

**APPENDIX C**  
**Sample Motion for Bond and Custody Redetermination**

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[ATTORNEY]  
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[ADDRESS]  
[TELEPHONE NUMBER]

**DETAINED**

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

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**In the Matter of**

[RESPONDENT]

**File No.    A # [NUMBER]**

**In Removal Proceedings**

-----X

**Immigration Judge: [NAME]**

**Master Hearing: [DATE, OR TBA]**

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

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

-----X

**In the Matter of**

[CLIENT NAME]

**File No.**

[A #]

**In Removal Proceedings**

-----X

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

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

**Applicable Standard**

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

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

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

<sup>1</sup> See 8 CFR § 1003.19(e) (2012); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

<sup>2</sup> *Matter of Guerra*, 24 I&N Dec 37; *Matter of Patel*, 15 I&N Dec 666 (BIA 1976).

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

### **Statement of Facts and Procedural History**

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

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

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

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

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

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.”<sup>7</sup> 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.<sup>8</sup> Indeed, health

<sup>3</sup> *Matter of Castillo-Padilla*, 25 I&N Dec 257, 259 (BIA 2010).

<sup>4</sup> World Health Organization, Q&A on Coronaviruses (COVID-19), Mar. 9, 2020, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

<sup>5</sup> 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>).

<sup>6</sup> *Id.*

<sup>7</sup> 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](https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf).

<sup>8</sup> *Id.*

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

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.”<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup>

<sup>9</sup> 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>.

<sup>10</sup> 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>.

<sup>11</sup> 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>

<sup>12</sup> *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>

<sup>13</sup> See *US v. Stephens*, No. 15-cr-95 AJN, 2020 US Dist LEXIS 47846 (SDNY March 19, 2020).

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., David Struett, *Cook County Jail releases several detainees “highly vulnerable” to coronavirus*, Chicago Sun-Times, March 17, 2020,

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

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

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

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

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

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

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

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

<sup>16</sup> 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>.

<sup>17</sup> 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>).

<sup>18</sup> 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   .

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[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)

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Motion for Bond or Custody Redetermination  
\_\_\_\_\_  
(name of document)

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

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

\_\_\_\_\_  
(address of party served)

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

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

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

**In the Matter of:**    [NAME]

**File No.**            [A NUMBER]

**Order of the Immigration Judge**

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

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

Deadlines:

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

The next \_\_\_\_\_ hearing is set for \_\_\_\_\_ at \_\_\_\_\_ AM/PM

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hon. [NAME]  
US Immigration Judge

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