

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

_____)	
DARCY G. MCMENAMIN and)	
GERARDO A. PORTILLO,)	
)	
Petitioners,)	
)	
v.)	C.A. No. _____
)	
STEVEN J. SOUZA, Superintendent)	
of the Bristol County House of)	
Correction, THOMAS M. HODGSON,)	
Sheriff of Bristol County, and)	
TODD LYONS, Acting Field Office)	
Director, U.S. Immigration and Customs)	
Enforcement,)	
)	
Respondents.)	
_____)	

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND INJUNCTIVE
RELIEF**

1. Petitioner Darcy G. McMenamin is a civil immigration detainee at the Bristol County House of Correction (the “BCHOC”). There has been no final determination of whether or not he will be allowed to remain in the United States. Mr. McMenamin is 44 years old and is very sick. He suffers from lung disease, including chronic obstructive pulmonary disorder (COPD) and basilar airspace disease. In January 2020, while detained at the BCHOC, he suffered a bilateral carotid dissection (tearing of the carotid arteries) resulting in stroke. He has been hospitalized multiple times in 2020, most recently last week.

2. Petitioner Gerardo A. Portillo is a civil immigration detainee at the BCHOC. On March 10, 2020, an Immigration Judge ordered that Mr. Portillo be allowed to remain in the

United States. It appears that he remains detained solely because the government reserved a potential appeal of that decision. Mr. Portillo is 29 years old and suffers from asthma, for which he has been prescribed medication.

3. Mr. McMenamain and Mr. Portillo are not safe within the BCHOC. Each has medical conditions that put them at high risk of severe illness and death from COVID-19. The novel coronavirus that causes COVID-19 is highly contagious. It has a multi-day incubation period during which an infected person shows no symptoms. The virus can be transmitted by asymptomatic people. The only known measures to mitigate its spread—“physical distancing” and close attention to hygiene—are impossible within the BCHOC.

4. The virus is already spreading rapidly within incarceration facilities in Massachusetts. The first confirmed case in those facilities was reported at the Massachusetts Treatment Center in Bridgewater on or about March 21.¹ In less than two weeks, the number of confirmed cases there has reportedly risen to 21.² Additionally, infection has now reportedly been confirmed at MCI-Shirley and at the county incarceration facilities for Essex, Middlesex, Norfolk, and Plymouth counties.³ As the City of New York Board of Correction has explained: “Given the nature of jails (e.g. dense housing areas and structural barriers to social distancing, hygiene, and sanitation), the number of patients diagnosed with COVID-19 is certain to rise exponentially.”⁴

¹ <https://www.wbur.org/news/2020/03/21/first-mass-prisoner-covid-19-diagnosed>

² <https://www.wbur.org/commonhealth/2020/03/23/coronavirus-massachusetts-prisoner>

³ *Id.*

⁴ <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf>

5. To protect their lives, petitioners 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

6. Petitioner Darcy G. McMenamain has been held in civil immigration detention since November 2019. He is currently detained at the BCHOC in North Dartmouth, Massachusetts. Mr. McMenamain is 44 years old and suffers from numerous physical ailments, including lung disease and high blood pressure. In January 2020, while detained at the BCHOC, he suffered a bilateral carotid dissection (tearing of the carotid arteries) resulting in stroke. He has been hospitalized multiple times in 2020, most recently last week.

7. Petitioner Gerardo A. Portillo has been held in civil immigration detention since January 2019. He is currently detained at the BCHOC in North Dartmouth, Massachusetts. Mr. Portillo is 29 years old and suffers from asthma, for which he has been prescribed medication.

8. Respondent Steven J. Souza is the Superintendent of the BCHOC and is the petitioners' immediate custodian. He is sued in his official capacity only.

9. Respondent Thomas M. Hodgson is the Sheriff of Bristol County, Massachusetts, and is the petitioners' custodian. He is sued in his official capacity only.

10. Respondent Todd Lyons is the Acting Field Office Director for the Boston Field Office of ICE's Enforcement and Removal Operations (ERO), located in Burlington, Massachusetts. He is sued in his official capacity only. The Boston Field Office is responsible for and has authority over ICE's apprehension, detention, and removal operations in Massachusetts, New Hampshire, Connecticut, Rhode Island, Maine, and Vermont. Mr. Lyons is the petitioners' custodian.

JURISDICTION AND VENUE

11. 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).

12. Venue is proper because the petitioners are 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.

13. The novel coronavirus responsible for the illness COVID-19 has led to a global pandemic. As of March 30, 2020, at least 693,000 people worldwide have been diagnosed with COVID-19,⁵ including approximately 163,000 people in the United States.⁶ At least 33,000 people have died as a result of COVID-19 worldwide, including at least 2,800 in the United States.

14. 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.

15. The virus is transmitted through droplets and on contaminated surfaces, and possibly also airborne transmission. 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.

⁵ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200330-sitrep-70-covid-19.pdf?sfvrsn=7e0fe3f8_2

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

16. Outcomes from COVID-19 vary from asymptomatic infection to death. In the highest risk 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.

17. 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.

18. People over the age of fifty 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.

19. There is no approved and available vaccine to prevent 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.

20. Consequently, preventing infection currently requires steps such as “social distancing” (such as remaining physically separated from other people by at least six feet, 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.

21. 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.⁷ The Governor also advised all residents to stay home and avoid all unnecessary travel and activities.⁸

22. 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.

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

23. People incarcerated at the BCHOC 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.

24. Most immigration detainees at the BCHOC are housed in open dormitories in the immigration detention building. Each dormitory holds more than 45 people. Bunk beds are closely spaced. People in the unit take meals together in a common area and share a communal bathroom, including several shared showers. Correctional officers and staff rotate regularly in and out of the unit, each potentially carrying infection from the outside world or other parts of

⁷ <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download>

⁸ <https://www.mass.gov/news/governor-charlie-baker-orders-all-non-essential-businesses-to-cease-in-person-operation>

the facility. Detainees also regularly rotate in and out of the facility as they are arrested, released, or deported, or are transported for health care and legal proceedings outside the facility.

25. Other immigration detainees at the BCHOC are housed in the main building, which also houses people involved in the criminal justice system, often recently arrested people awaiting trial. Detainees reside in cells containing up to eight people. People in the unit share a common area for meals and a common bathroom. Correctional officers and staff rotate regularly in and out of the unit, each potentially carrying infection from the outside world or other parts of the facility. Incarcerated people, including recently arrested people awaiting trial in the criminal justice system, also regularly rotate in and out of the facility

26. These crowded conditions, in both sleeping and social areas, and the shared objects (bathrooms, sinks, etc.) increase the likelihood that COVID-19 will spread rapidly across the facilities, infecting vulnerable detainees.

27. In New York City, for example, jails have become an epicenter of infectious spread. At the Rikers Island Jail in New York City, COVID-19 infection has now reportedly been confirmed in at least 180 incarcerated people.⁹ Similar patterns of infection are reportedly emerging in incarceration in facilities in other states (including Michigan and Illinois) and in the federal prison system (which recently reported its first death of a prisoner from COVID-19).¹⁰

⁹ <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/>;
<https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>

¹⁰ *Id.*

C. People Must Be Released from ICE Detention, Including Those Most Vulnerable to COVID-19.

28. 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, particularly including those most vulnerable to the infection.

29. For example, Dr. Robert Greifinger, a correctional health expert, has concluded that “[a]lthough a risk mitigation strategy must include a variety of steps,” the release of vulnerable people is “one of the most important steps in any such strategy.” *See* Decl. of Robert B. Greifinger, MD (“Greifinger Decl.”) ¶14.

30. Recognizing these grave risks, courts have begun issuing orders requiring or urging the release of incarcerated people. 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.”). The U.S. District Court for the District of Massachusetts recently ordered that an immigration detainee be released based on the “extraordinary circumstances” arising from the coronavirus pandemic. *See* Memorandum and Order (D.E. 507), *Calderon Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 25, 2020). Several other U.S. District Courts have issued orders requiring that immigration detainees be released in light of the coronavirus pandemic. *See* Memorandum and Order (D.E. 47), *Thakker v. Doll*, No. 20-00480 (M.D. Pa. Mar. 31, 2020); Order, *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).

31. Similarly, 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.”¹¹ 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 “extreme flight risk.”¹² 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.¹³ Many other courts have taken similar steps, recognizing that public safety means ensuring the public’s health.¹⁴

¹¹ See Letter from Mike McGrath, Chief Justice of Montana Supreme Court, to Montana Courts of Limited Jurisdiction Judges (Mar. 20, 2020), *available at* <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333> (emphasis added).

¹² Memo from Chief Justice Beatty to Magistrates, Municipal Judges, and Summary Court Staff (Mar. 16, 2020), *available at* <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461>.

¹³ 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>

¹⁴ See Appendix: Court Actions Across the Country to Reduce Incarceration in Light of Covid-19.

D. Petitioners are particularly vulnerable to COVID-19 and should be immediately released to a location where they can safely self-isolate under whatever conditions and supervision the Court deems appropriate.

32. Petitioner Darcy G. McMenamain is particularly vulnerable to serious illness or death if infected by COVID-19. Mr. McMenamain is 44 years old. Among other things, he suffers from lung disease (including chronic obstructive pulmonary disease (COPD) and basilar airspace disease) and high blood pressure. In January 2020, while detained at the BCHOC, he suffered a bilateral carotid dissection (tearing of the carotid arteries) resulting in stroke. He has been hospitalized multiple times in 2020, most recently last week.

33. On information and belief, upon his return to the BCHOC last week from the hospital, Mr. McMenamain was housed temporarily with multiple recent arrestees who were coughing, sneezing, and vomiting. He is currently housed in one of the BCHOC's ICE dormitories.

34. Petitioner Gerardo A. Portillo is particularly vulnerable to serious illness or death if infected by COVID-19. Mr. Portillo is 29 years old and suffers from asthma, for which he has previously received medical attention and been prescribed medication. Although an Immigration Judge ordered on March 10, 2020, that Mr. Portillo be allowed to remain in the United States, he remains detained at the BCHOC in the main building, where arrestees on criminal charges are also held.

35. Continued detention in BCHOC put Mr. McMenamain and Mr. Portillo 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.

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

37. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment’s prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. The Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which is ‘reasonable safety.’” *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (quoting *DeShaney*, 489 U.S. at 200). Accordingly, “[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.” *Id.*

38. 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.*

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

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

41. This court has recognized that that civil detainees, like the 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).

42. The Due Process Clause protects detainees, like the 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 v. Cousins*, 2018 WL 4189694, at *6 (D. Mass. Aug. 31, 2018) (noting that there is "much to be said" for the reasoning that extends *Kingsley* to conditions of confinement cases).

43. Moreover, because civil detention is governed by the Fifth Amendment rather than the Eighth Amendment, a condition of confinement for a civil immigration detainee violates the Constitution "if it imposes some harm to the detainee that significantly exceeds or is independent of the inherent discomforts of confinement and is not reasonably related to a

legitimate governmental objective or is excessive in relation to the legitimate governmental objective.” *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016), *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (citing and relying on *Bell v. Wolfish*, 441 U.S. 520, 535, 538 (1979)).

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

44. COVID-19 poses a serious risk to petitioners. It is highly contagious and can cause severe illness and death. Petitioners are at a heightened risk because of their health conditions.

45. The risk that COVID-19 poses to petitioners is known to defendants.

46. Mr. McMenamín’s and Mr. Portillo’s continued detention in the absence of appropriate or sufficient care and protection constitutes deliberate indifference and is objectively unreasonable.

47. 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.”¹⁵

¹⁵ March 19, 2020 letter from Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH to House and Senate Committees on Homeland Security, available at <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>.

48. 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.”¹⁶ 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.

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

50. 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 petitioners.

¹⁶ See John Sandweg, “I Used to Run ICE. We Need to Release the Nonviolent Detainees.” The Atlantic (March 22, 2020), available at <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>.

D. This Court has the authority to order release.

51. “[H]abeas corpus is, at its core, and 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”).

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

53. The same principle applies here. As the constitutional principles and public health experts make clear, releasing Mr. McMenamin and Mr. Portillo 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.

CLAIM FOR RELIEF

Count I: Violation of Fifth Amendment Right to Due Process

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

55. Petitioners' confinement subjects them to a heightened and unacceptable risk of contracting COVID-19, for which there is no vaccine or cure. Because of petitioners' particular vulnerabilities, they are at elevated risk of serious illness and death if infected with COVID-19. Defendants, acting unreasonably and with deliberate indifference, are subjecting the petitioners to a substantial risk of serious harm, in violation of their rights under the Due Process Clause.

Count II: Violation of the Rehabilitation Act

56. Under Section 504 of the Rehabilitation Act, federal agencies must provide reasonable accommodations to individuals with disabilities. 29 U.S.C. § 794(a); 6 C.F.R. § 15.30.

57. In light of their medical conditions and special vulnerability to COVID-19, petitioners have disabilities with the meaning of the Act.

58. In light of the ongoing pandemic, the petitioners must be released from detention, including because release is the only reasonable accommodation of their disabilities.

PRAYER FOR RELIEF

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

- a. Issue a Writ of Habeas Corpus or other suitable order for injunctive relief and order petitioners' immediate release, with appropriate conditions and precautionary public health measures;
- b. Grant any other and further relief that this Court may deem fit and proper.

Dated: April 1, 2020

/s/ Daniel L. McFadden

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*pro hac application forthcoming

**pro hac application forthcoming; not admitted in D.C.; practice limited to federal courts

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
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.³
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"> ○ “Lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses.” ○ “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.”⁴
	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.⁵
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.”⁶

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.⁷
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.”⁸
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.”⁹
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.¹⁰
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.¹¹
	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.¹²

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."¹³
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."¹⁴
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."¹⁵
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."¹⁶
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.¹⁷
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.¹⁸

Federal Criminal Detention	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.¹⁹
	D. Ct., 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.²⁰
	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.”²¹
	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.²²

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."²³
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]."²⁴
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."²⁵
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."²⁶

	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.”²⁷
	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].”²⁸
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.”²⁹
	C.D. Cal, Judge Terry J. Halter, Jr.	TRO and order to show cause based on writ of habeas corpus	<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.”³⁰
	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-19.³¹

	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."³²
	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."³³
	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."³⁴

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.

² Administrative Order, No. 2020-00010, Ala. Ct. App. (Mar. 18, 2020), <https://drive.google.com/file/d/1I4QLwsytSVkdOuo5p6qblJcuFWcAV4oA/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 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.

⁴ 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.](#)

⁵ *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>.

⁶ 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>.

⁷ 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>.

⁸ 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).

⁹ 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>.

¹⁰ 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.

¹¹ *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-f1rq9dTih2Pe3ZmAUcoZCiC9er2g4Z4mL_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>.

¹² *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.

¹³ 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#>.

¹⁴ 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>.

¹⁵ 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>.

¹⁶ Order, *Administrative Order for Court Operations During Pandemic* (Utah Mar. 21, 2020), <https://www.utcourts.gov/alerts/docs/20200320%20-%20Pandemic%20Administrative%20Order.pdf>.

¹⁷ 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>.

¹⁸ 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>.

¹⁹ Minute Order, *United States v. Michaels*, 8:16-cr-76-JVS, (C.D. Cal. Mar. 26, 2020), https://drive.google.com/file/d/1BeWih63M7FKreKEvLJyIQevYSivGA_PU/view.

²⁰ 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-oreyf4kbfbe3adv6u6ajsj57u-story.html>.

²¹ Minute Order, *United States v. Jaffee*, No. 19-cr-88 (RDM) (D.D.C. Mar. 26, 2020), <https://drive.google.com/file/d/1AYfIU6QKCOEIpx5Vh3Af6BDqO8goZ5WE/view>.

²² *United States v. Harris*, No. 19-cr-356 (RDM) (D.D.C. Mar. 26, 2020), <https://drive.google.com/file/d/1aO3BNOKB8ukL20A76Mu7Fn0GyCng0Ras/view>.

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- ²³ *United States v. Barkma*, No. 19-cr-0052 (RCJ-WGC), 2020 U.S. Dist. LEXIS 45628, at *3 (D. Nev. Mar. 17, 2020), https://drive.google.com/file/d/1o35MokiprkmhzCUUieg_Eua6e05v4zOw/view.
- ²⁴ *United States v. Copeland*, No. 2:05-cr-135-DCN, at 7 (D.S.C. Mar. 24, 2020), <https://drive.google.com/file/d/1tyA8Kjvld23QTLWo7xbAdqLEOCCVC4q/view>.
- ²⁵ *United States v. Garlock*, No. 18-CR-00418-VC-1, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020), https://drive.google.com/file/d/1H47EQMXtQZkXFv_GXSffAV6Xkse3-kpl/view.
- ²⁶ *In The Matter Of The Extradition Of Alejandro Toledo Manrique*, No. 19-mj-71055-MAG, 2020 WL 1307109, at *1 (N.D. Cal. Mar. 19, 2020), <https://drive.google.com/file/d/1AfU1ft4Lcm60QbPhjgo9HgGAHkbPKPzD/view>.
- ²⁷ AM. Order, *United States v. Perez*, 19-cr-297 (PAE), at 1 (S.D.N.Y. Mar. 19, 2020), <https://drive.google.com/file/d/17xE8qdGeeTI2d2dWjNDfwmxLc8GxTtfA/view>.
- ²⁸ *United States v. Stephens*, No. 15-cr-95-AJN, 2020 WL 1295155, at *2-3 (S.D.N.Y. Mar. 19, 2020), <https://drive.google.com/file/d/1hEhz9olCfaKRinDvUOKqjDTcx3-nc4vq/view>.
- ²⁹ *Xochihua-Jaimés v. Barr*, No. 18-cv-71460 (9th Cir. Mar. 23, 2020), <https://drive.google.com/file/d/16eh6qMzihmNlSEq0SzmCSQx98OiLn38l/view>.
- ³⁰ *Castillo v. Barr*, No. 20-cv-605 (TJH)(AFM), at 10 (C.D. Cal. Mar. 27, 2020), <https://drive.google.com/file/d/1BeFuU-Lrji-VVeA6QA2O7zLud7aWivEN/view>.
- ³¹ Transcript of Oral Argument, at 3-4, 6, *Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 26, 2020), <https://www.courtlistener.com/recap/gov.uscourts.mad.195705/gov.uscourts.mad.195705.507.1.pdf>.
- ³² *Jovel v. Decker*, No. 12-cv-308 (GBD), at 2 (S.D.N.Y. Mar. 26, 2020), <https://drive.google.com/file/d/1mrJ9WbCgNGeyWn1cy3xAvo61yJWnaDe8/view>.
- ³³ *Coronel v. Decker*, No. 20-cv-2472 (AJN), at 10 (S.D.N.Y. Mar. 27, 2020), <https://legalaidnyc.org/wp-content/uploads/2020/03/20cv2472-Op.-Order-3.27.20.pdf>.
- ³⁴ *Basank v. Decker*, No. 20-cv-2518 (AT), at 7, 10 (S.D.N.Y. Mar. 26, 2020), https://drive.google.com/file/d/1FJ7tU9JCskKPh4xkoe4j3YgoQ5y2_y0P/view.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Darcy G. McMenamin & Gerardo A. Portillo

(b) County of Residence of First Listed Plaintiff Detained in Bristol County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Daniel L. McFadden, ACLU Foundation of Massachusetts, 211 Congress St., Boston, MA 02110, 617-482-3170 x171

DEFENDANTS

Steven J. Souza, Superintendent of the Bristol County House of Correction, et al.

County of Residence of First Listed Defendant Bristol (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 2241. Brief description of cause: Petition for Habeas Corpus

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE William G. Young DOCKET NUMBER 20-10617-WGY

DATE 04/01/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Daniel L. McFadden

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) McMenamin et al. v. Souza et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830*, 835*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.
- III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Savino et al. v. Hodgson et al., 20-10617-WGY

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Daniel L. McFadden

ADDRESS ACLU Foundation of Massachusetts, 211 Congress St., Boston, MA 02110

TELEPHONE NO. 617-482-3170 x171