

**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).

Attached to this motion are two exhibits related to the COVID-19 virus. Pro se individuals using this motion will also want to attach supporting exhibits that are specific to their case and circumstances. Examples of helpful documents to attach include:

- Sponsor Letter: Letter from the person you will live with if released from detention, with proof of their immigration status;
- Medical records: Proof of any medical conditions you have;
- Evidence of your family ties: Proof of family members identity, immigration status, and relationship to you such as copies of passports, green cards, driver's licenses, birth and marriage certificates;
- Evidence of your community ties: Proof of employment history, pay stubs, tax returns, fixed address, length of residence in the U.S., any educational or vocational experience;
- Evidence of rehabilitation: If you have criminal conviction(s), proof probation and treatment program completion;
- Letters of support from family, close friends, and community members
- Photos of you and your family

DETAINED

**U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT**

_____ , _____

In the Matter of: _____)
_____)
_____)
(*your name*) _____)
_____)
In Removal Proceedings. _____)
_____)

File No.: A _____
(*your A number*)

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

Immigration Judge: _____

Next Hearing: _____

**This pro se brief/motion is based on a template developed by the Immigrant Defense Project (IDP).
IDP provided no individualized advice or assistance to Respondent, and its assistance does not
extend beyond the creation of the template motion and provision of supporting exhibits.**

**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:

STATEMENT OF FACTS

1. ICE arrested me on _____ (Date). I have been detained at the _____
_____ (Name of jail or detention center) for ____ (circle one) days
/ weeks / months.

2. Respondent appeared before this Court on _____ (Date) for an initial bond hearing. At the initial bond hearing, the Immigration Judge (*select one*):

____ **denied** bond

____ **granted** bond (in the amount of \$_____)

3. I am submitting this motion to request that the Immigration Judge grant me a new bond hearing or set a new bond in my case. I seek this redetermination because of the spread of the COVID-19 pandemic. Additionally, I seek this redetermination because:

(If applicable, discuss any relevant changes in your case or personal circumstances since your previous bond hearing which you think the Judge should consider)

4. _____

(Summarize your family background, employment history, community ties, etc.)

5. _____

(Discuss what has happened so far in your immigration case. Include any applications for relief you have submitted, such as asylum, withholding of removal, protection under CAT, adjustment of status, cancellation of removal, U visa, etc. Discuss any decisions the Judge has made in your case.)

6. I am afraid of contracting the COVID-19 virus inside the detention center. I am at a high risk because:

_____.

(Provide specific details about any medical conditions, if applicable, or any characteristic that places you at higher risk for the Covid-19 virus such as old age or pregnancy).

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); Center for Disease Control (CDC), *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). 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 Spaulding, 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

13. 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).
14. The onset of the COVID-19 pandemic constitutes a material change in circumstances requiring reconsideration of custody status by this Court. I am at serious and imminent medical risk each passing day. Continued detention during this health crisis exposes me to irreparable harm, gravely impedes my ability to protect myself and my health, and therefore constitutes a particularly severe restraint on my liberty.

15. Detention must at all times be reasonably related to the purposes of the statute. This extraordinary health crisis requires the Court to redetermine the reasonableness of my 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 my custody status. *See* 8 C.F.R. § 1003.19(e) (permitting reconsideration of custody status upon showing of changed circumstances).

16. 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.*

17. I am not a danger to persons or property. _____

_____.

(Explain any criminal record, rehabilitative programs, release plan, or other reasons why the Immigration Judge should decide that you are not dangerous.)

18. I am not at risk of flight. _____

_____.

(Explain why you will continue to appear in court to fight your case, such as the strength of your case, your length of residence in the U.S., employment history, family ties, record of appearance in any court case, etc.).

19. Upon release from detention, I will live with _____
_____ *(describe who you will live with, ie. spouse, children, parents, etc.)* at _____
_____ *(complete address)*.

20. I also ask that the Court mitigate any finding of flight 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*).

21. When setting a bond amount, the Court must consider 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

For the foregoing reasons, I respectfully request that the Court grant this motion.

Date: _____

Signature: _____

Print Name: _____

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT

_____, _____
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 OF IMMIGRATION REVIEW
IMMIGRATION COURT

_____)
In the Matter of:)
)
_____)
)
In Removal Proceedings.)
_____)

File No: A _____

**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:	1-27
	Ex. A-1: Center for Disease Control, <i>Coronavirus Disease 2019 (COVID-19), If You are at Higher Risk</i> , https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html (last accessed Mar. 22, 2020);	1-2
	Ex. A-2: <i>Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)</i> , 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);	3-8
	Ex. A-3: Jieliang Chen, <i>Pathogenicity and transmissibility of 2019 nCoV—A Quick Overview and Comparison with Other Emerging Viruses</i> , <i>Microbes and Infection</i> (Feb. 4, 2020), https://doi.org/10.1016/j.micinf.2020.01.004 ;	9-11
	Ex. A-4: Catherine Kariuki-Nyuthea et al., <i>Anxiety and Related Disorders and Physical Illness</i> , 179 <i>Comorbidity of Mental and Physical Disorders</i> 81(2015), https://www.karger.com/Article/Pdf/365538 ; and	12-18
	Ex. A-5: <i>Management of physical health conditions in adults with severe mental disorders</i> , World Health Organization (2018), https://apps.who.int/iris/bitstream/handle/10665/275718/9789241550383-eng.pdf (Excerpt).	19-27

Exhibit B	Information on the risk of COVID-19 within detention and carceral settings:	28-48
	Ex. B-1: Rich Schapiro, NBC News, <i>Coronavirus could ‘wreak havoc’ on U.S. jails, experts warn</i> (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);	28-32
	Ex. B-2: Dr. Anne C. Spaulding, MD MPH, <i>Coronavirus COVID-19 and the Correctional Facility: for the Correctional Healthcare Worker 14</i> (Mar. 9, 2020), https://www.ncchc.org/filebin/news/COVID_for_C F._HCW_3.9.20.pdf ;	33-42
	Ex. B-3: Keri Blakinger and Beth Schwartzapfel, <i>When Purell Is Contraband, How Do You Contain Coronavirus?</i> 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	43-45
	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/1eNyNmy622OjVILFSwgypITPK0eAt5yLgSkS_7_0vv8/edit?usp=sharing (Excerpt).	46-48
Exhibit C		
Exhibit D		
Exhibit E		
Exhibit F		
Exhibit G		
Exhibit H		
Exhibit I		

File No.: A _____

Name: _____

CERTIFICATE OF SERVICE

I hereby certify that on _____ (*Date*), I, _____
(*Name*) caused to be 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*)