

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

MARIO LUIS RODAS-MAZARIEGOS)
and RAY ANTHONY MARZOUCA,)
)
Petitioners,)
)
v.) C.A. No. _____)
)
ANTONE MONIZ, Superintendent)
of the Plymouth County Correctional,)
Facility, JOSEPH D. MCDONALD, JR.,)
Sheriff of Plymouth 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. COVID-19 has been detected within the Plymouth County Correctional Facility (the “PCCF”). On Monday, March 23, 2020, the Sheriff of Plymouth County announced that an unidentified employee had been tested on Friday, March 20, and that the PCCF had received the positive result on Sunday, March 22.¹

2. The PCCF houses numerous civil immigration detainees in close quarters where “physical distancing” and normal hygiene are impossible.

3. Petitioner Mario Luis Rodas-Mazariegos (who goes by Mario L. Rodas) is also a civil immigration detainee at PCCF. There has been no final determination of whether or not he will be allowed to remain in the United States. Mr. Rodas is 59 years old and suffers from uncontrolled diabetes mellitus and high blood pressure. The presence of COVID-19 in the PCCF puts him at high risk of severe illness and death.

4. Petitioner Ray Anthony Marzouca is a civil immigration detainee at PCCF. There has been no final determination of whether or not he will be allowed to remain in the United States. Mr. Marzouca is 63 years old and has been informed that he has prostate cancer. The presence of COVID-19 in the PCCF puts him at high risk of severe illness and death.

5. Mr. Rodas and Mr. Marzouca are not safe within the PCCF. 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. It is already spreading within incarceration facilities in Massachusetts and elsewhere.² As the City of New York Board of Correction explained (after dozens of cases arose

¹ https://www.pcsdma.org/forms/employee_positive.pdf

² The Massachusetts Treatment Center at Bridgewater is now reporting ten cases, including two staff members and eight incarcerated people. There is also one reported case at MCI-Shirley. *See*

at Rikers Island and other locations): “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.”³

6. 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.⁴

PARTIES

7. Petitioner Mario L. Rodas has been held in civil immigration detention since March 5, 2020. He is currently detained at the PCCF in Plymouth, Massachusetts. Mr. Rodas is 59 years old and suffers from uncontrolled diabetes mellitus and hypertension (high blood pressure).

8. Petitioner Ray Anthony Marzouca has been held in civil immigration detention since November 2019. He is currently detained at the PCCF in Plymouth, Massachusetts. Mr. Marzouca is 63 years old and has been informed that he has prostate cancer. Although communication with Mr. Marzouca is difficult right now due to facility restrictions, his family has been informed that the cancer has spread to his spine and possibly his shoulder.

<https://www.masslive.com/coronavirus/2020/03/coronavirus-11-people-at-massachusetts-jails-test-positive-for-covid-19-almost-all-cases-from-mass-treatment-center-in-bridgewater.html>.

³ <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf>

⁴ Alternatively, the Sheriff’s department could be ordered to exercise its statutory authority, under M.G.L. Ch. 126, § 26, to secure for the petitioners a housing setting that permits appropriate isolation—such as one of the many motel rooms currently empty in the Commonwealth—to which they could be released and reside under the continuing supervision of the Sheriff’s department. *See* M.G.L. Ch. 126, § 26 (“If disease breaks out in a jail or other county prison, which, in the opinion of the inspectors of the prison, may endanger the lives or health of the prisoners to such a degree as to render their removal necessary, the inspectors may designate in writing a suitable place within the same county, or any prison in a contiguous county, as a place of confinement for such prisoners.”).

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

10. Respondent Joseph D. McDonald, Jr. is the Sheriff of Plymouth County, Massachusetts, and is the petitioners' custodian. He is sued in his official capacity only.

11. 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. 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

12. 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).

13. 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.

14. The novel coronavirus responsible for the illness COVID-19 has led to a global pandemic. As of March 24, 2020, at least 372,000 people worldwide have been diagnosed with COVID-19,⁵ including approximately 44,000 people in the United States.⁶ At least 16,000 people have died as a result of COVID-19 worldwide, including at least 544 in the United States.

15. 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.

16. 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.

17. 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.

18. 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.

⁵ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200324-sitrep-64-covid-19.pdf?sfvrsn=703b2c40_2

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

19. 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, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), 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.

20. 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.

21. 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.

22. 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

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>

23. 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 PCCF are at high risk for COVID-19 infection.

24. 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.

25. Indeed, in 2019, the PCCF reportedly suffered a mumps outbreak among ICE detainees.

26. Immigration detainees at the PCCF are housed in four units. Each unit holds between approximately 50 and 100 people. Within each unit, people are held in communal cells with up to five bunks each. The bunks are in close proximity to each other, as well as to a toilet located in the same small room. The unit takes meals together in a common area located immediately outside of the cells. The entire unit of 50 or more people shares one 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 the facility. Detainees also regularly rotate in and out of the facility as they are arrested, released, or deported.

27. 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.

28. In New York City, for example, jails have become an epicenter of infectious spread. At the Rikers Island Jail in New York City, 21 detainees and 17 correctional staff tested positive for coronavirus as of March 23, 2020.

29. Once introduced into this setting, COVID-19 will spread. This is not a speculative fear: On March 23, 2020, the Sheriff of Plymouth County announced that an unidentified employee had been tested for COVID-19 on Friday, March 20, and that the PCCF received the positive result on Sunday, March 22.

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

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

31. For example, Dr. Robert Greifinger, a correctional health expert, has concluded that “even with the best-laid plans to address the spread of COVID-19 in detention facilities, the release of vulnerable individuals is a key part of a risk mitigation strategy.” *See* Decl. of Robert B. Greifinger, MD (“Greifinger Decl.”) ¶12. Accordingly, “[i]n [his] opinion, the public health recommendation is to release vulnerable people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.” *Id.* In a scenario where vulnerable detainees have already been potentially exposed to COVID-19, these experts recommend the release of detainees to a self-

isolation setting outside of detention in coordination with local health authorities, and testing where possible.

32. 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 (9th Cir. Mar. 23, 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.”). 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.”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 “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

⁹ *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).

¹⁰ 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>.

servicing 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 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.

33. Petitioner Mario Rodas is particularly vulnerable to serious illness or death if infected by COVID-19. He is 59 years old. He suffers from uncontrolled diabetes mellitus and hypertension (high blood pressure).

34. Mr. Marzouca is particularly vulnerable to serious illness or death if infected by COVID-19. He is 63 years old. His medical records have been requested but not yet provided. He understands he was diagnosed with prostate cancer in 2019.

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 New York City jails released some vulnerable inmates. See *US jails begin releasing prisoners to stem Covid-19 infections*, BBC News (Mar. 19, 2020), available at <https://www.bbc.com/news/world-us-canada-51947802>. The Chief Justice of the Ohio Supreme Court pressed for the release of vulnerable inmates. See *Release Ohio jail inmates vulnerable to coronavirus, chief justice urges*, WLMT (Mar. 19, 2020). The Sacramento Superior Court entered a standing order authorizing their sheriff to release those within 30 days of release, regardless of crime. See *Standing Order of the Sacramento Superior Court* (Mar. 17, 2020), available at: <https://www.saccourt.ca.gov/general/standing-orders/docs/ssc-20-5.pdf>. In Volusia County, Florida, the correctional facility released 88 inmates held in jail on nonviolent charges. *Coronavirus preparation prompts Volusia jail to release some non-violent offenders*, The Daytona Beach News-Journal (March 20, 2020). Trial court chief judges in Maine immediately vacated all outstanding warrants for unpaid fines, restitution, fees, and failures to appear. See *Emergency Order* (March 17, 2020), available at: <https://www.courts.maine.gov/covid19/emergency-order-vacating-warrants-fines-fees.pdf>. Sheriffs in two Iowa counties are releasing all inmates with pre-existing conditions or who are serving time for certain low-level crimes. See *Some county sheriffs working with courts to release some Iowa inmates earlier amid COVID-19 concerns* (March 19, 2020), available at: <https://www.weareiowa.com/article/news/local/some-county-sheriffs-working-with-courts-to-release-some-iowa-inmates-earlier-amid-covid-19-concerns/524-05eacd11-1e25-4b32-b744-87f633ee873d>. In Cincinnati, a court order has authorized the county sheriff to release low-risk, nonviolent inmates at his discretion. See *Order to authorize Hamilton County sheriff to release low-risk, nonviolent jail inmates*, Cincinnati Enquirer (March 16, 2020), available at: <https://www.cincinnati.com/story/news/crime/crime-and-courts/2020/03/16/coronavirus-hamilton-county-sheriff-release-low-risk-inmates/5062700002/>. And Iran has released 85,000 prisoners, with 10,000 more slated to receive pardons. See *Hard-hit Iran frees more prisoners amid coronavirus outbreak*, Al Jazeera (March 17, 2020), available at: <https://www.aljazeera.com/news/2020/03/hard-hit-iran-frees-prisoners-coronavirus-outbreak-200317110516495.html>.

35. Communicating with Mr. Marzouca and obtaining records from him is currently difficult. Among other reasons, counsel have been informed that Mr. Marzouca was moved temporarily to segregation after being threatened by another detainee. Mr. Marzouca's family understands that doctors recently determined that his cancer has spread to his spine and possibly his shoulder.

36. Continued detention in the PCCF puts Mr. Rodas and Mr. Marzouca at high risk of severe illness and death, particularly in light of the confirmed presence of the virus that causes COVID-19 in the facility.

LEGAL FRAMEWORK

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

37. 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.

38. 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.*

39. 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.*

40. 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).

41. 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. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”); *see also Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2019); *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1120, 1122-25 (9th Cir. 2018).

42. 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. Cnty. of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018); *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005).

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 age and underlying health conditions.

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

46. 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

¹³ 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>.

47. 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.

48. 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).

49. 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.

¹⁴ 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.

50. “[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”).

51. 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).

52. The same principle applies here. As the constitutional principles and public health experts make clear, releasing Mr. Rodas and Mr. Marzouca 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. Alternatively, the Court can order the Sheriff’s department to exercise its statutory authority to secure for the petitioners a housing setting that permits appropriate isolation—such as one of the many motel rooms currently empty in the

Commonwealth—to which they could be released and reside under the continuing supervision of the Sheriff’s department. *See* M.G.L. Ch. 126, § 26.

CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

53. 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.

54. 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.

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. Alternatively, issue a Writ of Habeas Corpus or other suitable order requiring the petitioners’ custodian, the Sheriff’s department, to exercise its statutory authority under M.G.L. Ch. 126, § 26, to secure for them a housing setting that permits appropriate isolation—such as one of the many motel rooms currently empty in the Commonwealth—to which they could be released and reside under the continuing supervision of the Sheriff’s department;
- c. Grant any other and further relief that this Court may deem fit and proper.

Dated: March 25, 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

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

Mario Luis Rodas-Mazariegos and Ray Anthony Marzouca

(b) County of Residence of First Listed Plaintiff Plymouth (detained) (EXCEPT IN U.S. PLAINTIFF CASES)

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

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

DEFENDANTS

Antone Moniz, Superintendent of Plymouth County Correctional Facility, et al.

County of Residence of First Listed Defendant Plymouth (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, FEDERAL TAX SUITS, BANKRUPTCY, 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: Emergency Petition for Habeas Corpus for Detainees Vulnerable to COVID-19

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 DOCKET NUMBER

DATE 03/25/2020 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) Rodas-Mazariegos et al. v. Moniz 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.

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 /s/ Daniel L. McFadden

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