

**SAMPLE  
MOTION IN SUPPORT OF BOND REDETERMINATION HEARING BASED UPON  
CHANGED CIRCUMSTANCES**

This sample motion is related to the motion established in support of bond redetermination based upon changed circumstances. The motion was prepared by *Edward T. Moises*; but, the template was not designed by him. The Motion was prepared from research and template modeled by the works of other advocacy organizations, drawing on the risk of contamination the COVID-19 pandemic may bring in the midst of the detainees. 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 Immigration Judge.

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).

**DETAINED**

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

\_\_\_\_\_  
In the Matter of: ) File No.: 20000000  
)  
JASCINTO DOES, )  
)  
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. Respondent was born in February 3, 1955. He is over 60 of age. He has diagnosed with diabetes and kidney disease. 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.
2. Respondent was detained by U.S. Immigration and Customs Enforcement on January 2, 2020. On January 6, 2020, this Court held a bond hearing in Respondent’s case, in which the Immigration Judge denied bond/set bond in the amount of \$1,500. 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**

4. Respondent has a family tie in the United States. Married with a lawful permanent resident. Respondent has 2 children 16 and 18 years of age with his wife. Since 2018, Respondent was working a security guard with the same employer.
5. Respondent was arrested by ICE on January 2, 2020. Respondent has been detained by I.C.E. at the Howard County Detention Center for more than 6 months.
6. On January 14, 2020, Respondent appeared for a Master Calendar Hearing at which DHS served a Notice to Appear charging him as removal pursuant to INA Section 236 (a). On January 14, 2020 respondent filed an application for Asylum, Withholding under CAT to this court.
7. At the age of more than 60 years old, Respondent's health conditions need particular attention. Respondent suffers with diabetes and kidney disease, and blood disorders.
8. Respondent appeared before this Court on January 14, 2020 for an initial bond hearing. At the conclusion of the hearing, the Immigration Judge granted bond in the amount of \$2,000. Given Respondent's family financial status, he was unable to pay the bond.
9. On February 26, 2020, Respondent filed for a Cancellation of Removal, also, his health conditions his deteriorated and his children and wife are at the verge of being evicted due to the nonpayment of the rent.
10. 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.

11. 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[.]”).

12. 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.
13. 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*.
14. 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.

15. 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**

16. 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).
17. 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.
18. 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 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).

19. 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.*
20. Respondent is not a danger to persons or property. He does not have criminal record.
21. 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. Respondent entered at the border between U.S. – Mexico and not inspected. He has been living in the United States for more than 10 years now. He is an active asset for his community. He leads a bilingual ministry at his church that serves the purpose for integration. His criminal record is clean.
22. Upon release from custody, Respondent will reside at 234 Stevens Forest, Columbia, MD 21045 with his partner, children, and parents.
23. Further, Respondent is pursuing meritorious challenges to their removal. He has a Cancellation of removal pending application, an asylum, withholding under CAT filed with this court.



24. 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*).
25. 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**

26. 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: \_\_\_\_\_

\_\_\_\_\_  
Respondent Representative,  
ORPE Human Rights Advocates  
Twin Knolls Rd, Suite 300  
Columbia, MD 21045

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE OF IMMIGRATION REVIEW  
IMMIGRATION COURT  
BALTIMORE, MARYLAND

In the Matter of: JASCINTO DOES

File No.: A2000000

**[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

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**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  
BALTIMORE, MARYLAND

In the Matter of:	)	File No.: A 2000000
	)	
JASCINTO DOES,	)	
	)	
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:	1-27
	Ex. A-1: Center for Disease Control, <i>Coronavirus Disease 2019 (COVID-19), If You are at Higher Risk</i> , <a href="https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html">https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html</a> (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), <a href="https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf">https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf</a> (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), <a href="https://doi.org/10.1016/j.micinf.2020.01.004">https://doi.org/10.1016/j.micinf.2020.01.004</a> ;	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), <a href="https://www.karger.com/Article/Pdf/365538">https://www.karger.com/Article/Pdf/365538</a> ; and	12-18
	Ex. A-5: <i>Management of physical health conditions in adults with severe mental disorders</i> , World Health Organization (2018), <a href="https://apps.who.int/iris/bitstream/handle/10665/275718/">https://apps.who.int/iris/bitstream/handle/10665/275718/</a>	19-27

	9789241550383-eng.pdf (Excerpt).	
Exhibit B	Information on the risk of COVID-19 within detention and carceral settings:  Ex. B-1: Rich Schapiro, NBC News, <i>Coronavirus could 'wreak havoc' on U.S. jails, experts warn</i> (Mar. 12, 2020), <a href="https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586">https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586</a> (last accessed Mar. 22, 2020);  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), <a href="https://www.ncchc.org/filebin/news/COVID_for_CF_HCW_3.9.20.pdf">https://www.ncchc.org/filebin/news/COVID_for_CF_HCW_3.9.20.pdf</a> ;  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), <a href="https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus">https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus</a> (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 <a href="https://docs.google.com/document/d/1eNyNmy622OjVILFSwgypITPK0eAt5yLgSkS_7_0vv8/edit?usp=sharing">https://docs.google.com/document/d/1eNyNmy622OjVILFSwgypITPK0eAt5yLgSkS_7_0vv8/edit?usp=sharing</a> (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 community of Respondent's Church	
Exhibit F	Evidence of family ties [birth certificates of children, proof of immigration status of family members]	
Exhibit G	Other relevant evidence	

**File No.: A 20000000**  
Jascinto Does

**CERTIFICATE OF SERVICE**

I hereby certify that on this May 6, 2021. I, Edward T. Moises, 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)