**SAMPLE**

**Motion & exhibits in support of BOND REDETERMINATION HEARING BASED UPON CHANGED CIRCUMSTances**

**(FOR FILING WITH THE IJ)**

This sample motion and accompanying list of exhibits were prepared by the Immigrant Defense Project, drawing from research provided by numerous other organizations related to the COVID-19 (aka coronavirus) pandemic. The sample motion provides potential factual and legal arguments that a detained person should be provided a new bond hearing in light of the COVID-19 pandemic and particular health risks to detained persons. A large portion of these materials may also be used to support an initial bond request to the IJ.

This motion is not a substitute for independent legal advice supplied by a lawyer familiar with a client’s case.  It is not intended as, nor does it constitute, legal advice.

This motion is applicable to individuals who are detained pursuant to INA § 236(a) (aka “discretionary detention”) who were previously denied bond by an Immigration Judge or granted a bond amount that they have been unable to pay. It is not applicable to individuals detained under the mandatory detention statutes, INA §§ 235(b) (“arriving” noncitizens), 236(c) (certain criminal offenses), or 241 (post-final removal order).

Finally, the motion uses the pronouns “they/their” to refer to the Respondent, but we encourage authors using this sample to substitute the preferred pronouns of the detained individual.

**DETAINED**

**U.S. DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**IMMIGRATION COURT**

**[CITY], [STATE]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the Matter of: ) File No.: A[ ]

)

[NAME], )

)

In Removal Proceedings. )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**RESPONDENT’S MOTION FOR BOND REDETERMINATION HEARING BASED UPON CHANGED CIRCUMSTANCES**

Immigration Judge: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Next Hearing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RESPONDENT’S MOTION FOR BOND REDETERMINATION HEARING BASED UPON CHANGED CIRCUMSTANCES**

Pursuant to 8 C.F.R. § 1003.19(e), Respondent respectfully requests a bond redetermination hearing based upon the COVID-19 pandemic, a material change in circumstances. In support of this motion, Respondent submits as follows:

1. [Summary statement about Respondent, highlighting characteristics making the client vulnerable to COVID-19 (ie. age, medical condition)].
2. Respondent was detained by U.S. Immigration and Customs Enforcement on [Date]. On [Date], this Court held a bond hearing in Respondent’s case, in which the Immigration Judge [denied bond/set bond in the amount of $XX]. [If bond set, add “Respondent has been unable to pay the bond amount.”]
3. The COVID-19 pandemic, which places Respondent at a grave health risk while detained, constitutes a material change in circumstances requiring custody redetermination by this Court. *See* 8 C.F.R. § 1003.19(e). Further, Respondent poses no risk of flight nor danger to persons or property. Therefore, Respondent moves this Court for a custody redetermination hearing and release Respondent on his own recognizance or grant a reasonable bond.

**STATEMENT OF FACTS**

1. [Summarize Respondent’s family background, employment history, etc.].
2. Respondent was arrested by ICE on [date]. [Discuss circumstances of arrest, if relevant]. Respondent has been detained by I.C.E. at the [name of jail/detention center] for [X months].
3. [Discuss procedural history in immigration case: “On [Date], Respondent appeared for a Master Calendar Hearing at which DHS served a Notice to Appear charging him as removal pursuant to [INA Section]. On [Date], Respondent filed an application for [Cancellation of Removal, Asylum, Withholding, Protection under CAT, Adjustment of Status] this Court.]”]
4. [Provide specific details about any medical needs. Highlight characteristics that make Respondent at particularly high risk of serious health outcomes should they contract COVID-19, such as: older age, pregnancy, and underlying medical conditions including lung disease, heart disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, asthma, compromised immune systems (such as from HIV, cancer, or autoimmune disease), blood disorders, stroke, and mental illness.]
5. Respondent appeared before this Court on [date] for an initial bond hearing. At the conclusion of the hearing, the Immigration Judge [denied bond/granted bond in the amount of $XX]. [If the Court denied bond, state the reason].
6. [If applicable, discuss any relevant changes in the Respondent’s case or personal circumstances since the first bond hearing, including submitting new applications for relief, declining health and/or hardship to family].
7. On March 11, 2020, the World Health Organization declared the spread of the novel COVID-19 virus (aka “coronavirus”) to be a global pandemic. As of March 22, at least 316,692 people worldwide have confirmed diagnoses, including over 27,004 people in the United States. *See* Johns Hopkins University & Medicine, *Coronavirus COVID-19 Global Cases*, https://coronavirus.jhu.edu/map.html (last accessed Mar. 22, 2020) (Johns Hopkins); Center for Disease Control, *Coronavirus Disease 2019 (COVID-19)*, *Cases in the U.S.*, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last accessed Mar. 22, 2020) (CDC). Over 13,598 people have died as a result of COVID-19 worldwide, including at least 201 people in the United States. *See* Johns Hopkins; CDC. The transmission of COVID-19 is expected to grow exponentially.
8. People over the age of 60 and people of any age with certain medical conditions face greater chances of serious illness or death from COVID-19. Ex. A-1, Center for Disease Control, *Coronavirus Disease 2019 (COVID-19),* *If You are at Higher Risk* (older adults are among those at higher risk). Medical conditions that increase a person’s susceptibility to the COVID-19 disease and its complications include lung disease, heart disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders, inherited metabolic disorders, stroke, pregnancy, anxiety and other mental illnesses. *See* Ex. A-2, World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* at 12 (finding highest fatality rates for patients with cardiovascular disease, diabetes, hypertension, chronic respiratory disease, and cancer); Ex. A-3, Jieliang Chen, *Pathogenicity and transmissibility of 2019-nCoV*, at 69(discussing higher fatality rates for patients with health conditions that suppressed their immune system); Ex. A-4, Catherine Kariuki-Nyuthea et al., *Anxiety and Related Disorders and Physical Illness* at 82-83 (describing “a growing body of evidence for a strong bidirectional association between anxiety and related disorders and co-occurring general medical conditions” which include respiratory illnesses); Ex. A-5, World Health Organization, *Management of physical health conditions in adults with severe mental disorders* at 38(“People with [severe mental disorders] are at greater risk than the general population for exposure to infectious diseases[.]”).
9. The COVID-19 virus can severely damage lung tissue—to the point of causing permanent loss of respiratory capacity—and may also cause inflammation of the heart muscle. Complications of COVID-19 can manifest at an alarming pace and rapidly deteriorate a patient’s health.
10. According to Dr. Homer Venters, former chief medical officer of the New York City jail system, “[i]t’s just a matter of time before we see cases [of coronavirus] inside jails and prison.” Ex. B-1, NBC News, *Coronavirus could ‘wreak havoc’ on U.S. jails, experts warn*. Once COVID-19 is introduced to a jail or detention center, these environments “provide prime breeding ground for the spread of infectious diseases.” *Id.*  It is impossible for detained persons to follow CDC recommendations to avoid crowds, especially in poorly ventilated spaces. Dr. Anne Spaudling, an expert on jail health systems, explains, “[i]ncarcerated persons sleep in close quarters, eat together, recreate in small spaces. Staff are close by. Both those incarcerated and those who watch over them are at risk for airborne infections.” Ex. B-2, Dr. Anne C. Spaulding, *Coronavirus COVID-19 and the Correctional Facility*.
11. In addition to the congregant environment inherent to jails and detention centers, Dr. Venters also recently noted that “[j]ails and prisons are often dirty and have really very little in the way of infection control.” Ex. B-3, Keri Blakinger and Beth Schwartzapfel, *When Purell Is Contraband, How Do You Contain Coronavirus?* In many jails, prison, and detention centers there are a small number of bathrooms for many detained people, broken sinks, and no access to soap. *Id.*  Indeed, advocates across the country have documented the inability of detained noncitizens to regularly access free sanitation products such as soap.
12. Immigration detention facilities and jails lack adequate medical infrastructure to prevent the spread of COVID-19 and treat those who are most vulnerable to illness. These concerns led over 3,000 medical professionals to call for the release of people from detention. Ex. B-4, Medical Provider Letter.

**ARGUMENT**

1. When considering a bond redetermination, the Court may consider three main issues: (1) whether the Respondent’s circumstances have changed materially since the immigration court’s initial determination, (2) whether the applicant poses an immediate flight risk, and (3) whether the applicant is a danger to persons or property. *See* 8 C.F.R. § 1003.19(e); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
2. The onset of the COVID-19 pandemic constitutes a material change in circumstances requiring reconsideration of custody status by this Court. Respondent is at serious and imminent medical risk each passing day. Continued detention during this health crisis exposes Respondent to irreparable harm, gravely impedes their ability to protect themselves and their own health, and therefore constitutes a particularly severe restraint on Respondent’s liberty.
3. Detention must at all times be reasonably related to the purposes of the statute. This extraordinary health crisis requires the Court the redetermine the reasonableness of Respondent’s detention, particularly in light of available alternatives to detention. The COVID-19 pandemic therefore constitutes a material changed circumstance such that this Court must reconsider Respondent’s custody status. *See* 8 C.F.R. §1003.19(e) (permitting reconsideration of custody status upon showing of changed circumstances).
4. Respondent merits release from custody under a reasonable bond as they present no “danger to persons or property”, no “threat to the national security,” nor “risk of flight.” *Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018). The Immigration Judge has broad discretion in deciding the factors that they may consider in custody determinations and may choose to give greater weight to some factors, so long as the decision is reasonable. *Matter of Guerra*,24 I&N Dec. at 40. Factors for consideration include: (1) whether the individual has a fixed address in the United States; (2) length of residence in the United States; (3) family ties in the United States; (4) employment history; (5) record of appearance in court; (6) criminal record; (7) history of immigration violations; (8) any attempts to flee prosecution; and (9) manner of entry to the United States*.* *Id*.
5. Respondent is not a danger to persons or property. [Discuss criminal record or lack thereof, any rehabilitation programs, and/or release plan that will mitigate dangerousness].
6. Respondent does not pose a risk of flight as they have strong ties to the community and every incentive to continue to appear in court. [Discuss helpful facts relating to manner of entry, length of residence in the U.S., employment history, family and community ties, record of appearance in any court (immigration, criminal, family) etc.] Upon release from custody, Respondent will reside at [Address] with [their partner, children, parents, etc.]. Further, Respondent is pursuing meritorious challenges to their removal. [If helpful, discuss pending applications for relief and strength of claim].
7. For the above reasons, Respondent is not a flight risk. However, to the extent that the Court determines Respondent does present any risk of flight, the Court can mitigate that risk by setting an appropriate bond amount. *See Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009) (“setting of bond is designed to ensure [a noncitizen]’s presence at proceedings.”); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 (BIA 2020) (same) (quoting *Urena*).
8. When setting a bond amount, the Court must consider Respondent’s ability to pay and available alternatives to detention. *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (“A bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government’s legitimate interests.”).

**CONCLUSION**

1. Respondent’s circumstances have materially changed since the Court’s initial bond determination, warranting reconsideration of Respondent’s custody status. Upon reconsideration, the Court should find that Respondent presents neither a flight risk nor danger, and grant Respondent release on their own recognizance or reasonable bond.

Wherefore, for the foregoing reasons, Respondent respectfully moves that this motion be granted.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of Respondent/Attorney]

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE OF IMMIGRATION REVIEW

IMMIGRATION COURT

[CITY, STATE]

In the Matter of: **[NAME]** File No.: A[ ]

**[PROPOSED] ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of Respondent’s Motion for a Bond Redetermination Hearing Based Upon Changed Circumstances, it is HEREBY ORDERED that the motion be [ ] GRANTED [ ] DENIED because:

[ ] DHS does not oppose the motion.

[ ] The respondent does not oppose the motion.

[ ] A response to the motion has not been filed with the court.

[ ] Good cause has been established for the motion.

[ ] The court agrees with the reasons stated in the opposition to the motion.

[ ] The motion is untimely per \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ] Other:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Deadlines:

[ ] The application(s) for relief must be filed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ] The respondent must comply with DHS biometrics instructions by \_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Immigration Judge Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Certificate of Service**

This document was served by: [ ] Mail [ ] Personal Service

To: [ ] Noncitizen [ ] Noncitizen c/o Custodial Officer [ ] Noncitizen’s Attorney [ ] DHS

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Court Staff\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE OFIMMIGRATION REVIEW

IMMIGRATION COURT

[CITY, STATE]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the Matter of: ) File No.: A[ ]

)

[NAME], )

)

In Removal Proceedings. )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**Exhibit List in Support of Respondent’s Motion for a Bond Redetermination Hearing Based Upon Changed Circumstances**

|  |  |  |
| --- | --- | --- |
| Exhibit | Description of Exhibit | Page(s) |
| Exhibit A | Information on the medical risks associated with COVID-19:  Ex. A-1: Center for Disease Control, *Coronavirus Disease 2019*  *(COVID-19), If You are at Higher Risk*,  https://www.cdc.gov/coronavirus/2019-ncov/specific  -groups/high-risk-complications.html (last accessed  Mar. 22, 2020)*;*  Ex. A-2: *Report of the WHO-China Joint Mission on Coronavirus*  *Disease 2019 (COVID-19)*, World Health Organization  (Feb. 28, 2020), https://www.who.int/docs/default-  source/coronaviruse/who-china-joint-mission-on-covid-19-  final-report.pdf (Excerpt);    Ex. A-3: Jieliang Chen, *Pathogenicity and transmissibility of 2019*  *nCoV—A* *Quick Overview and Comparison with Other*  *Emerging Viruses*, Microbes and Infection (Feb. 4, 2020),  https://doi.org/10.1016/j.micinf.2020.01.004;  Ex. A-4: Catherine Kariuki-Nyuthea et al., *Anxiety and Related*  *Disorders and Physical Illness*, 179 Comorbidity of Mental  and Physical Disorders 81(2015), https://www.karger.com/  Article/Pdf/365538; and  Ex. A-5: *Management of physical health conditions in adults with*  *severe mental disorders*, World Health Organization (2018),  https://apps.who.int/iris/bitstream/handle/10665/275718/  9789241550383-eng.pdf (Excerpt). | 1-27  1-2  3-8  9-11  12-18  19-27 |
| Exhibit B | Information on the risk of COVID-19 within detention and carceral settings:  Ex. B-1: Rich Schapiro, NBC News, *Coronavirus could ‘wreak*  *havoc’ on U.S. jails, experts warn* (Mar. 12, 2020),  https://www.nbcnews.com/news/us-news/coronavirus-could-  wreak-havoc-u-s-jails-experts-warn-n1156586 (last accessed  Mar. 22, 2020);  Ex. B-2: Dr. Anne C. Spaulding, MD MPH, *Coronavirus*  *COVID-19 and the Correctional Facility: for the*  *Correctional Healthcare Worker 14* (Mar. 9, 2020),  https://www.ncchc.org/filebin/news/COVID\_for\_C  F.\_HCW\_3.9.20.pdf;  Ex. B-3: Keri Blakinger and Beth Schwartzapfel, *When Purell*  *Is Contraband, How Do You Contain Coronavirus?*  The Marshall Project (Mar. 6, 2020),  https://www.themarshallproject.org/2020/03/06/  when-purell-is-contraband-how-do-you-contain-  coronavirus (last accessed Mar. 22, 2020); and  Ex. B-4: Letter from over 3,000 Medical Professionals  discussing health risks of detaining noncitizens  during COVID-19 pandemic, available at https://docs.  google.com/document/d/1eNyNmy622OjVILFSwgyp  ITPK0eAt5yLgSkS\_7\_0vv8/edit?usp=sharing  (Excerpt). | 28-48  28-32  33-42  43-45  46-48 |
| Exhibit C | Initial Bond Decision by the Immigration Court |  |
| Exhibit D | Letter from Respondent’s sponsor confirming residence upon release |  |
| Exhibit E | Letters of support from [family, friends, and community members] |  |
| Exhibit F | Evidence of family ties [birth certificates of children, proof of immigration status of family members] |  |
| Exhibit G | [Include any other relevant evidence] |  |

**File No.: A [ ]**

**[Name]**

**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ caused to be

(Date) (Name)

served a copy of the foregoing Respondent’s Motion for Bond Redetermination Hearing Based

Upon Changed Circumstances and Supporting Exhibits on the U.S. Department of Homeland

Security, Office of Chief Counsel at:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

(Address of DHS Office)

by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(Method of service)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Printed Name)