

APPENDIX B
Sample Motion for Bond and Custody Determination

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

DETAINED

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

-----X

In the Matter of

[RESPONDENT]

File No. A # [NUMBER]

In Removal Proceedings

-----X

Immigration Judge: [NAME]

Master Hearing: [DATE, OR TBA]

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

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

-----X

In the Matter of

[CLIENT NAME]

File No.

[A #]

In Removal Proceedings

-----X

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

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

Applicable Standard

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

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

¹ See 8 CFR §§ 1003.19(c); 1236.1 (2012); INA § 236(a)(2)(B) (“the Attorney General...may release the [noncitizen] on bond of at least \$1500...or conditional parole.”).

² See *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (citing *Matter of Adeniji*, 22 I&N Dec 1102 (BIA 1999)).

³ See 8 CFR § 1003.19(d). (2012).

⁴ *Matter of Castillo-Padilla*, 25 I&N Dec 257, 259 (BIA 2010).

Statement of Facts and Procedural History

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

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

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

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

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

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

Detained individuals, such as the Respondent, face an elevated risk of contracting COVID-19. Experts have previously warned that in the enclosed environment of a prison or detention facility, "both those incarcerated and those who watch over them are at risk for airborne infections."⁸ Dr. Anne Spaulding has compared the spread of this contagion in a prison to that of the outbreak that overtook the Diamond Princess Cruise Ship in January 2020.⁹ Indeed, health experts warn that "[a]n outbreak of the deadly virus inside the walls of a U.S. prison or jail is now a question of when, not if."¹⁰

⁵ World Health Organization, Q&A on Coronaviruses (COVID-19), Mar. 9, 2020, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

⁶ Chaolin Huang, et al., *Clinical Features of Patients Infected with 2019 Novel Coronavirus in Wuhan, China*, 395 *The Lancet* 497 (2020), [https://doi.org/10.1016/S0140-6736\(20\)30183-5](https://doi.org/10.1016/S0140-6736(20)30183-5) (also available at <https://www.sciencedirect.com/science/article/pii/S0140673620301835>).

⁷ *Id.*

⁸ Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF Administrators_3.9.2020.pdf.

⁹ *Id.*

¹⁰ Rich Shapiro, *Coronavirus Could "Wreak Havoc" on U.S. Jails, Experts Warn*, NBC News (Mar. 12, 2020), <https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586>.

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

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

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

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

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

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

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

¹⁵ *Id.*

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

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

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

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

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

2. Respondent Otherwise Warrants Release from Immigration Detention

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

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

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

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

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

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

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

Respectfully submitted this day of , 20 .

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

(Name of alien or aliens)

A _____

("A number" of alien or aliens)

PROOF OF SERVICE

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

Served a copy of this: _____
Motion for Custody and Bond Redetermination

(name of document)

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

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

(address of party served)

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

(signature)

(date)

