

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

PEDRO GONZALEZ GUARCAS,

Petitioner,

v.

**US DEPARTMENT OF HOMELAND
SECURITY, Acting Secretary, et al.,**

Respondents.

Case No.: 1:20-cv-00411-JL

**PETITIONER’S EMERGENCY MOTION FOR EXPEDITED AND IMMEDIATE
CONSIDERATION**

Petitioner Pedro Gonzalez Guaracas respectfully moves this Court, on an emergency basis, to expedite consideration of the instant habeas corpus petition which was filed on April 2, 2020. Given the ongoing health emergency, Petitioner requests that a decision be rendered in the next twenty-one (21) days. Because this case is a habeas corpus action, such expedited consideration is warranted. Generally, 28 U.S.C. § 2243 requires courts to “summarily” decide petitions for writs of habeas corpus with all possible speed. *See* 28 U.S.C. § 2243 (“The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.”). Although the statute provides no fixed timeline for a decision, the statute favors prompt resolution of such claims. It should also be noted that the identical legal question in this case is currently before Judge Joseph A. DiClerico, Jr. in *Rivera-Medrano v. U.S. Department of Homeland Security*, No. 1:20-cv-00194-JD (D.N.H. filed Feb. 3, 2020). A decision is expected imminently.

Petitioner believes that prompt resolution is required in this case in light of the current COVID-19 pandemic. Given Petitioner’s detention at the Strafford County Department of

Corrections¹, he is at greater risk of becoming ill with the COVID-19 strain of coronavirus. This disease is spreading exponentially across the country and across New Hampshire. There is no vaccine, and no uninfected person is immune. See Exhibit 1 (Declaration of Dr. Golob) at ¶ 10. As explained in the Governor’s recent March 24, 2020 press conference, a “huge surge” of reported cases is expected², with a peak sometime around late April or early May.³ Five people have already died. Because there is no vaccine for or cure to COVID-19, the only known way to protect against serious illness or death caused by COVID-19 is social distancing or hygiene. See *id.* at ¶ 11. However, experts have found that such practices are virtually impossible in detention settings.⁴ Indeed, as Petitioner’s affidavit shows from her experience, social distancing is not occurring in several ways at the Strafford County Department of Corrections. See Exhibit 4 ¶ 3 (Petitioner’s Affidavit). Time is of the essence before the virus becomes widespread within prison and jail facilities in New Hampshire, which would render Petitioner trapped inside a nightmare scenario.

Unfortunately, outbreaks have occurred in jails outside of New Hampshire, and it is likely only a matter of time before infections start spreading through the New Hampshire jail and prison system.⁵ For example, on March 18, 2020, the federal Bureau of Prisons disclosed that a staffer

¹ As of March 25, 2020, the Strafford County Department of Corrections has 333 inmates, which includes 66 federal immigrant detainees. The jail can house 495 inmates. See Kyle Stucker, A Look Inside ICE Facility at Strafford County Jail, *Foster’s Daily Democrat* (Aug. 18, 2019), <https://www.fosters.com/news/20190818/look-inside-ice-facility-at-strafford-county-jail>.

² *New Hampshire Expecting ‘Huge Surge’ Of Positive Coronavirus Tests As Testing Expands*, CBS (Mar. 24, 2020), <https://boston.cbslocal.com/2020/03/24/new-hampshire-coronavirus-governor-chris-sununu/>.

³ Kathy McCormick, *NH Commissioner: Virus to Peak Between Late April, Early May*, Associated Press (Mar. 25, 2020), <https://www.wcax.com/content/news/NH-commissioner-Virus-to-peak-between-late-April-early-May-569109751.html>.

⁴ Martin Kaste, *Prisons and Jails Worry About Becoming Coronavirus ‘Incubators’*, *Nat. Pub. Radio* (Mar. 13, 2020, 12:00 PM), www.npr.org/2020/03/13/815002735/prisons-and-jails-worryabout-becoming-coronavirus-incubators; Lauren-Brooke Eisen, *How Coronavirus Could Affect U.S. Jails and Prisons*, Brennan Ctr. For Justice (Mar. 13, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/how-coronavirus-could-affect-us-jails-and-prisons>.

⁵ For example, as of April 2, 2020, the New York’s Department of Corrections had 231 inmates and 223 staff members with COVID-19 (with most inmate infections occurring on Rikers Island). The infection rate in this corrections setting is higher than New York City and most countries. Julia Craven, *Coronavirus Cases Are*

tested positive for the coronavirus at the Berlin medium-security facility in New Hampshire.⁶ On March 27, 2020, the Merrimack County House of Corrections disclosed that a corrections officer had tested positive for COVID-19, and two fellow employees are under quarantine.⁷ Furthermore, because the government is continuously transferring detainees from out of state facilities to the Strafford County Department of Corrections, as well as bringing detainees to the Boston Immigration Court for court hearings, the likelihood that the virus can come into that specific facility is significantly high. See Exhibit 2, 3 (Affidavits of Attorneys). For instance, the government recently transferred some detainees from the Bristol County Jail in Massachusetts to the Strafford County Department of Corrections. See Exhibit 2 (Affidavit of Attorney Ira Alkalay). In a few days after their transfer, a nurse at the Bristol County Jail was confirmed positive for COVID-19.⁸ Significantly, one deputy sheriff of the Strafford County Sheriff's Office, which has a contract for transportation of immigration detainees for the government, has been confirmed positive for COVID-19.⁹

Spreading Rapidly on Rikers Island, Slate (Apr. 2, 2020), <https://slate.com/news-and-politics/2020/04/rikers-coronavirus-cases-increase.html>; Ned Parker, et al., *Spread of Coronavirus Accelerates in U.S. Jails and Prisons*, Reuters (Mar. 28, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-inmates-insigh/spread-of-coronavirus-accelerates-in-us-jails-and-prisons-idUSKBN21F0TM>; Andrew Denney, *New Coronavirus Cases in NYC Jails Outpacing Rest of the City*, *New York Post* (Mar. 25, 2020), <https://nypost.com/2020/03/25/new-coronavirus-cases-in-nyc-jails-outpacing-rest-of-the-city/>. In a recent letter to New York's criminal justice leaders, Board of Correction interim chairwoman Jacqueline Sherman described a jail system in crisis. She explained: "It is likely these people have been in hundreds of housing areas and common areas over recent weeks and have been in close contact with many other people in custody and staff." Craig McCarthy, *NYC Jails See Outbreak of Coronavirus Cases With Exponential Increase Expected*, *New York Post* (Mar. 22, 2020), <https://nypost.com/2020/03/22/nyc-jails-see-outbreak-of-coronavirus-cases-with-exponential-increase-expected/>.

⁶ Nancy West, *Federal Prison Staffer in Berlin Tests Positive for COVID-19*, InDepthNH.org (Mar. 18, 2020), <http://indepthnh.org/2020/03/18/one-staffer-at-federal-prison-in-berlin-tests-positive-for-covid-19/>.

⁷ Mark Hayward, *Corrections Officer at Merrimack County Jail Tests Positive for COVID-19; Two Others Quarantined*, *Union Leader* (Mar. 27, 2020), https://www.unionleader.com/news/health/corrections-officer-at-merrimack-county-jail-tests-positive-for-covid/article_aef8e47b-b4e2-5da6-b84c-76b2d8318651.html?utm_medium=social&utm_source=twitter&utm_campaign=user-share.

⁸ *Nurse at Bristol County House of Corrections Tests Positive for COVID-19*, *Dartmouth Week* (Apr. 2, 2020), <https://dartmouth.theweektoday.com/node/47324?source=email-bn&fbclid=IwAR2-eCBSi0uBZBPEPhfch9h2BnHKaEb82hYZ6ke5UayYle7sjD87EVIrHM8>.

⁹ Kimberley Haas, *Deputy Sheriff in Strafford County Tests Positive for COVID-19*, *Union Leader* (Apr. 2, 2020),

In sum, by the time the disease takes hold of the state's prison and jail system, it will be too late and Petitioner will be helpless to protect himself:

[B]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible. Separating sick people from well people to prevent the disease from spreading can be nearly impossible in prison, since prisoners are already grouped according to security and other logistical considerations. Even so-called social distancing can prove impossible. People in prisons and jails live every minute of the day in close proximity to each other.¹⁰

Notably, Petitioner had a lung problem when he was young (bronchitis). *See Exhibit 4* (Petitioner's Affidavit). Moreover, outbreaks in our jails and prisons will endanger correctional officers and medical staff, their families, and their communities as staff cycle through the facilities. The more people who contract the virus, the more treatment they will need, and the more precious resources their treatment will require.

The District Court for the District of New Hampshire has recognized that this pandemic poses dire threats not only to everyone in New Hampshire, but also to its legal system. It has acknowledged, for example, that "the threat to public health and safety presented by the COVID-19 pandemic has become more widely understood" and that "it now appears to be accepted in the medical community that COVID-19 may be spread by persons who are asymptomatic and ... there are recent incidents of community-based transmission of the virus in this district." *See* Mar. 20, 2020 D.N.H. Standing Order 20-5, *available at* <http://www.nhd.uscourts.gov/pdf/ADM%201%2020-5.pdf>. Accordingly, this District Court has issued multiple orders designed to slow the spread of COVID-19, including closing the federal courthouse with limited exceptions. *Id.* Further, on March 25, 2020, Judge Mark L. Wolf in the

https://www.unionleader.com/news/health/coronavirus/deputy-sheriff-in-straftford-county-tests-positive-for-covid-19/article_f3785021-1042-54ed-99d3-3c1e8749e5ce.html.

¹⁰ The Justice Collaborative, *Explainer: Prisons and Jails are Particularly Vulnerable to COVID - 19 Outbreaks*, <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf> (emphasis removed).

District of Massachusetts released an immigrant detainee because of this pandemic. *See Calderon Jiminez v. Wolf*, No. 1:18-cv-10225-MLW (D. Mass. Mar. 25, 2020), Docket No. 506. A copy of the transcript of Judge Wolf’s reasoning is attached as Exhibit 5. That Court explained:

.... To be blunt, we’re living in the midst of a coronavirus pandemic. Some infected people die; not all, but some infected people die. If the petitioner is infected and dies, the case will be moot. The habeas remedy will be ineffective.

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

See Exhibit 5, 4:1-13; *see also* Chris Villani, *Releasing ICE Detainee, Judge Says Jail No Safer Than Court*, Law360.com (Mar. 25, 2020), <https://www.law360.com/articles/1256985/releasing-ice-detainee-judge-says-jail-no-safer-than-court>.¹¹

To be clear, Petitioner is not yet seeking his immediate release before this Court (though he reserves the right to do so), but rather the far more limited relief of expedited consideration of his petition. One judge within this District has already recognized how the risk of COVID-19 for inmates may necessitate deciding immigration detention cases promptly. *See Rivera-Medrano v.*

¹¹ A New York federal judge, citing this logic from Judge Wolf, similarly blocked customs agents from arresting three detainees before their immigration hearings. *Basank v. Decker*, 20 Civ. 2518 (AT), 2020 U.S. Dist. LEXIS 53191, at *10 (S.D.N.Y. Mar. 26, 2020) (“A number of courts in this district and elsewhere have recognized the threat that COVID-19 poses to individuals held in jails and other detention facilities.”); *see also, e.g., Xochihua-Jaimes v. Barr*, 18-71460, Doc. No. 53, 2020 U.S. App. LEXIS 9069 (9th Cir. Mar. 23, 2020) (unpublished) (“In 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”); *United States v. Stephens*, No. 15 Cr. 95, 2020 U.S. Dist. LEXIS 47846, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (“[I]nmates may be at a heightened risk of contracting COVID-19 should an outbreak develop.”); ordering “conditions of 24-hour home incarceration and electronic location monitoring”); *United States v. Garlock*, 18 Cr. 418, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) (“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. Several recent court rulings have explained the health risks—to inmates, guards, and the community at large—created by large prison populations. The chaos has already begun inside federal prisons—inmates and prison employees are starting to test positive for the virus, quarantines are being instituted, visits from outsiders have been suspended, and inmate movement is being restricted even more than usual.”).

Wolf, No. 20-cv-194-JD (D.N.H. Mar. 27, 2020) (Docket No. 14) (DiClerico, J.) (granting motion to expedite consideration of bond habeas corpus action brought by detained immigrant because of COVID-19; concluding that, “[a]ssuming that a health emergency exists or will exist in the jail, the court will consider her petition on an expedited basis”). See Exhibit 6.

In light of the current public health emergency addressed above, Petitioner has no objection to this Court considering the current petition without oral argument. Should this Court believe that oral argument is necessary, Petitioner’s counsel is amenable to such argument occurring by videoconference or teleconference pursuant to Section 10 of this Court’s March 20, 2020 Standing Order 20-5.

Pursuant to L.R. 7.1(c), counsel for Petitioner states that this Motion was served on the Government concurrent with its filing with the Court. Given the emergency nature of the relief sought, Petitioner has not yet been able to secure the position of the Government.

WHEREFORE, Petitioner respectfully requests that this Court provide the following relief:

- A) adjudicate this habeas petition expeditiously within twenty-one days (21) days of today’s date; and
- B) grant such other and further relief as this Court deems just and proper in the circumstances.

Respectfully submitted,

PEDRO GONZALEZ GUARCAS,

By and through his Counsel,

/s/ Gilles Bissonnette

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