separate people and limit their interactions. In Massachusetts, for example, the Governor has declared a state of emergency, ordered the closure of all non-essential businesses, and prohibited gatherings of more than 10 people.⁵ The Governor also advised all residents to stay home and avoid all unnecessary travel and activities.⁶

20. Preventing COVID-19 is in the public interest. People with COVID-19 often require intensive medical interventions, including hospitalization, use of a ventilator, and other life support. Consequently, an outbreak of COVID-19 cases in any discrete location—whether in a nursing home, university, or incarceration facility—presents a serious risk of overwhelming the local medical resources upon which all residents rely.

⁵ <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download>

⁶ <https://www.mass.gov/news/governor-charlie-baker-orders-all-non-essential-businesses-to-cease-in-person-operation>

B. Detainees at PCCF are at high risk for COVID-19 infection.

21. At present, there is no way to adequately protect people from COVID-19 in communal living environments, particularly people who are medically vulnerable. For example, nursing homes—where staff are trained to prevent the spread of communicable diseases—have been the sites of some of the largest concentrated outbreaks of COVID-19 in the United States. More than 50% of all COVID-19 deaths in Massachusetts have occurred among residents of long-term care facilities.⁷

22. Similarly, COVID-19 is spreading rapidly through the Massachusetts incarceration system. To date, at least eight prisoners in Massachusetts state facilities have died from COVID-19.

23. In the Massachusetts Department of Correction (the “DOC”), the number of the incarcerated people who tested positive for COVID-19 has more than octupled in the last month, increasing from 40 to 351.

24. COVID-19 is also spreading through the county Houses of Correction. For example, the number of positive cases in the Essex and Middlesex county sheriffs’ departments (prisoners and staff) has more than doubled over the last two weeks to more than 70 cases each.⁸

25. The virus that causes COVID-19 is present in the PCCF. Multiple PCCF staff members and at least one PCCF inmate have tested positive for COVID-19.

⁷ <https://www.mass.gov/doc/covid-19-dashboard-may-4-2020/download>.

⁸ Real-time tracking available at: <https://data.aclum.org/sjc-12926-tracker/>.

Additionally, nationwide, more than 600 confirmed cases have been reported in ICE detention facilities. See <https://www.ice.gov/coronavirus>. And the New York Times is currently tracking more than 10,000 cases in state prisons and detention facilities. See <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

26. People incarcerated at the PCCF live in close quarters and rely on shared spaces to eat, sleep, shower, and use the bathroom. They cannot achieve the physical distancing needed to effectively prevent the spread of COVID-19. Similarly, the intensive hygiene practices necessary to prevent the spread of COVID-19 are impossible.

27. Immigration detainees at the PCCF are housed in several units, one of which is C-3. Within each unit, people are held in cells with up to five bunks each. The unit takes meals together in a common area located immediately outside the cells. Although each cell has a toilet, the entire unit shares a communal bathroom, including several shared showers. The living area contains many metallic and plastic surfaces that detainees touch and breathe on, and as to which constant disinfection is impracticable. Correctional officers and staff rotate in and out of the unit. Detainees also regularly rotate in and out of the unit as they are arrested, released, or deported.

28. These conditions and the shared objects (furniture, bathrooms, sinks, etc.) increase the likelihood that COVID-19 will spread rapidly across the facility, infecting vulnerable detainees.

C. People must be released from ICE detention.

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

30. Recognizing these grave risks, courts have begun issuing orders requiring or urging the release of incarcerated people. In Massachusetts, the U.S. District Court recently ordered that an immigration detainee be released from the PCCF based on the “extraordinary circumstances” arising from the coronavirus pandemic. *See* Ex. A (Memorandum and Order

(D.E. 507), *Calderon Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 25, 2020)). The court has also certified a class of all civil immigration detainees held at the Bristol County House of Correction, and has ordered the interim release of dozens of detainees during the pendency of that action. *See generally Savino v. Souza*, No. 20-10617, 2020 WL 1703844 (D. Mass. Apr. 8, 2020) (“*Savino Order*”). And in New Hampshire, the U.S. District Court has similarly provisionally certified a class of immigration detainees and is considering expedited applications for interim release. *See generally Gomes v. DHS*, No. 20-453, 2020 WL 2113642 (D.N.H. May 4, 2020).

31. Similarly, the U.S. Court of the Appeals for the Ninth Circuit recently ordered the release of an immigrant from ICE detention in light of the dangers posed by the COVID-19 crisis. *See, e.g., Xochihua-Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877 (9th Cir. Mar. 24, 2020) (Order) (“[I]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court *sua sponte* orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court.”). Other U.S. District Courts have issued orders requiring that immigration detainees be released in light of the coronavirus pandemic. *See, e.g., A.R. v. Decker*, No. 20-3600 (D.N.J. Apr. 12, 2020); *Bent v. Barr*, No. 19-CV-06123, 2020 WL 1812850 (N.D. Cal. Apr. 9, 2020); *Ortuno v. Jennings*, No. 3:20-cv-02064-MMC, Dkt. No. 38 (N.D. Cal. Apr. 8, 2020); *Toma v. Adducci*, 20-cv-10829, Dkt. No. 29 (E.D. Mich. Apr. 9, 2020); *L.O. v. Tsoukaris*, 20-cv-2481, Dkt. No. 24 (D.N.J. Apr. 9, 2020); *Hope v. Doll*, No. 1:20-cv-00562 (M.D. Pa. Apr. 7, 2020); *Malam v. Adducci*, No. 2:20-cv-10829 (E.D. Mich. Apr. 6, 2020) (“[T]he only reasonable response by Respondents is the release of Petitioner; any other response demonstrates a disregard of the specific, severe, and life-threatening risk to Petitioner from

COVID-19.”); *Nguyen v. Marin*, No. 20-00646, Dkt. No. 10, (C.D. Cal. Apr. 3, 2020); Orders, *Robles v. Wolf*, No. 20-cv-627, Dkt. Nos. 32, 35, 36, 38, 39 (C.D. Cal. Apr. 2, 2020); *Hernandez v. Wolf*, 20-cv-617, Dkt. No. 17 (C.D. Cal. Apr. 1, 2020) (“Because of the highly contagious nature of the coronavirus and the, relatively high, mortality rate of COVID-19, the disease can spread uncontrollably with devastating results in a crowded, closed facility, such as an immigration detention center.”); *Avendaño Hernandez v. Decker*, No. 20-CV-1589, 2020 WL 1547459, at *4 (S.D.N.Y. Mar. 31, 2020); *Thakker v. Doll*, No. 20-00480 (M.D. Pa. Mar. 31, 2020); *Fraihat v. Wolf*, No. 20-00590 (C.D. Cal. Mar. 30, 2020); *Castillo v. Barr*, No. 20-00605, 2020 WL 1502864, at *6 (C.D. Cal. Mar. 27, 2020); *Coronel v. Decker*, No. 20-2472, 2020 WL 1487274, at *10 (S.D.N.Y. Mar. 27, 2020); *Basank v. Decker*, No. 20-2518, 2020 WL 1481503, at *7 (S.D.N.Y. Mar. 26, 2020).

32. Similarly, the Massachusetts Supreme Judicial Court recently established a rebuttable presumption of release for most pre-trial detainees accused of crimes, particularly those with medical vulnerabilities. *See* Slip Opinion, *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, No. SJC-12926, at 29-30 (Apr. 3, 2020). And the Chief Justice of the Montana Supreme Court recently urged judges to “review your jail rosters and *release, without bond, as many prisoners as you are able*, especially those being held for non-violent offenses.”⁹ The Chief Justice of the South Carolina Supreme Court ordered that everyone held on bond in a non-capital case be released, unless there exists an “unreasonable danger” or

⁹ *See* Letter from Mike McGrath, Chief Justice of Montana Supreme Court, to Montana Courts of Limited Jurisdiction Judges (Mar. 20, 2020), <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333> (emphasis added).

“extreme flight risk.”¹⁰ And in New Jersey, after the Supreme Court ordered briefing and argument on why it should not order the immediate release of individuals serving county jail sentences, the Attorney General and County Prosecutors agreed to create an immediate presumption of release for every person serving a county jail sentence in New Jersey.¹¹ Many other courts have taken similar steps, recognizing that public safety means ensuring the public’s health.¹²

D. Petitioners should be immediately released to a location where they can safely self-isolate under whatever conditions and supervision the Court deems appropriate.

33. Petitioner Cleberson Quadrelli has been held in civil immigration detention since May 2019. He is currently detained at the PCCF in Plymouth, Massachusetts. On information and belief, he is detained in Unit C-3 within the facility. Mr. Quadrelli has no criminal record except for non-violent motor vehicle offenses that occurred roughly a decade ago. He is currently seeking to re-open his removal proceedings on the grounds of legal error that resulted in the denial of his eligibility for cancellation of removal. He currently has a Petition for Review pending before the U.S. Court of Appeals for the First Circuit where the legal issue regarding his eligibility will be addressed. His removal is presently stayed by court order.

¹⁰ Memo from Chief Justice Beatty to Magistrates, Municipal Judges, and Summary Court Staff (Mar. 16, 2020), <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461>.

¹¹ See https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf; <https://www.njcourts.gov/public/assets/COVIDproposedOTSC.pdf?c=Pkd>

¹² See Appendix: Court Actions Across the Country to Reduce Incarceration in Light of Covid-19.

34. Petitioner Evens Dry has been held in civil immigration detention since July 2019. He is currently detained at the PCCF in Plymouth, Massachusetts. On information and belief, he is detained in Unit C-3 within the facility. Mr. Dry has never been convicted of a crime.

35. Petitioner Abdy Nizeyimana has been held in civil immigration detainee since September 2019. He is currently detained at the PCCF in Plymouth, Massachusetts. On information and belief, he is detained in Unit C-3 within the facility. Mr. Nizeyimana has never been convicted of a crime.

36. Continued detention in the PCCF puts petitioners at high risk of severe illness and death from COVID-19.

LEGAL FRAMEWORK

A. Petitioners are entitled to constitutional due process protections against infectious disease and death while detained.

37. 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. 25, 33 (1993) (quoting *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989)).

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

38. Immigration 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).

39. For pretrial and civil detainees, due process “provides *at least* as much protection . . . as the Eighth Amendment provides for convicted inmates.” *Ruiz-Rosa v. Rullan*, 485 F.3d 150, 155 (1st Cir. 2007) (emphasis added); *accord Gaudreault v. Municipality of Salem*, 923 F.2d 203, 208 (1st Cir. 1990). Indeed, civil detainees, like petitioners here, are entitled to conditions of confinement that are superior to those of convicted prisoners. *See Alves v. Murphy*, 530 F. Supp. 2d 380, 387 (D. Mass. 2008); *see also King v. Cty. of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018); *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004).

40. Consequently, under the Due Process Clause, pretrial and civil detainees, like petitioners, may not be subject to conditions that amount to punishment, including conditions that fail to “reasonably relate[] to a legitimate governmental objective.” *Bell v. Wolfish*, 441 U.S. 520, 539 (1979); *accord Lyons v. Powell*, 838 F.2d 28, 29 (1st Cir. 1988). Accordingly, the First Circuit has found that, at a minimum, detention conditions are unconstitutional where they: (1) objectively deny a minimal measure of necessities required for civilized living; and (2) are imposed with deliberate indifference to inmate health or safety. *Surprenant v. Rivas*, 424 F.3d 5, 18-19 (1st Cir. 2005); *Reaves v. Dep’t of Corr.*, 333 F. Supp. 3d 18, 26 (D. Mass. 2018); *Couchon v. Cousins*, No. 17-10965, 2018 WL 4189694, at *6 (D. Mass. Aug. 31, 2018).

41. Additionally, the Due Process Clause protects detainees, like petitioners, not only from conduct amounting to deliberate indifference, but also from objectively unreasonable conduct that creates a risk to their safety. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472-73 (2015); *Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1120, 1122-25 (9th Cir. 2018). The language of *Kingsley* is broad—applying not only to use of excessive force by the government, but to government action generally, including actions involving medical treatment. *See Gordon*, 888 F.3d at 1124; *see also Couchon*, 2018

WL 4189694, at *6 (noting that there is “much to be said” for the reasoning that extends *Kingsley* to conditions of confinement cases).

42. Regardless, under either the objective unreasonableness or deliberate indifference standard, petitioners should succeed on the merits of their claim. As a court in this district recently explained, “the virus is gravely dangerous to all of us,” and that harm is “more serious for some petitioners than for others.” *See Savino* Order at 21.

43. Further, to the extent relevant, it also clear that there are substitute measures that can achieve community safety and petitioners’ future appearance, absent continued detention. The Court can order release subject to home confinement, GPS monitoring, and other conditions that the Court deems appropriate.

44. But in all events, because the government has actual knowledge of the impending, preventable, and extreme risks that COVID-19 poses to petitioners (including death), their release is required under due process principles.

B. Release is the only relief that can adequately protect petitioners.

45. COVID-19 poses a serious risk to petitioners. It is highly contagious and can cause severe illness and death.

46. The risk that COVID-19 poses to petitioners is known to Respondent.

47. Petitioners’ continued detention in the absence of appropriate or sufficient care and protection constitutes deliberate indifference and is objectively unreasonable.

48. Medical experts for the Department of Homeland Security have also identified the risk of COVID-19 spreading to ICE detention centers. As early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts to the Department of Homeland Security, shared concerns about the specific risk to immigrant detainees as a result of COVID-19 with the agency.

These experts warned of the danger of rapid spread of COVID-19 in immigration detention facilities. In a letter to Congress, Dr. Allen and Dr. Rich recommended that “[m]inimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases.” They concluded that “acting immediately will save lives not of only those detained, but also detention staff and their families, and the community-at-large.”¹³

49. John Sandweg, a former acting director of ICE, has written publicly about the need to release nonviolent detainees because ICE detention centers “are extremely susceptible to outbreaks of infectious diseases” and “preventing the virus from being introduced into these facilities is impossible.”¹⁴ Prisons and jails around the country are already releasing non-violent detainees because the risk of contagion is overwhelming. The circumstances of this case make clear that release is the only means to ensure compliance with the petitioners’ due process rights. Public health information makes clear that the only way to prevent infection is through social distancing and increased hygiene, and that these measures are most imperative to protect individuals with underlying medical conditions. The only course of action that can remedy these unlawful conditions is release from the detention centers where risk mitigation is impossible.

C. ICE has the authority to release detained people in its custody.

50. 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.

¹³ Letter from Scott A. Allen, MD, FACP, and Josiah Rich, MD, MPH, to House and Senate Committees on Homeland Security (Mar. 19, 2020), <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>.

¹⁴ See John Sandweg, “I Used to Run ICE. We Need to Release the Nonviolent Detainees.” *The Atlantic* (Mar. 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>.

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).

51. 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 some of the class members.

D. This Court has the authority to order preliminary release pending resolution of this petition under the principles of *Mapp v. Reno*.

52. During the pendency of this action, the Court should order petitioners’ interim release under the principles of *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001). Under *Mapp*, a court may order a habeas petitioner released on an interim basis after “inquir[ing] into whether ‘the habeas petition raise[s] substantial claims and [whether] extraordinary circumstances exist[] that make the grant of bail necessary to make the habeas remedy effective.’” *Id.* at 230 (quoting *Iuteri v. Nardoza*, 662 F.2d 159, 161 (2d Cir. 1981)) (alterations in original).¹⁵ Courts in this district and others have recently applied *Mapp* and its First Circuit analogues to order pre-judgment release for immigration detainees challenging their detention in light of the COVID-19 pandemic. *See, e.g., Savino Order* at 27-28; *Avendaño Hernandez v. Decker*, No. 20-CV-1589 (JPO), 2020 WL 1547459, at *2-*4 (S.D.N.Y. Apr. 1, 2020); *Calderon Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 26, 2020) (Ex. A).

¹⁵ Whereas *Mapp* required only that the petitioner raise “substantial claims” on the merits, the First Circuit – considering a habeas petition from a convicted state prisoner – articulated a higher standard. *See Glynn v. Donnelly*, 470 F.2d 95, 98 (1st Cir. 1972). However, the First Circuit’s test should not extend to immigration detainees, who retain the presumption of innocence, and “the *Mapp* test or something similar or perhaps less is appropriate” in the immigration context. *Jimenez v. Wolf*, No. 18-10225-MLW, Memorandum & Order, ECF No. 507 (D. Mass. Mar. 26, 2020) at 1-2.; *see also Savino Order* at 27-28 n.11.

53. Here, as in those cases, this “nightmarish pandemic” constitutes “exceptional circumstances,” and petitioners have raised “substantial claims” that their detention is unconstitutional in light of the COVID-19 pandemic. *Savino* Order at 27-28 & n.11.¹⁶ Habeas will not be an effective remedy for them if they are no longer alive.

54. This Court should therefore order petitioners’ interim release while the Court considers and resolves this matter.

E. This Court has the authority to order release as a final remedy.

55. “[H]abeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and “[f]ederal courts possess whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights.” *Stone v. City & Cty. 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); *see also* 28 U.S.C. § 2243; *Boumediene v. Bush*, 553 U.S. 723, 779-80 (2008) (explaining that “common-law habeas corpus was, above all an adaptable remedy,” that the “habeas court’s role was most extensive in cases of pretrial and noncriminal detention,” and that “when the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority . . . to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner’s release”).

56. Courts have regularly exercised this authority to remedy constitutional violations caused by overcrowding. *See, e.g., Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983)

¹⁶ As this Court observed in the *Savino* order, a petitioner’s challenge to detention in light of the COVID-19 pandemic “would also satisfy a more exacting standard” like the one articulated by the First Circuit in *Glynn*. *See Savino* Order at 28 n.11.

(concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

57. The same principle applies here. As the constitutional principles and public health experts make clear, releasing petitioners is the only viable remedy to ensure their safety. The Court may condition that release on the use of GPS monitoring and any other conditions it considers appropriate.

CLASS ALLEGATIONS

58. The foregoing allegations are re-alleged and incorporated herein.

59. Petitioners seek to represent a class defined as all civil immigration detainees who are petitioners in this action (*i.e.*, who signed the original Petition (D.E. 1)) or are otherwise presently detained in unit C-3 at the PCCF. The members of the class are readily ascertainable through the Courts' and the respondents' records.

60. Petitioners bring this action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) on behalf of themselves and all other similarly-situated persons within the proposed class as defined above.

61. The class is so numerous that joinder of all members is impracticable. According to records produced by respondent, there are at least 42 members of the class.

62. There are multiple questions of law and fact common to the members of the proposed class, including whether, due to the COVID-19 pandemic, the petitioners' continued civil detention at the PCCF violates their Fifth Amendment rights such that they should be released.

63. Petitioners' claims are typical of the claims of the proposed class, and petitioners will fairly and adequately protect the interests of the proposed class. Petitioners' interests do not

conflict with those of other members of the proposed class, and petitioners have retained competent counsel experienced in class actions and immigration law.

64. Moreover, certification is appropriate under Federal Rule of Civil Procedure 23(b)(2) because class members are subject to a common practice by respondent. Every member of the class is at imminent risk of being infected by COVID-19 while in the custody of respondent. And, because every member of the class is entitled to relief from this unconstitutional detention, an appropriate injunction or declaration will provide relief on a class-wide basis.

CLAIM FOR RELIEF

Count I: Violation of Fifth Amendment Right to Due Process

65. 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 when it does not ensure those detainees' safety and health.

66. The confinement of the petitioners and class members subjects them to a heightened and unacceptable risk of contracting COVID-19, for which there is no vaccine or cure. Respondent, acting unreasonably and with deliberate indifference, is subjecting petitioners and the class members to a substantial risk of serious harm, in violation of their rights under the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE petitioners request that the Court immediately grant the following relief:

- a. Certify a class defined as: All civil immigration detainees who are petitioners in this action or are otherwise presently detained in unit C-3 at the PCCF.

- b. Name the proposed class representatives as representatives of the class and appoint their counsel as class counsel.
- c. Order the petitioners' and class members' immediate interim release pending the Court's consideration and resolution of this matter, including pursuant to *Mapp v. Reno*;
- d. Declare that the petitioners and class members are entitled to release, with appropriate conditions and precautionary public health measures.
- e. Issue a Writ of Habeas Corpus or other suitable order for injunctive relief and order petitioners' and class members' immediate release, with appropriate conditions and precautionary public health measures;
- f. Grant any other and further relief that this Court may deem fit and proper.

Dated: May 26, 2020

/s/ Daniel L. McFadden

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Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

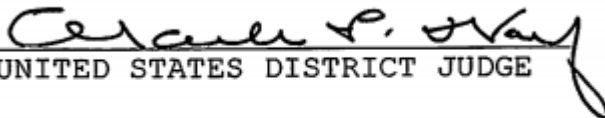
LILIAN PAHOLA CALDERON JIMENEZ)	
AND LUIS GORDILLO, ET AL.,)	
individually and on behalf of all)	
others similarly situated,)	
)	
Petitioners-Plaintiffs,)	
)	
v.)	C.A. No. 18-10225-MLW
)	
CHAD WOLF, ET AL.,)	
)	
Respondents-Defendants.)	

MEMORANDUM AND ORDER

WOLF, D.J.

March 26, 2020

Attached is a transcript of the decision, issued orally on March 25, 2020, granting the Motion for Immediate Interim Release of Class Member Salvador Rodriguez-Aguasviva (Docket No. 500).


 UNITED STATES DISTRICT JUDGE

1 * * * * *

2 THE COURT: I'm going to decide this matter, and I will
3 explain my decision. The transcript will be a record of the
4 decision and you must order it. It's possible I'll write this
5 up, but I do think this is an urgent matter and I should tell
6 you my decision, so I will.

7 First, I've concluded for the reasons described by the
8 Second Circuit in Mapp v. Reno, 241 F. 3d 221 at 230, a 2001
9 Second Circuit case, that District Courts do have the power to
03:23 10 order the release of immigration detainees on bail. I don't
11 think that the REAL ID Act alters that fundamental authority.

12 As I said earlier, I believe that the Glynn v. Donnelly
13 case, the First Circuit case, 470 F.2d 95, 98 is
14 distinguishable in a material respect. In Glynn, the First
15 Circuit did hold that in certain extraordinary circumstances a
16 District Court could release a detained petitioner before the
17 petition was decided on the merits. It created a higher
18 standard or stated a higher standard than the Second Circuit in
19 Mapp. In Glynn, the petitioner was somebody who had been
03:24 20 convicted of a crime. I believe his appeal had been denied,
21 and then he was petitioning for habeas corpus, but he had no
22 presumption of innocence.

23 In this case, it's important to remember we're talking
24 about a civil detainee, somebody who has never been charged,
25 let alone convicted of any crime. And I think that the Mapp

1 test or something similar or perhaps less is appropriate. As I
2 said, the Mapp test where the court in Mapp said -- I don't
3 know -- somebody perhaps didn't mute their phone because,
4 unless I'm hearing the court reporter, there's something
5 clicking, banging.

6 But the court in Mapp said the court considering a habeas
7 petitioner's fitness for bail must inquire into whether the
8 habeas petitioner raises substantial claims and whether
9 extraordinary circumstances exist to make the grant of bail
03:25 10 necessary to make the habeas remedy effective. And I would add
11 to that that, even if those requirements are met, the court
12 would have to be satisfied that the petitioner would not be a
13 danger to the community, reasonably assured that the petitioner
14 would not be a danger to the community or not would flee if
15 released on reasonable feasible conditions.

16 I do find, without expressing any prediction of how the
17 merits will be resolved, that a substantial claim or question
18 is raised by the petitioner's habeas petition. The initial
19 description by ICE of the reason for his detention -- well, the
03:26 20 reason for his detention sent to petitioner's counsel in an
21 email was that in effect -- well, that he was likely to be
22 unable -- the petitioner was likely to be unable to receive an
23 approved I-601A because he did not appear at his removal
24 hearing. He was ordered removed in absentia. The essence of
25 this, the way it was stated initially indicated that ICE was

1 under the impression or misimpression that the petitioner is
2 ineligible for an I-601A.

3 While I've commended Mr. Lyons and Mr. Charles on many
4 things they've done, since June 2018, I have found ICE has
5 repeatedly failed to understand its own regulations as I held
6 in 2018. And I learned, to my dismay, in the fall of 2019,
7 when the witness responsible for much of the national program
8 for many years testified that he didn't understand -- he didn't
9 realize there was a regulation that required that everybody
03:28 10 detained more than six months had to be interviewed. It would
11 be sadly consistent with the pattern in this case if ICE
12 misunderstood whether somebody who failed to appear for a
13 removal hearing was ineligible for an I-601A.

14 And indeed it appears that ICE's position has evolved and
15 they don't take that position anymore. Mr. Lyons has
16 articulated in his declaration other reasons for the detention,
17 but there is the question of whether those reasons were in his
18 mind when he decided to detain the petitioner or whether the
19 affidavit that appears to have been drafted by a lawyer has
03:29 20 rationalizations that weren't part of the decisionmaking
21 process at issue. That's an issue that I may need to hear
22 testimony on. I also -- but I do think that there's a
23 substantial question, a substantial claim.

24 In addition, I find that extraordinary circumstances exist
25 that make the grant of bail necessary to make the habeas

1 effective, to make the habeas remedy effective. To be blunt,
2 we're living in the midst of a coronavirus pandemic. Some
3 infected people die; not all, but some infected people die. If
4 the petitioner is infected and dies, the case will be moot.
5 The habeas remedy will be ineffective.

6 And being in a jail enhances risk. Social distancing is
7 difficult or impossible. Washing hands repeatedly may be
8 difficult. There is, it appears not to be disputed, one
9 court -- one Plymouth County jail employee who has been
03:31 10 infected, and there's a genuine risk that this will spread
11 throughout the jail. Again, the petitioner is in custody with
12 people charged with or convicted of crimes. He's not been
13 charged or convicted of anything.

14 I've also considered what I ordinarily consider in making
15 or reviewing bail decisions in criminal cases. There's no
16 contention that the petitioner will be dangerous to any
17 individual or the community if he's released on reasonable
18 conditions.

19 ICE does contend that he would be a risk of flight. That
03:32 20 is based on the fact that he missed one immigration hearing at
21 which his removal was ordered and apparently did not tell ICE
22 of his change of address. And he is facing a serious risk of
23 being removed. He may not prevail on the habeas petition. And
24 if he does, he may not get a provisional waiver.

25 However, there's no indication that the petitioner has

1 anyplace to go. Being among other people, say, in a homeless
2 shelter is very dangerous, like being in a jail. There's no
3 indication that he has any relatives or others who might take
4 him in other than his wife. And I am ordering that he live
5 with his wife in Lawrence, Massachusetts; that he stay in their
6 residence, except if there is a medical need for him to leave;
7 and, unless it's a genuine emergency, he would need the
8 permission of ICE to leave. And he is to be on electronic
9 monitoring, so if he leaves the residence when he hasn't been
03:33 10 authorized to leave, ICE would know that and, if appropriate,
11 could come back to me to revoke his release.

12 In addition, there are certain equities that favor the
13 release of the petitioner. He's now been detained since
14 September 4, 2019. On January 27, the motion was filed to
15 enjoin his removal. As I indicated in the course of the
16 argument, with the assent of petitioner's counsel, class
17 counsel, ICE has repeatedly been given extensions of time to
18 respond to the motion.

19 On January 31, 2020, the parties filed a joint motion to
03:35 20 give ICE until February 14 to confer, and then on February 13,
21 the respondents filed an unopposed motion for an extension of
22 time to file their opposition until February 20, which I
23 allowed. Then I was asked not to schedule a hearing in this
24 case until after March 25 because Mr. Lyons would not be
25 available from March 10 to 24. I accommodated that. And I was

1 told that local counsel, Ms. Piemonte, would be on trial until
2 April 6. On March 19 I allowed the respondent's motion for
3 respondents to file a sur-reply. And though it's possible,
4 except for ICE asking for and receiving extensions of time to
5 respond or file a sur-reply, that there would have been a
6 hearing and a decision on this case earlier.

7 So essentially we're in a circumstance where an individual
8 who has not been accused of any crime has been detained for --
9 I think it comes to about six and a half months. Part of that
03:36 10 is because I've stayed his removal pending the decision on his
11 motion to enjoin removal, but because of accommodations to ICE,
12 that wasn't fully briefed until less than a week ago, and I had
13 been asked to defer to Mr. Lyons' availability, which I did.

14 So for all of those reasons, I'm ordering that the
15 petitioner be released no later than tomorrow, March 26, 2020,
16 on the conditions I articulated and will memorialize in a brief
17 order.

18 I'm ordering counsel for ICE to inform me when he has been
19 released, and if there's some problem with implementing this
03:38 20 order by tomorrow, you'll have to let me know promptly.

21 Petitioners' counsel I'm directing, ordering, to inform the
22 petitioner and his wife of my decision, including the
23 requirements that he live with his wife and that he be on
24 electronic monitoring. And he'll have to confirm for ICE,
25 he'll have to provide ICE her address if they don't have it and

1 confirm her willingness to have her husband with her for the
2 duration of this case.

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Appendix: Court Actions Across the Country to Reduce Incarceration in Light of Covid-19¹

State	Judicial Body	Forum	Nature of Relief
Alabama	Circuit Court for the 19 th Judicial Circuit of Alabama	Administrative order	<ul style="list-style-type: none"> • Judge Fuller ordered “all inmates currently held on appearance bonds of \$5,000.00 or less be immediately released on recognizance with instructions to personally appear at their next schedule court appearance.”²
Alaska	Court of Appeals for the State of Alaska	Order	<ul style="list-style-type: none"> • Alaska’s intermediate appellate court holds that COVID-19 is a changed circumstance that courts must consider when deciding bail motions.³
Arizona	Coconino County court system and jail, Judge Dan Slayton, along with other county judges	Court order	<ul style="list-style-type: none"> • As of March 20, 2020, Judge Dan Slayton and other county judges have released around 50 people who were held in the county jail on non-violent charges.⁴
California	Supreme Court of California, Chief Justice Tani Cantil-Sakauye	Advisory	<ul style="list-style-type: none"> • The Chief Justice issued guidance encouraging the state’s superior courts to, among other things: <ul style="list-style-type: none"> ○ “Consider a defendant's existing health conditions, and conditions existing at the anticipated place of confinement, in setting conditions of custody for adult or juvenile defendants.” ○ “Identify detainees with less than 60 days in custody to permit early release, with or without supervision or community-based treatment.”⁵ • The Judicial Council approved 11 temporary rules allowing for: <ul style="list-style-type: none"> ○ “bail for all misdemeanor and felony offenses must be set at \$0, with the exception of only” a few enumerate offenses.⁶
	Sacramento Superior Court, Judge Hom	Order	<ul style="list-style-type: none"> • The Court entered a standing order authorizing their sheriff to release those within 30 days of release, regardless of crime.⁷

Hawai'i	Supreme Court of the State of Hawai'i	Order and Appointment of Special Master	<ul style="list-style-type: none"> The court appointed a Special Master who will “work with the parties in a collaborative and expeditious manner to address the issues raised in the two petitions and to facilitate a resolution while protecting public health and public safety.”⁸
Kentucky	Kentucky, Chief Justice John Minton Jr.	Letter to state judges and court clerks	<ul style="list-style-type: none"> Kentucky, Chief Justice John Minton Jr. told state’s judges and court clerks to release jail inmates “as quickly as we can” noting, “jails are susceptible to worse-case scenarios due to the close proximity of people and the number of pre-existing conditions,” and that courts have the responsibility “to work with jailers and other county officials to safely release as many defendants as we can as quickly as we can.”⁹
Louisiana	Louisiana Supreme Court, Chief Justice Bernette J. Johnson	Letter to Louisiana District Judges	<ul style="list-style-type: none"> Louisiana Supreme Court Chief Justice Bernette J. Johnson recognized that “it is important to safely minimize the number of people detained in jails where possible.” Justice Johnson instructed all District Judges to “conduct a comprehensive and heightened risk-based assessment of all detainees.” Among other things: <ul style="list-style-type: none"> For pre-trial detainees charged with misdemeanor and non-violent, judges should consider nominal or reduced bail or release on personal recognizance. For those convicted of misdemeanors, judges should “consider modification to a release and supervised probation or simply time-served.” For probation revocations, judges should “confer with Probation and Parole to determine whether there is an alternative to detention, especially with technical violations.” Judges should “suggest to law enforcement that, whenever practicable, they issue summons and citations on misdemeanor crimes and non-violent offenses in lieu of arrest.”¹⁰

Maine	State of Maine Superior Court, Chief Justice Mullen and District Court Chief Judge Sparaco and Deputy Chief Judge French	Emergency Order	<ul style="list-style-type: none"> The Superior Court and District Court ordered all trial courts to immediately vacate all outstanding warrants for unpaid fines, restitution, fees, and failures to appear.¹¹
Massachusetts	Justice Gaziano, Commonwealth of Massachusetts Supreme Judicial Court	Order	<ul style="list-style-type: none"> The Supreme Judicial Court held that people who are held pretrial on bail and have not been found dangerous or charged with a violent or otherwise excluded offense are entitled to a hearing within two business days of filing their motions, where they will be entitled to a rebuttable presumption of release.¹²
Michigan	Chief Justice Bridget M. McCormack, Michigan Supreme Court	Joint Statement	<ul style="list-style-type: none"> In a Joint statement, Chief Justice McCormack urged judges to “use the statutory authority they have to reduce and suspend jail sentences for people who do not pose a public safety risk[,]... release far more people on their own recognizance while they await their day in court...[a]nd judges should use probation and treatment programs as jail alternatives.¹³
Montana	Supreme Court of Montana, Chief Justice McGrath	Letter to Judges	<ul style="list-style-type: none"> Chief Justice of the Montana Supreme Court urged judges to “review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses.”¹⁴
New Jersey	New Jersey Supreme Court, Chief Justice Rabner	Consent Order	<ul style="list-style-type: none"> In New Jersey, after the Supreme Court ordered briefing and argument on why it should not order the immediate release of individuals serving county jail sentences, the Attorney General and County Prosecutors agreed to create an immediate presumption of release for every person serving a county jail sentence in New Jersey.¹⁵

New York	New York State Supreme Court, Bronx County, Justice Doris M. Gonzales	Judicial ruling based on writ of habeas corpus	<ul style="list-style-type: none"> In a habeas petition brought by the Legal Aid Society, a Justice Doris M. Gonzales ordered the release of 106 individuals currently held at Rikers Island on a non-criminal technical parole violation. These individuals were selected in the petition by virtue of their age and/or underlying medical condition.¹⁶
	New York Supreme Court Justice Mark Dwyer	Judicial ruling based on writ of habeas corpus	<ul style="list-style-type: none"> In a habeas petition brought by the Legal Aid Society, a Justice Mark Dwyer ordered the release of 16 individuals currently held at Rikers Island on pretrial detention or parole violation. These individuals were selected in the petition by virtue of their age and/or underlying medical condition.¹⁷
Ohio	Ohio Supreme Court, Chief Justice Maureen O'Connor	News Conference	<ul style="list-style-type: none"> Chief Justice O'Connor urged "judges to use their discretion and release people held in jail and incarcerated individuals who are in a high-risk category for being infected with the virus."¹⁸
Pennsylvania	Supreme Court of Pennsylvania, Per Curiam	Order	<ul style="list-style-type: none"> The Supreme Court of Pennsylvania directed "the President Judges of each judicial district, or their judicial designees, to engage with other county stakeholders to review immediately the current capabilities of the county correctional institutions in their district to address the spread of COVID-19."¹⁹
South Carolina	Supreme Court of South Carolina, Chief Justice Beatty	Memorandum	<ul style="list-style-type: none"> The Chief Justice instructed that "any person charged with a non-capital crime shall be ordered released pending trial on his own recognizance without surety, unless an unreasonable danger to the community will result or the accused is an extreme flight risk."²⁰
Texas	Travis County, Texas, Judges	Individual Court Orders	<ul style="list-style-type: none"> Travis County has begun releasing some defendants in custody with underlying health conditions, to reduce the potential spread of COVID-19 in the county's jails. After Austin saw its first positive cases of COVID-19, judges in the county nearly doubled its release of people from local jails on personal bonds, with one judge alone reversing four bond decisions after "balancing this pandemic and public health safety of inmates against what they're charged with."²¹

Tennessee	Supreme Court of Tennessee	Court Order	<ul style="list-style-type: none"> The Chief Justice of the Tennessee Supreme Court ordered local judges to come up with plans for reducing their prison and jail populations by March 30th.²²
Utah	Utah Supreme Court and Utah Judicial Council, Chief Justice Durrant	Administrative Order	<ul style="list-style-type: none"> The Chief Justice of the Utah Supreme Court ordered that for defendants in-custody on certain misdemeanor offenses, “the assigned judge must reconsider the defendant’s custody status and is encouraged to release the defendant subject to appropriate conditions.”²³
Washington	Washington Supreme Court, Chief Justice Stephens	Order	<ul style="list-style-type: none"> Chief Justice Stephens ordered judges not to issue bench warrants for failure to appear, “unless necessary for the immediate preservation of public or individual safety” and “to hear motions for pretrial release on an expediated basis without requiring a motion to shorten time.” Additionally, for populations designated as at-risk or vulnerable by the Centers for Disease Control, the COVID-19 crisis is presumed to be a material change in circumstances to permit amendment of a previous bail order or to modify conditions of pre-trial release.²⁴
Wyoming	Wyoming Supreme Court, Chief Justice Davis	Order	<ul style="list-style-type: none"> The Chief Justice instructed judges to issue summonses instead of bench warrants, unless public safety compels otherwise.²⁵

Federal Criminal Detention	Supreme Court, Justice Sotomayor	Opinion respecting the denial to vacate stay	<ul style="list-style-type: none"> • The Court denied to reverse a stay issued by the Firth Circuit regarding an injunction requiring the prison to follow an extensive protocol, including frequent cleaning and increased education efforts. • However, Justice Sotomayor cautioned that “while States and prisons retain discretion in how they respond to health emergencies, federal courts do have an obligation to ensure that prisons are not deliberately indifferent in the face of danger and death.” “It has long been said that a society’s worth can be judged by taking stock of its prisons. That is all the truer in this pandemic, where inmates everywhere have been rendered vulnerable and often powerless to protect themselves from harm. May we hope that our country’s facilities serve as models rather than cautionary tales.”²⁶
	9 th Cir., Peter L. Shaw, Appellate Commissioner	Order	<ul style="list-style-type: none"> • After a joint motion, the case was remanded to the district court to allow the court to entertain the parties stipulation in a FRAP(9) appeal to release appellant pending sentencing.²⁷
	C.D. Cal, Judge James V. Selna	Minute Order	<ul style="list-style-type: none"> • The Court granted temporary release for 90 days, pursuant to 18 U.S.C. § 3142 (i), which authorizes discretionary temporary release when necessary for a person’s defense or another compelling reason. Judge Selna held the defendant’s age and medical conditions, which place him in the population most susceptible to COVID-19, and in light of the pandemic, to constitute “another compelling reason” and granted his temporary release.²⁸
	D. Colo., Chief Judge Philip A. Brimmer	Order	<ul style="list-style-type: none"> • Judge Brimmer held that the U.S. Constitution requires that Weld County Sheriff Steve Reams provide special protections to medically vulnerable people incarcerated in the Weld County Jail. “The record indicates that defendant has failed to take adequate measures to protect members of the plaintiff class from COVID-19 given that they face a heightened risk of serious illness or death from the virus. Accordingly, plaintiffs’ conditions of confinement violate the Eighth Amendment to the Constitution, and plaintiffs are entitled to a limited preliminary injunction to ameliorate those conditions.”²⁹

D. Conn., Judge Janet Bond Arterton	Order	<ul style="list-style-type: none"> Judge Arterton waived defendant's exhaustion requirements and concluded "[i]n light of the expectation that the COVID-19 pandemic will continue to grow and spread over the next several weeks, the Court concludes that the risks faced by Defendant will be minimized by her immediate release to home" under a compassionate release, 18 U.S.C. § 3582(c)(1)(A)(i).³⁰
D. Conn., Vanessa L. Bryant	Memorandum	<ul style="list-style-type: none"> Judge Bryant waived exhaustion requirements and granted compassionate release, pursuant to 18 U.S.C. § 3582(c), to an immunocompromised defendant with 8 weeks left to serve in light of severe risks posed by COVID-19.³¹
D. Conn., Judge Jeffrey A. Meyer	Order	<ul style="list-style-type: none"> Judge Meyer ordered the release of defendant stating that "the conditions of confinement at Wyatt are not compatible" with current COVID-19 public health guidance concerning social distancing and avoiding congregating in large groups. Judge Meyer is one of four federal judges in Connecticut who has released inmates in connection with the COVID-19 pandemic.³²
D. Conn., Judge Stefan R. Underhill	General Order	<ul style="list-style-type: none"> Judge Underhill held, "[p]ursuant to the provisions of the Criminal Justice Act, 18 U.S.C. Section 3006A(a)(l), and (c), the Office of the Federal Public Defender for the District of Connecticut is hereby appointed to represent any then-unrepresented defendant previously determined to have been entitled to appointment of counsel, or who was previously represented by retained counsel and is presently indigent, for purposes of issues relating to requests for early release . The Federal Public Defender, in consultation with the client, shall determine whether to present, and if appropriate shall present, any motion for modification of an imposed term of imprisonment for extraordinary and compelling reasons ("compassionate release" motion), in accordance with 18 U.S.C. Section 3582(c)(1)(A)(i), in relation to the COVID-19 pandemic.³³
D.D.C., Judge Ellen S. Huvelle	Amended Order	<ul style="list-style-type: none"> Judge Huvelle granted "defendant's unopposed motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) because of the COVID-19 global pandemic."³⁴

D.D.C., Judge Amit P. Mehta	Order	<ul style="list-style-type: none"> Judge Mehta found COVID-19 to present exceptional reasons under 18 U.S.C. § 1345(c) to warrant to release pending sentencing.³⁵
D.D.C., Judge Randolph D. Moss	Minute Order	<ul style="list-style-type: none"> Judge Moss released defendant, despite acknowledging offense charged—marijuana distribution and felon in possession—“is serious” because among other factors mitigating public safety concerns “incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant’s release to home confinement.”³⁶
D.D.C., Judge Randolph D. Moss	Order	<ul style="list-style-type: none"> Judge Moss declared “[a]s counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to the community have not changed - with one exception. That one exception - COVID-19 - however, not only rebuts the statutory presumption of dangerousness, see 18 U.S.C. § 3142(e), but tilts the balance in favor of release.”³⁷
D.D.C., Judge Randolph D. Moss	Memorandum Opinion	<ul style="list-style-type: none"> Judge Moss released defendant while awaiting trial after weighing the risk to the public of releasing defendant [charged with distribution of child pornography] directly against risk to community safety if defendant remained incarcerated in light of the COVID-19 pandemic.³⁸
D.D.C., Judge Randolph D. Moss	Memorandum Opinion	<ul style="list-style-type: none"> Defendants are indefinitely and involuntary committed at Saint Elizabeths Hospital. The Court found, among other things, “[e]ven under the guidance relied upon by Defendants, the Hospital’s protocol for returning symptomatic patients to the general population is not consistent with CDC standards.”³⁹
D. Idaho, Chief Magistrate Judge Ronald E. Bush	Order	<ul style="list-style-type: none"> Magistrate Judge Bush released defendant previously detained in presumption case in light of the ongoing public health emergency relating to the COVID-19 coronavirus pandemic providing a compelling basis for release under § 3142(i).⁴⁰

D. Md., Magistrate Judge Deborah L. Boardman	Memorandum	<ul style="list-style-type: none"> Magistrate Judge Boardman rejected the government’s motion for pretrial detention, considering “[t]he disruption to the attorney-client relationship caused by this public health crisis likely will have broader implications for the Court and the administration of justice” as a factor in the Bail Reform Act.⁴¹
D. Md., Judge Theodore D. Chuang	Memorandum Order	<ul style="list-style-type: none"> “In the Court’s view ... Underwood should receive strong consideration for a furlough under the present circumstances. Even though no inmate at FCI-Cumberland has tested positive for the coronavirus to date, there is significant potential for it to enter the prison in the near future... Underwood is a non-violent offender, has no significant prior criminal record, and poses no danger to the community at all. It would therefore be in the public interest to have someone in Underwood’s condition outside of FCI-Cumberland at the present time because of the public resources necessarily required to protect him from the virus and to treat him were he to become infected.”⁴²
D. Nev., Judge Jones	Opinion and Order	<ul style="list-style-type: none"> Judge Jones delayed defendant’s date to surrender to begin his intermittent confinement by a minimum of 30 days because “[i]n considering the total harm and benefits to prisoner and society . . . temporarily suspending [defendant’s] intermittent confinement would appear to satisfy the interests of everyone during this rapidly encroaching pandemic.” In coming to this conclusion, the court placed weight on the fact that “incarcerated individuals are at special risk of infection, given their living situations, and may also be less able to participate in proactive measures to keep themselves safe; because infection control is challenging in these settings.”⁴³
D.P.R., Magistrate Judge Marshal D. Morgan	Order	<ul style="list-style-type: none"> “[G]iven the COVID-19 pandemic afflicting the world, rather than issue an arrest warrant at this time, the Court will instead issue a summons.”⁴⁴

D.S.C., Judge David C. Norton	Order	<ul style="list-style-type: none"> Judge Norton granted compassionate release for 73-year-old with severe health conditions under the First Step Act, “[g]iven defendant’s tenuous health condition and age, remaining incarcerated during the current global pandemic puts him at even higher risk for severe illness and possible death, and Congress has expressed its desire for courts to [release federal inmates who are vulnerable to COVID-19].”⁴⁵
D.S.D., Lawrence Piersol	Opinion and Order	<ul style="list-style-type: none"> Judge Piersol reducing sentence by an extra 40 months under the First Step Act in light of the extreme danger posed by COVID-19.⁴⁶
E.D. Mich., Judge Judith E. Levy	Order	<ul style="list-style-type: none"> Judge Levy ordered release under 18 U.S.C. § 3142(i)(4), both due to the risk of COVID-19 and the difficulty preparing defense while detained due to limits facility placed in response to COVID-19. The Court also noted that “waiting for either Defendant to have a confirmed case of COVID-19, or for there to be a major outbreak in Defendant’s facility, would render meaningless this request for release. Such a failure to act could have devastating consequences for Defendant and would create serious medical and security challenges to the existing prison population and the wider community.”⁴⁷
E.D.N.Y, Judge Pamela K. Chen	Order	<ul style="list-style-type: none"> “The Court grants Defendant Jose Maria Marin's motion ...for compassionate release, pursuant to 18 U.S.C. § 3582(c)(1)(A), for ... his advanced age, significantly deteriorating health, elevated risk of dire health consequences due to the current COVID-19 outbreak, status as a non-violent offender, and service of 80% of his original sentence. Although Defendant has not exhausted his administrative remedies in the manner prescribed by Section 3582(c), because the government is consenting to the requested sentencing reduction, the Court deems Section 3582(c)'s exhaustion requirement as having been met.”⁴⁸

M.D. Pa., Judge John E. Jones	Order	<ul style="list-style-type: none"> Judge Jones granted defendant's compassionate release pursuant to 18 U.S.C. § 3582 (c)(1)(A), noting the "unprecedented" circumstances facing "our prison system" and finding that COVID-19 is an extraordinary and compelling basis for release; indeed, "[n]o rationale is more compelling or extraordinary."⁴⁹
N.D. Cal., Judge Vince Chhabria	Sua Sponte Order	<ul style="list-style-type: none"> Judge Chhabria issued a sua sponte decision extending defendant's surrender date from June 12, 2020 to September 1, 2020 stating: "By now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided . . . To avoid adding to the chaos and creating unnecessary health risks, offenders who are on release and scheduled to surrender to the Bureau of Prisons in the coming months should, absent truly extraordinary circumstances, have their surrender dates extended until this public health crisis has passed."⁵⁰
N.D. Cal., Judge Hixson	Order	<ul style="list-style-type: none"> Judge Hixson released a 74-year old in light of COVID-19 holding "[t]he risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail. Release under the current circumstances also serves the United States' treaty obligation to Peru, which - if there is probable cause to believe Toledo committed the alleged crimes - is to deliver him to Peru alive."⁵¹
N.D. Ga., Magistrate Judge Regina D. Cannon	Order	<ul style="list-style-type: none"> Magistrate Judge Cannon releasing defendant in part because "the danger inherent in his continued incarceration at the R.A. Deyton Detention Facility . . . during the COVID-19 outbreak justif[y] his immediate release from custody"⁵²

N.D. Ill., Judge Matthew F. Kennelly	Opinion and Order	<ul style="list-style-type: none"> Plaintiffs sought certification of a class and the temporary restraining order based, in part, “that the Sheriff has violated their Fourteenth Amendment right to constitutionally adequate living conditions by failing to implement appropriate measures to control the spread of the virus.” In issuing a temporary restraining order, Judge Kennelly found “plaintiffs have demonstrated that certain of the conditions created by the intentional actions of the Sheriff enable the spread of coronavirus and significantly heighten detainees' risk of contracting the virus.”⁵³
S.D. Fla., Judge Cecilia M. Altonaga	Order	<ul style="list-style-type: none"> Judge Altonaga granted an unopposed motion for compassionate release.⁵⁴
S.D. Fla., Magistrate Judge Jonathan Goodman	Order	<ul style="list-style-type: none"> Magistrate Judge Goodman released an incarcerated individual due to the “extraordinary situation of a medically-compromised detainee being housed at a detention center where it is difficult, if not impossible, for [the defendant] and others to practice the social distancing measures which government, public health and medical officials all advocate.”⁵⁵
S.D.N.Y., Judge Paul A. Engelmayer	Amended Order	<ul style="list-style-type: none"> Judge Engelmayer granted defendant temporary release from custody, pursuant to 18 U.S.C. § 3142(i), “based on the unique confluence of serious health issues and other risk factors facing this defendant, including but not limited to the defendant’s serious progressive lung disease and other significant health issues, which place him at a substantially heightened risk of dangerous complications should he contract COVID-19 as compared to most other individuals.”⁵⁶
S.D.N.Y., Chief Judge Colleen McMahan	Order	<ul style="list-style-type: none"> Chief Judge Colleen held “Releasing a prisoner who is for all practical purposes deserving of compassionate release during normal times is all but mandated in the age of COVID-19”⁵⁷

S.D.N.Y., Judge Alison J. Nathan	Opinion & Order	<ul style="list-style-type: none"> Judge Nathan ordered the Defendant released subject to the additional conditions of 24-hour home incarceration and electronic location monitoring as directed by the Probation Department based in part on “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic” which may place “at a heightened risk of contracting COVID-19 should an outbreak develop [in a prison].”⁵⁸
S.D.N.Y., Analisa Torres	Order	<ul style="list-style-type: none"> Judge Torres waived exhaustion requirements and granted immediate compassionate release in light of COVID-19 to defendant convicted in multi-million dollar fraud scheme motivated by greed; “The severity of Zukerman’s conduct remains unchanged. What has changed, however, is the environment where Zukerman is serving his sentence. When the Court sentenced Zukerman, the Court did not intend for that sentence to ‘include a great and unforeseen risk of severe illness or death’ brought on by a global pandemic.”⁵⁹
S.D.N.Y., Analisa Torres	Order	<ul style="list-style-type: none"> “The Court holds . . . that Perez’s exhaustion of the administrative process can be waived in light of the extraordinary threat posed—in his unique circumstances—by the COVID-19 pandemic.”⁶⁰
N.D. Ohio, Judge James S. Gwin	Order	<ul style="list-style-type: none"> Judge Gwin ordered Elkton officials to identify, within one day, all members of the subclass of inmates identified by the CDC as being at higher risk. “This includes all Elkton inmates 65 years or older and those with documented, pre-existing medical conditions, including heart, lung, kidney, and liver conditions, diabetes, conditions causing a person to be immunocompromised...and severe obesity.” Following identification, the court ordered officials to evaluate each subclass member’s eligibility for transfer out of Elkton through any means, including but not limited to compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough within two weeks.⁶¹

	S.D. Tex., Judge Keith P. Ellison	Memorandum and Order	<ul style="list-style-type: none"> Judge Ellison released a defendant serving a 188-month sentence for drug conspiracy in light of vulnerability to COVID-19 stating, “while the Court is aware of the measures taken by the Federal Bureau of Prisons, news reports of the virus’s spread in detention centers within the United States and beyond our borders in China and Iran demonstrate that individuals housed within our prison systems nonetheless remain particularly vulnerable to infection.”⁶²
	W.D. Va., Judge James P. Jones; see also 4 th Cir., Patricia S. Connor, Clerk	Order	<ul style="list-style-type: none"> Judge Jones granted release after reconsidering the courts prior order denying the defendant’s motion for a stay of her imprisonment pending her appeal in light of the Fourth Circuit remand requiring the lower court to specifically consider extraordinary danger posed by COVID-19.⁶³
	W.D., Va., Judge Norman K. Moon	Order	<ul style="list-style-type: none"> Judge Moon granted compassionate release; remarking “[h]ad the Court known when it sentenced Defendant in 2018 that the final 18 months of his term in federal prison would expose him to a heightened and substantial risk presented by the COVID-19 pandemic on account of Defendant’s compromised immune system, the Court would not have sentenced him to the latter 18 months”⁶⁴
Federal Immigration Detention	9th Cir., Judges Wardlaw, M. Smith, and Judge Siler, 6 th Cir., sitting by designation.	Sua Sponte Order	<ul style="list-style-type: none"> The panel held “[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court <i>sua sponte</i> orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court.”⁶⁵
	N.D. Cal, Judge Maxine Chesney	Order	<ul style="list-style-type: none"> Judge Chesney granted in part a request for a TRO, ordering ICE to release four detainees at two immigration detention facilities, Yuba and Mesa Verde Detention Center.⁶⁶

N.D. Cal, Judge Vince Chhabria	Order	<ul style="list-style-type: none"> Judge Chhabria granted motion for provisional class certification—of all ICE detainees at two detention facilities—and motion for TRO. In addition to finding that the plaintiffs had demonstrated an “exceedingly strong likelihood that they will prevail on their claim,” Judge Chhabria faulted ICE officials for not being prepared with basic information about the detainees, and ordered ICE to provide records so that individualized bail applications may be considered.⁶⁷
N.D. Cal, Magistrate Judge Laurel Beeler	Order	<ul style="list-style-type: none"> Judge Beeler ordered release of Haitian citizen with chronic post-traumatic stress disorder (PTSD), depression, and latent tuberculosis. In so doing, the court recognized the risk that serious mental health issues pose. Citing clinical experts on the topic, Judge Beeler stated, “Growing evidence demonstrates that PTSD, anxiety/stress, and depression can lead to decreased immune response and increased risk of infections. These illnesses are ‘linked with elevated stress levels,’ which can impact immune responses.” This weakened immunity “can put detainees ‘at increased risk of contracting a suffering from more severe forms of COVID-19.’”⁶⁸
N.D. Cal, Magistrate Judge Donna M. Ryu	Order	<ul style="list-style-type: none"> Judge Ryu granted release of 58-year-old with asthma, hypertension, and pre-diabetes, despite two prior convictions for voluntary manslaughter and attempted murder. “[Respondents] claim that COVID-19 has not yet spread to Mesa Verde, so Bent’s injury is only conjectural...Courts fielding habeas petitions in the wake of the escalating pandemic have rejected similar standing arguments, even when there is no evidence that a particular detention facility has detected a confirmed case of the virus.”⁶⁹

<p>C.D. Cal, Judge Terry J. Halter, Jr.</p>	<p>TRO and order to show cause based on writ of habeas corpus</p>	<ul style="list-style-type: none"> • Judge Halter ordered the release of two ICE detainees. The court found that in detention “[p]etitioners have not been protected [against risks associated with COVID-19]. They are not kept at least 6 feet apart from others at all times. They have been put into a situation where they are forced to touch surfaces touched by other detainees, such as with common sinks, toilets and showers. Moreover, the Government cannot deny the fact that the risk of infection in immigration detention facilities – and jails – is particularly high if an asymptomatic guard, or other employee, enters a facility. While social visits have been discontinued at Adelanto, the rotation of guards and other staff continues.”⁷⁰
<p>C.D. Cal, Judge Terry J. Halter, Jr.</p>	<p>Order</p>	<ul style="list-style-type: none"> • Judge Halter ordered release detainee who suffers from multiple health conditions, including asthma, stating that, “[b]ecause of the highly contagious nature of the coronavirus and the, relatively high, mortality rate of COVID-19, the disease can spread uncontrollably with devastating results in a crowded, closed facility, such as an immigration detention center....Inadequate health and safety measures at a detention center cause cognizable harm to every detainee at that center.” The court further highlighted the troubling number of asymptomatic carriers, and, cited to <i>Helling v. McKinney</i>, 509 U.S. 25, 32 (1993) in stating that “[a] remedy for unsafe conditions need not await a tragic event. The Government cannot be ‘deliberately indifferent to the exposure of [prisoners] to a serious, communicable disease on the ground that the complaining [prisoner] shows no serious current symptoms.’” Finally, despite a “history of various criminal convictions,” including some violent offenses, the court stated that “[t]he risk that Fraihat will flee, given the current global pandemic, is very low given, further, that he has matters pending before the BIA and the Ninth Circuit.”⁷¹

C.D. Cal, Judge Terry J. Halter, Jr.	Order	<ul style="list-style-type: none"> • Court ordered release of 43-years-old with multiple ailments. He has eight prior convictions and the IJ had denied bond given “multiple failures to appear in the Superior Court of California and his lack of ties to the community.” The court found, however, that “those issues are not directly before this Court,” and ordered him released. “Despite early reports, no age group is safe from COVID-19. While older people with pre-existing conditions are the most vulnerable to COVID-19-related mortality, young people without preexisting conditions have, also, succumbed to COVID-19.”⁷²
C.D. Cal, Judge Terry J. Halter, Jr.	Order	<ul style="list-style-type: none"> • Judge Halter issued individual orders in <i>Robles v. Wolf</i> litigation granting release of six individuals. While the individuals are civil detainees, all six had criminal records.⁷³
D. Col., Judge William J. Martinez	Order	<ul style="list-style-type: none"> • Judge Martinez ordered release of 55-year-old male with health conditions, despite recent conviction for racketeering, forgery, and theft. Judge Martinez found petitioner to be at risk even though the CDC does not currently list hypertension as a risk factor for COVID-19, because evidence about the risks of high blood pressure is rapidly mounting. He further relied upon the fact that men and black individuals are at heightened risk for COVID-19.⁷⁴
S.D. Ill., Chief Judge Nancy J. Rosenstengel	Memorandum and Order	<ul style="list-style-type: none"> • Judge Rosenstengel ordered release of 49-year-old male with Type 2 diabetes and hypertension, finding that he faced “imminent risk.” Despite “significant steps” by facility officials to reduce the possibility of infection, the court found those efforts to be “inadequate to protect Chavez or to sufficiently address his health needs and particular risks.”⁷⁵
D. Mass, Judge Mark L. Wolf	Oral Order	<ul style="list-style-type: none"> • Judge Wolf ordered the release, with conditions, from ICE custody a member of the class in <i>Calderon v. Nielsen</i> based, in part, on the “extraordinary circumstances” posed by COVID-19.⁷⁶

D. Mass., Judge William G. Young	Memorandum and Order	<ul style="list-style-type: none"> Judge Young allowed motion for class certification, creating the class of all civil detainees held at Bristol County House of Corrections and C. Carlos Correia Immigration Detention Center. “Though there are indeed pertinent and meaningful distinctions among the various Detainees, there is a common question of unconstitutional overcrowding that binds the class together.” The court deferred ruling on petitioners’ underlying habeas petition and motion for PI.⁷⁷
E.D. Mich., Magistrate Judge Anthony P. Patti	Opinion and Order	<ul style="list-style-type: none"> Judge Patti converted the below TRO into a Preliminary Injunction, requiring immediate release of medically vulnerable petitioner.⁷⁸
E.D. Mich., Magistrate Judge Anthony P. Patti	Opinion and Order	<ul style="list-style-type: none"> Judge Patti ordered release of 55-year-old petitioner with various medical needs, including hypotension and prostate issues. The court highlighted that its prior order (see below) “neither required a specific set or number of health conditions nor established a floor for the level of heightened risk of complications from COVID-19 that would justify immediate release from civil detention.” Furthermore, “CDC guidance notes that those at high-risk for severe illness from COVID-19 includes “[p]eople of all ages with underlying medical conditions, particularly if not well controlled.” Thus petitioners’ alleged incomplete access to medical care weighed in favor of granting relief.⁷⁹
E.D. Mich., Judge Judith E. Levy; Magistrate Judge Anthony P. Patti	Amended Order and Opinion	<ul style="list-style-type: none"> Judge Levy ordered release of 56-year-old individual stating: “As prison officials are beginning to recognize around the country, even the most stringent precautionary measures—short of limiting the detainee population itself—simply cannot protect detainees from the extremely high risk of contracting this unique and deadly disease.”⁸⁰
D.N.H., Judge Landya McCafferty	Order	<ul style="list-style-type: none"> Judge McCafferty provisionally ordered class certification of all civil immigration detainees at the Strafford County Department of Corrections for the purpose of facilitating expedited bail hearings for class members.⁸¹

D.N.J., Judge Madeline Cox Arleo	Opinion and Order	<ul style="list-style-type: none"> Judge Arleo ordered release of five medically vulnerable individuals, ranging from ages 33 to 59 years old. The court highlighted that given the increasing number of confirmed COVID-19 cases, and Petitioners' 20% chance of death if they contract the virus, the "odds are worse than a game of Russian roulette."⁸²
D.N.J., Judge Kevin McNulty	Opinion	<ul style="list-style-type: none"> Judge McNulty granted release of individual with Post Traumatic Stress Disorder (PTSD) and Unspecified Schizophrenia Spectrum and Other Psychotic Disorder. In light of both an expert declaration about the increased risk that COVID-19 poses to individuals with severe and persistent mental illness and the fact that Petitioner's medication is immune suppressing, Judge McNulty found him likely to succeed on his confinement claim.⁸³
D.N.J., Judge John Michael Vasquez	Decision	<ul style="list-style-type: none"> Judge Vasquez granted Plaintiffs' TRO and ordered the three individuals' immediate release, highlighting that "[c]ounty jails were not designed with pandemics in mind." All three individuals have health conditions.⁸⁴
S.D.N.Y., Judge George B. Daniels	Memorandum Decision and Order	<ul style="list-style-type: none"> Judge Daniels ordered the release, under <i>Mapp v. Reno</i>, 241 F.3d 221 (2d Cir. 2001), of an individual as there was likelihood of success on the merits and COVID-19 risks and individual's own medical issues constituted "extraordinary circumstances warranting release."⁸⁵
S.D.N.Y., Judge Alison J. Nathan	Opinion and Order	<ul style="list-style-type: none"> Judge Nathan ordered the immediate release of four detainees finding "no evidence that the government took any specific action to prevent the spread of COVID-19 to high-risk individuals . . . held in civil detention."⁸⁶
S.D.N.Y., Judge J. Paul Oetken	Opinion and Order	<ul style="list-style-type: none"> Judge Oetken ordered immediate release of detainee pursuant to <i>Mapp v. Reno</i> in light of detainee's "several severe medical conditions." "Severe health issues' are 'the prototypical...case of extraordinary circumstances that justify release pending adjudication of habeas.'" ⁸⁷

	S.D.N.Y., Judge Analisa Torres	Order	<ul style="list-style-type: none"> Judge Torres granted TRO and ordered release of three medically vulnerable detainees, ages 37, 27, and 32. “During a deadly pandemic, the continued confinement of individuals being held to ensure that they appear at their immigration proceedings—not as punishment for any crime or with the primary aim of protecting public safety—does not serve the public’s interest.”⁸⁸
	S.D.N.Y., Judge Analisa Torres	Memorandum Decision and Order.	<ul style="list-style-type: none"> Judge Torres granted immediate release on recognizance for ten individuals in immigration detention who have a variety of chronic health conditions that put them at high risk for COVID-19. These conditions include obesity, asthma, diabetes, pulmonary disease, history of congestive heart failure, respiratory problems, gastrointestinal problems, and colorectal bleeding. The court held detainees face serious risks to their health in confinement and “if they remain in immigration detention constitutes irreparable harm warranting a TRO.”⁸⁹
	M.D. Pa., Judge John E. Jones III	Memorandum and Order	<ul style="list-style-type: none"> Judge Jones III ruled that federal immigration authorities must immediately release the ten individuals in immigration detention who are at high risk for contracting COVID-19 due to their age or medical conditions or both. In his decision, Judge Jones III noted, “At this point, it is not a matter of if COVID-19 will enter Pennsylvania prisons, but when it is finally detected therein. It is not unlikely that COVID-19 is already present in some county prisons.”⁹⁰

¹ This chart provides only a sample of the judicial action taken throughout the country as judges continue to respond to the COVID-19 pandemic.

²Administrative Order, No. 2020-00010, Ala. Ct. App. (Mar. 18, 2020), <https://drive.google.com/file/d/1I4QLwsytSVkdOuo5p6qb1JcuFWcAV4oA/view?usp=sharing>. Note: the original order has been revised to provide discretion to the Sheriffs. See Mike Carson, *Alabama Judge Orders Jail Inmates*

Released, then Leaves it Up to Sheriffs, AL.Com (Mar. 19, 2020), <https://www.al.com/news/2020/03/alabama-judge-orders-jail-inmates-released-then-leaves-it-up-to-sheriffs.html>.

³ *Karr v. Alaska*, Nos. A-13630/13639/13640 (Alaska Mar. 24, 2020), <https://drive.google.com/file/d/19wz01J9vX8nvw4oyORahUfcTO1dno1QA/view>.

⁴ Scott Buffon, *Coconino County Jail Releases Nonviolent Inmates in Light of Coronavirus Concerns*, Arizona Daily Sun (updated Mar. 25, 2020), https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article_a6046904-18ff-532a-9dba-54a58862c50b.html.

⁵ Advisory from California Chief Justice Tani Cantil-Sakauye to Presiding Judges and Court Executive Officers of the California Courts (Mar. 20, 2020), <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>.

⁶ Emergency Rules of the California Rules of Court (April 6, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349>.

⁷ *Standing Order of the Sacramento Superior Court*, No. SSC-20-PA5 (Mar. 17, 2020), <https://www.saccourt.ca.gov/general/standing-orders/docs/ssc-20-5.pdf>.

⁸ Order of Consolidation and for Appointment of Special Master, SCPW-20-0000200, SCPW-20-0000213 at 6 (Haw. Apr. 1, 2020), https://www.courts.state.hi.us/wp-content/uploads/2020/04/040220_SCPW20-200and20-213_OPDvConnors_OPDvIge_ORD.pdf,

⁹ Kyle C. Barry, *Some Supreme Courts Are Helping Shrink Jails to Stop Outbreaks. Others Are Lagging Behind.*, The Appeal (Mar. 25, 2020), <https://theappeal.org/politicalreport/some-supreme-courts-are-helping-shrink-jails-coronavirus>; John Cheves, *Chief Justice Pleads for Kentucky Inmate Release Ahead of COVID-19 but Progress Slow*, Lexington Herald Leader (Mar. 23, 2020), <https://www.kentucky.com/news/coronavirus/article241428266.html>.

¹⁰ Letter from Louisiana Chief Justice Bernette J. Johnson to Louisiana District Judges (Apr. 2, 2020), <http://www.lasc.org/COVID19/2020-04-02-LASC-ChiefLetterReCOVID-19andjailpopulation.pdf>.

¹¹ Emergency Order Vacating Warrants for Unpaid Fines, Unpaid Restitution, Unpaid Court-Appointed Counsel Fees, and Other Criminal Fees (Mar. 17, 2020), <https://www.courts.maine.gov/covid19/emergency-order-vacating-warrants-fines-fees.pdf>.

¹² Op. and Order, *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, SJC 12926 (Mass. Apr. 3, 2020) <https://www.mass.gov/files/documents/2020/04/03/12926.pdf>

¹³ Joint Statement of Chief Justice Bridget M. McCormack, Mich. Sup. Ct. and Sheriff Matt Saxton, Exec. Dir., Mich. Sheriff Ass'n (Mar. 26, 2020), [https://courts.michigan.gov/News-Events/press_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%202%20\(003\).pdf](https://courts.michigan.gov/News-Events/press_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%202%20(003).pdf).

¹⁴ Letter from Chief Justice Mike McGrath, Mont. Sup. Ct. to Mont. Ct. of Ltd. Jurisdiction Judges (Mar. 20, 2020), <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>.

¹⁵ Consent Order, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (N.J. March 22, 2020), https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf.

¹⁶ *People of the State of New York, ex rel., v. Cynthia Brann*, No. 260154/2020 (Sup. Ct. NY Mar. 25, 2020), https://linkprotect.cudasvc.com/url?a=https%3a%2f%2flegalaidnyc.org%2fwp-content%2fuploads%2f2020%2f03%2fLAS-Mass-Parole-Holds-Writ.pdf&c=E,1,pDbcoVtCJ0c6j6E8cI3m276yaRsnzttikQuvDWwS91mRHj6RhL8o5pEJmJl-lk86sC7-f1rq9dTIh2Pe3ZmAUcoZCi9er2g4Z4mL_ToQ,&typo=1; see also Frank G. Runyeon, *NY Judges Release 122 Inmates as Virus Cases Spike in Jails*, Law360 (March 27, 2020), <https://www.law360.com/newyork/articles/1257871/ny-judges-release-122-inmates-as-virus-cases-spike-in-jails>.

¹⁷ *Jeffrey v. Bran*, (Sup. Ct. NY Mar. 26, 2020). See Press Release, Redmon Haskins, *Legal Aid Wins Release of 16 Incarcerated New Yorkers at a High Risk of COVID-19 from City Jails* (Mar. 26, 2020), <https://legalaidnyc.org/wp-content/uploads/2020/03/03-26-20-Legal-Aid-Wins-Release-of-16-Incarcerated-New-Yorkers-at-a-high-risk-of-COVID-19-from-City-Jails.pdf>;

see also Runyeon, *NY Judges Release 122 Inmates*, *supra* note 11.

¹⁸ Press Conference, Ohio Chief Justice Maureen O'Connor and Gov. Mike DeWine (Mar. 19, 2020); see also WLWT5, *Release Ohio Jail Inmates Vulnerable to Coronavirus, Chief Justice Urges* (Mar. 19, 2020), <https://www.wlwt.com/article/release-ohio-jail-inmates-vulnerable-to-coronavirus-chief-justice-urges/31788560#>.

¹⁹ *In Re: The petition of the Pennsylvania Prison Society*, No. 70 MM 2020 (Penn. Sup. Ct. Apr. 3, 2020), <https://www.clearinghouse.net/chDocs/public/CJ-PA-0008-0002.pdf>.

²⁰ Memorandum from Chief Justice Beatty, Sup. Ct of S.C to Magistrates, Mun. Judges, and Summary Ct. Staff (March 16, 2020), <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461>.

²¹ Ryan Autullo, *Travis County Judges Releasing Inmates to Limit Coronavirus Spread*, Statesman (Mar. 16, 2020), <https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread?fbclid=IwAR3VKawwn3bwSLSO9jXBxXNRuaWd1DRLsCBFc-ZkPN1INWW8xnzLPvZYNO4>.

²² Emergency Pet. to Supplement Court's Order With Directives Necessary to Reduce COVID-19 Public Health Risks Associated with Tennessee Jails, Juvenile Detention Centers and Prisons, *In re COVID-19 Pandemic*, No. ADM2020-0428 at 2, (Tenn. Mar. 25, 2020), available at <https://clearinghouse.net/detail.php?id=17455&search=source%7Cgeneral%3BspecialCollection%7C62%3Bborderby%7CfilingYear%3B> (see the Emergency Pet. under the documents heading).

²³ Order, *Administrative Order for Court Operations During Pandemic* (Utah Mar. 21, 2020), <https://www.utcourts.gov/alerts/docs/20200320%20-%20Pandemic%20Administrative%20Order.pdf>.

²⁴ Am. Order, *In the Matter of Statewide Response by Washington State Courts to the Covid-19 Public Health Emergency*, No. 25700-B-607 (Wash. Mar. 20, 2020), <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf>.

²⁵ Order Adopting Temporary Plan to Address Health Risks Posed by the COVID-19 Pandemic, *In the Matter of the Wyoming Supreme Court's Temporary Plan Regarding COVID-19 Pandemic* (Wyo. Mar. 18, 2020), <http://www.courts.state.wy.us/wp-content/uploads/2020/03/COVID-19-Order.pdf>.

²⁶ *Lady Curtis Valentine v. Collier*, No. 19A1034, 590 U.S. _ (2020), https://www.supremecourt.gov/opinions/19pdf/19a1034_o75q.pdf.

²⁷ *United States v. Chavol*, No. 20-50075 (9th Cir. Apr. 2, 2020), <https://drive.google.com/file/d/1aTt8NVzc-J8ONEPUSdaaklStlDzbuGeJ/view>.

²⁸ *United States v. Michaels*, 8:16-cr-76-JVS, (C.D. Cal. Mar. 26, 2020), https://drive.google.com/file/d/1BeWih63M7FKreKEvLJyIQevYSivGA_PU/view.

²⁹ *Carranza v. Reams*, No. 1:20-cv-00977-PAB (May 11, 2020), <https://aclu-co.org/wp-content/uploads/2020/05/2020-05-11-55-Order-on-preliminary-injunction.pdf>.

³⁰ *United States v. Colvin*, No. 3:19-cr-179 (JBA), 2020 WL 1613943 (D. Conn. Apr. 2, 2020), <https://drive.google.com/file/d/1yGDRB3F26VOFdAeSQHt4Lgixl18g4UHH/view>.

³¹ *United States v. Jepsen*, No. 3:19-cv-00073(VLB), 2020 WL 1640232 (D. Conn. Apr. 1, 2020), https://drive.google.com/file/d/1D0n64TIHAr_CeayEwjjs9GFZ6KSd6Gda/view.

³² Edmund H. Mahony, *Courts Ponder the Release of Low Risk Inmates in an Effort to Block the Spread of COVID-19 to the Prison System*, Hartford Currant (Mar. 24, 2020), <https://www.courant.com/coronavirus/hc-news-covid-inmate-releases-20200323-20200324-orevf4kbfbe3adv6u6ajsj57u-story.html>.

³³ *In Re: Court Operations Under the Exigent Circumstances Created by COVID-19*, (D. Conn. April 7, 2020), <http://ctd.uscourts.gov/sites/default/files/COVID-19-General-Order-re-Appointing-Counsel.pdf>.

³⁴ *United States v. Powell*, No. 1:94-cr-316-ESH, (D.D.C. Mar. 28, 2020), https://drive.google.com/file/d/1SmegVSk_XRf_oiAsFVrE7gCT6PnrjMED/view.

³⁵ *United States v. Meekins*, No. 1:18-cr-222-APM (D.D.C. Mar. 31, 2020), https://drive.google.com/file/d/1ltVSM4Lp1_NpFGZMG1GL_YXTaba98MpS/view.

³⁶ *United States v. Jaffee*, No. 19-cr-88 (RDM) (D.D.C. Mar. 26, 2020), <https://drive.google.com/file/d/1AYfIU6QKCOEIpx5Vh3Af6BDqO8goZ5WE/view>.

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