

District Court Responses to COVID-19-based Release Motions

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I. Arguments Courts Have Found Persuasive

A. Individual defendant is at a heightened risk of serious health consequences if infected with COVID-19 because of underlying health concerns.

1. cites: *United States v. Perez*, 2020 U.S. Dist. LEXIS 51867 (S.D.N.Y. March 19, 2020) (lung disease), ; *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020) (diabetes, age, weight); *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191 (S.D.N.Y. March 26, 2020); *United States v. Ramos*, 2020 U.S. Dist. LEXIS 52586 (D. Mass. March 26, 2020) (diabetes, asthma); *United States v. Witter*, 2020 U.S. Dist. LEXIS 53189 (S.D.N.Y. March 26, 2020) (hypertension); *Castillo v. Barr*, 2020 U.S. Dist. LEXIS 54425 (C.D. Ca., March 27, 2020); *United States v. Resnick*, 2020 U.S. Dist.. LEXIS 59091 (S.D.N.Y. April 2, 2020) (diabetes, end-stage liver disease); *United State v. Colvin*, 2020 U.S. Dist.. LEXIS 57962 (D. Conn. April 2, 2020) (diabetes); *United States v. Rodriguez*, 2020 U.S. Dist. LEXIS 58718 (E.D. Pa. April 1, 2020) (diabetes); *United States v. Garcha*, 2020 U.S. Dist. LEXIS 57434 (N.D. Ca. April 1, 2020) (HIV)

2. useful language:

- i. “it is not possible for a medically vulnerable inmate to isolate himself in this institutional setting as recommended by the CDC” (*US v. Ramos* at 4)
- ii. “defendant's risk of serious infection while in custody as a result of his medical condition ‘present[s] a unique combination of circumstances giving rise to [a] situation that [is] out of the ordinary’” (*US v. Witter* at 4).
- iii. “The Court takes judicial notice that, for people of advanced age, with underlying health problems, or both, COVID-19 causes severe medical conditions and has increased lethality.” (*Basank v. Decker* at 9).

B. There are known cases of COVID-19 in the particular facility.

1. cites: *United States v. Witter*, 2020 U.S. Dist. LEXIS 53189 (S.D.N.Y. March 26, 2020); *Coronel v. Decker*, 2020 U.S. Dist. LEXIS 53954 (S.D.N.Y. March 27, 2020); *United States v. Roman*, 2020 U.S. Dist. LEXIS 53956 (S.D.N.Y. March 27, 2020); *United States v. Rodriguez*, 2020 U.S. Dist. LEXIS 58718 (E..D. Pa. April 1, 2020)

- i. “The government's assurances that the BOP's "extraordinary actions" can protect inmates ring hollow given that these measures have already

failed to prevent transmission of the disease at the facility where Mr. Rodriguez is housed” (*US v. Rodriguez* at 21).

C. Detention hearing was already a close call.

1. cite: *United States v. Harris*, 2020 U.S. Dist. LEXIS 53632 (D.D.C. March 27, 2020)

D. Conditions of detention facilities facilitate spread of virus.

1. cites: *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. March 17, 2020), *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191 (S.D.N.Y. March 26, 2020); *Coronel v. Decker*, 2020 U.S. Dist. LEXIS 53954 (S.D.N.Y. March 27, 2020), *United States v. Gabelman*, 2020 U.S. Dist. LEXIS 52773 (D. Nev. March 23, 2020); *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 53359 E.D. Mich. March 27, 2020); *United States v. Resnick*, 2020 U.S. Dist. LEXIS 59091 (S.D.N.Y. April 2, 2020); *United States v. Roeder*, 2020 U.S. App. LEXIS 10246 (3rd Cir. April 1, 2020)

2. useful language:

i. “The Washoe County Detention Facility also has limited access to personal hygiene items such as tissues, soap, disinfectant, or hot water, which prevent individuals from taking recommended precautions to minimize the spread of the virus. Moreover, if people cannot afford to buy personal hygiene products then their ability to maintain proper hygiene is even more limited.” (*US v. Barkman* at 6).

ii. “Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease” (*Basank v. Decker* at 3).

iii. “being in immigration detention places petitioners at significantly higher risk of contracting COVID-19” (*Coronel v. Decker* at 8)

iv. “the court agrees, that incarceration increases [defendant’s] risk of exposure to the virus.” (*US v. Ramos* at 4).

v. “CDC acknowledged that correctional detention facilities ‘present unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff’” (*US v. Kennedy* at 4).

vi.. “It goes without saying that prisons generally are crowded spaces and therefore are less than conducive to the practice of social distancing.. During this rapidly evolving public health emergency, there are many valid concerns about the possibility of contagion in prisons.” (*US v. Roeder* at 4).

E. Detention facilities do not have adequate medical services

1. cites: *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. March 17, 2020)

2. useful language:

i. “There are also significant limitations on the detention facility's medical services. The detention facility does not have a hospital unit on-site, medical staffing in general is limited, and the Renown tent will quickly become overwhelmed if an outbreak occurs at the detention facility. It is unknown if the Washoe County Detention Facility possesses a single ventilator.” (*US v. Barkman* at 7).

ii.. “The Washoe County Detention Facility simply lacks the resources necessary to engage in aggressive screening and testing of inmates, correctional staff, law enforcement officers and other care and service providers who enter the facility. (*US v. Barkman* at 8).

F. Risk of flight is reduced because of COVID-19 pandemic

1. cites: *United States v. Ramos*, 2020 U.S. Dist. LEXIS 52586 (D. Mass. March 26, 2020); *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020)

2. useful language:

i. “At this time, Mr. Ramos cannot travel without a significant risk of exposure to the virus with the potentially severe health consequences that would follow, and therefore cannot readily flee the district.” (*US v. Ramos* at 5).

ii. “Flight would be enormously more risky and complicated in light of the travel and commercial restrictions brought on by the COVID-19 virus.” (*US v. Fellela* at 1).

G. COVID-19 restrictions interfere with access to counsel

1. cites: *United States v. Chandler*, 2020 U.S. Dist. LEXIS 56240 (S.D.N.Y. March 31, 2020); *United States v. Stephens*, 2020 U.S. Dist. LEXIS 47846 (S.D.N.Y. March 19, 2020)

2. useful language:

i. “The Bureau of Prisons on March 13 announced a 30-day suspension of all visits to federal correctional facilities, including the MCC. Since then, Chandler's counsel has been entirely unable to communicate with him in

person or by video conference, and had only one phone call with Chandler that lasted less than five minutes and was not private. The situation seems unlikely to improve in the near future. (*US v. Chandler* at 3).

ii. “obstacles the current public health crisis pose to preparation of Defendant’s defense constitute a compelling reason under 18 U.S.C. § 3142(i)” (*US v. Stephens* at 8).

II. Responses to Common Reasons for Denial

A. There are no known cases at the particular facility

1. Response: Given the nature of detention facilities, cases are inevitable and outbreaks will spread quickly. There is little to no testing available.

i. “Although I understand that no one has yet tested positive for the virus at Wyatt and I credit the Government’s representations about the precaution being taken by Wyatt personnel, this does not change the fact that [defendant] continues to be subject to close quarters confinement at Wyatt.” *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn., March 20, 2020)

ii. “While no cases have been reported at Southern Nevada Detention Center, it is likely only a matter of time before that occurs.” *United States v. Cox*, 2020 U.S. Dist. LEXIS 54427, 10 (D. Nev. March 26, 2020)

iii. “Since the government urged the Court to wait and see, at least one person at the D.C. jail has tested positive for the virus...the uncertainty is endemic in the present circumstances, and that uncertainty cannot preclude courts from acting until the damage has been done” (*United States v. Harris*, 2020 U.S. Dist. LEXIS 53632, 16 (D.D.C. March 27, 2020).

iii. “The United States argues that release is improper here because it was unaware of any known COVID-19 cases at Saginaw County jail. However, this argument fails to address the facts of the current global public health crisis—particularly as Michigan prisons are beginning to see exponential spread of the disease” *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 56875, 8 (E.D. Mich. April 1, 2020).

B. Individual defendant is not medically vulnerable

1. This virus can be deadly to anyone, especially with inadequate medical services.

i. “even if defendant did not have a heightened susceptibility to COVID-19, the public health crisis—and its impact on Defendant’s ability to present a defense—nonetheless satisfies § 3142(i)” *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 53359, 10 (E.D. Mich. March 27, 2020).

C. Facility is taking precautions to prevent spread

1. Response: The precautions taken aren't enough. Social distancing is necessary and impossible in the detention facility context.

i. "Respondents represented that...detention facilities...are taking certain measures to prevent the spread of virus: screening detainees upon intake for risk factors, isolating detainees who report symptoms, conducting video court appearances with only one detainee in the room at a time, providing soap and hand sanitizer to inmates, and increasing the frequency and intensity of cleaning jail facilities. These measures are patently insufficient to protect Petitioners" *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191, 17-18 (S.D.N.Y. March 26, 2020).

ii. "All levels of government nationwide have recently taken drastic measures in light of the COVID-19 pandemic to promote "social distancing" and to prohibit the congregation of large numbers of people with one another. But, as is true for most jails and prisons, the conditions of confinement at Wyatt are not compatible with these safeguards." *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020).

iii. "Even if all CDC's interim recommendations are followed...Court is concerned that such measures will prove insufficient to stem deadly outbreaks" *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 53359, 5 (E.D. Mich. March 27, 2020).

iv. "'Infections that are transmitted through droplets,' like COVID-19, 'are particularly difficult to control in detention facilities, as 6-foot distancing and proper decontamination of surfaces is virtually impossible.'" *United States v. Harris*, 2020 U.S. Dist. LEXIS 53632, 6 (D.D.C. March 27, 2020).

v. "Due to continuously changing circumstances surrounding the COVID-19 pandemic, it is unclear to what extent these measures have been or will be effective in mitigating spread of the disease." *United States v. Roeder*, 2020 U.S. App. LEXIS 10246, 5 (3rd Cir. April 1, 2020).

vi. "Realistically, the best – perhaps the only – way to mitigate the damage and reduce the death toll is to decrease the jail and prison population by releasing as many people as possible." *United States v. Nkanga*, 2020 U.S. Dist. LEXIS 56188 (S.D.N.Y. March 31, 2020).

D. Defendant failed to explain how release to home confinement would minimize risk of contracting COVID-19

1. This is coming up more often in recent cases, one of the factors of a four-factor test from *United States v. Clark*, 2020 U.S. Dist. LEXIS 51390 (D. Kansas March 25, 2020), *see also United States v. McDonald*, 2020 U.S. Dist. LEXIS 59474 (D. Nev. April 3, 2020).

2. Response: Detention facilities are uniquely vulnerable to COVID-19 and exacerbated cases.

i. See above language from §§ I.D and I.E re: detention facilitating spread of virus and inadequate medical care in facilities.

ii. “In light of the expectation that the COVID-19 pandemic will continue to grow and spread over the next several weeks, the Court concludes that the risks faced by Defendant will be minimized by her immediate release to home, where she will quarantine herself.” *United State v. Colvin*, 2020 U.S. Dist. LEXIS 57962, 10 (D.. Conn. April 2, 2020).

E. Release could increase the risk of others contracting COVID-19 on the outside

1. This is also coming up as one of the prongs of the four-factor test from *US v. Clark*, *US v. McDonald* and others

2. Response: Incarcerated people will be motivated to quarantine for two weeks in order to protect family members and loved ones. People who return from abroad are also being asked to quarantine for two weeks and are not being denied entry into the country or their homes.

i. Also provide details regarding size of the place Client is being released to, number of people living there and plan for self-isolation.

ii. “And any reservations this court may have had about Resnick's being a possible spreader of COVID-19 if released into the community has been assuaged by the release plan he has proffered.” Goes on to discuss probation department inspection, quarantine protocol, size and layout of apartment. *United States v. Resnick*, 2020 U.S. Dist. LEXIS 59091, 20 (S.D.N.Y. April 2, 2020)

F. For compassionate release motions: Defendant has failed to exhaust administrative remedies as required by § 3582(C)(1)(A)

1. Response: The COVID-19 pandemic satisfies exceptions to the exhaustion requirement.

i. “The Court concludes that all three exceptions to the exhaustion requirement apply to Defendant's request. First, if Defendant contracts COVID-19 before her appeals are exhausted, that undue delay might cause

her to endure precisely the "catastrophic health consequences" she now seeks to avoid. See CDC Guidance. Second, given the brief duration of Defendant's remaining term of imprisonment, the exhaustion requirement likely renders BOP incapable of granting adequate relief, as her sentence will likely already have expired by the time her appeals are exhausted and would certainly already have expired by the time the thirty-day waiting period ends. Third, Defendant would be subjected to undue prejudice—the heightened risk of severe illness—while attempting to exhaust her appeals.” *United State v. Colvin*, 2020 U.S. Dist. LEXIS 57962, 5 (D. Conn. April 2, 2020).

ii. “The Court concludes that requiring him to exhaust administrative remedies, given his unique circumstances and the exigency of a rapidly advancing pandemic, would result in undue prejudice and render exhaustion of the full BOP administrative process both futile and inadequate.” *United States v. Perez*, 2020 U.S. Dist. LEXIS 57265, 7 (S.D.N.Y. April 1, 2020)

III. Case Briefs

April 3, 2020

A. *United States v. Bell*, 2020 U.S. Dist. LEXIS 58850 (E.D. Mich. April 3, 2020)

-court **denied** motion for pretrial release

-denied because:

1. court used four factors from *McDonald* (above) to decide motion

-Mr. Bell hasn't demonstrated exposure to virus

-no information about Mr. Ramos's home plan

B. *United States v. Gold*, 2020 U.S. Dist. LEXIS 59245 (N.D. Ohio April 3, 2020)

-court **denied** motion to release from custody

-denied because:

1. Mr. Gold evaded arrest for 324 days so is too much of a flight risk

C. *United States v. Johnson*, 2020 U.S. Dist. LEXIS 59206 (D. Md. April 3, 2020)

-court **denied** motion to modify sentence under 18 USC § 3582(c)(1)(A)(i)

-denied because:

1. there is no exception to exhaustion of administrative remedies requirement under § 3582(c)(1)

D. *United States v. Martinez*, 2020 U.S. Dist. LEXIS 59112 (W.D. Okla. April 3, 2020)

-court **denied** motion to reconsider release pending sentencing

-denied because:

1. within the context of the pandemic, Mr. Martinez's situation isn't exceptional

-no known exposure to COVID-19

-jail has established comprehensive precautionary measures

E. *United States v. Mendoza*, 2020 U.S. Dist. LEXIS 58880 (M.D. Pa. April 3, 2020)

-court **denied** motion for review of detention order

-denied because:

1. no underlying health condition
2. no known cases at detention facility
3. precautions put in place for health and access to lawyers

F. *United States v. McDonald*, 2020 U.S. Dist. LEXIS 59474 (D. Nev. April 3, 2020)

-court **denied** motion for emergency temporary release

-denied based on four factors:

1. original grounds for pretrial detention
2. specificity of stated COVID-19 concerns
3. extent to which release plan is tailored to mitigate or exacerbate other COVID-19 risks to Defendant
4. the likelihood that Defendant's proposed release would increase COVID-19 risk to others

G. *United States v. Moran*, 2020 U.S. Dist. LEXIS 58574 (D. Md. April 3, 2020)

-court **denied** motion for reconsideration of detention order

-denied because:

1. COVID-19 doesn't relieve court of responsibilities to ensure presence of defendant and safety of community
2. not a candidate for home detention because prior drug trafficking conviction and current drug trafficking case

H. *United States v. Sundblad*, 2020 U.S. Dist. LEXIS 59193 (D.S.C. April 3, 2020)

-court **denied** motion for compassionate release

-denied because:

1. district court doesn't have the authority to modify or reduce sentence under compassionate release where defendant hasn't first petitioned the BOP

April 2, 2020

A. *United State v. Colvin*, 2020 U.S. Dist. LEXIS 57962 (D. Conn. April 2, 2020)

-court **granted** motion for compassionate release

-granted because:

1. Exceptions to exhaustion of administrative remedies requirement apply
2. Mr. Colvin's diabetes serves as extraordinary and compelling reasons justifying immediate release under § 3582(c)(1)(A)

B. *United States v. Credidio*, 2020 U.S.. Dist. LEXIS (S.D.N.Y. April 2, 2020)

-court **denied** writ of habeas corpus

-denied because:

1. court has no legal authority to provide the relief Ms. Credidio seeks
- court encourages the BOP to treat the matter with urgency and designate Ms. Credidio to a facility enabling her to leave the MCC

C. *United States v. Crosby*, 2020 U.S. Dist. LEXIS (D. Md. April 2, 2020)

-court **denied** motion for reconsideration of detention

-denied because:

1. COVID-19 is just one factor to consider
2. Mr. Crosby “only” a higher risk of infection due to pneumonia, asthma, need for an albuterol inhaler

D. *United States v. Gagne*, 2020 U.S. Dist. LEXIS 57957 (D. Conn. April 2, 2020)

-court **denied** motion to reduce sentence

-denied because:

1. Ms. Gagne did not satisfy exhaustion of administrative remedies requirement under § 3582(c)(1)(A)
 - did not present “unique circumstances warranting excusal of exhaustion requirement (11)

E. *United States v. Hernandez*, 2020 U.S. Dist. LEXIS 58739 (S.D.N.Y. April 2, 2020)

-court **granted** motion for compassionate release

-granted because:

1. Mr. Hernandez exhausted administrative remedies
 2. Mr. Hernandez has asthma
- “ The COVID-19 pandemic is extraordinary and unprecedented in modern times in this nation. It presents a clear and present danger to free society for reasons that need no elaboration” (7)

F. *United States v. Kahn*, 2020 U.S. Dist. LEXIS 58411 (S. D. Fla. April 2, 2020)

-court **denied** emergency motion to set bond

-denied because:

1. Mr.. Kahn previously had his bond revoked
- “the COVID-19 pandemic is a valid factor for this Court to consider in determining appropriate conditions of release at a bond hearing.” (18)

G. *United States v. Lunnie*, 2020 U.S. Dist. LEXIS 57764 (E.D. Ark. April 2, 2020)

-court **denied** motion for release on bond

-denied because:

1. Mr. Lunnie did not show a sufficiently compelling reason for release
 - arguments about COVID-19 are too speculative and general
 - despite Mr. Lunnie’s serious underlying health concerns
2. used the four-factor test from *US v. McDonald*

H. *United States v. Molina*, 2020 U.S. Dist. LEXIS 57669 (N.D. Ala. April 2, 2020)

-court **denied** motion requesting release and transfer to home confinement

-denied because:

1. no exceptional circumstances warranting presentencing release
2. Mr.. Molina is a paraplegic but this isn’t a new condition
3. facility has precautions in place against COVID-19

I. *United States v. Pritchett*, 2020 U.S. Dist. LEXIS 57862 (W.D. Pa. April 2, 2020)

-court **denied** motion for release pending trial or request for furlough

-denied because:

1. facility is taking precautions
2. Mr. Pritchett can contract the virus on the outside too

J. *United States v. Resnick*, 2020 U.S. Dist. LEXIS 59091 (S.D.N.Y. April 2, 2020)

-court **granted** motion for compassionate release

-granted because:

1. Mr. Resnick lives with chronic medical conditions (diabetes, liver disease)
2. Mr. Resnick is close to meeting criteria for BOP's Elderly Reentry Pilot Program
3. Mr. Resnick exhausted administrative remedies in the BOP

K. *United States v. Robinson*, 2020 U.S. Dist. LEXIS 58186 (D. Md.. April 2, 2020)

-court **denied** motion for reconsideration of pretrial detention

-denied because:

1. no pretrial services to ensure supervision
2. "no greater danger to the community than armed drug traffickers"

L. *United States v. West*, 2020 U.S. Dist. LEXIS 58182 (D. Md. April 2, 2020)

-court **denied** motion for reconsideration of pretrial detention

-denied because:

1. danger to the community finding, firearm offense
 2. no pretrial services to ensure supervision
- Mr. West has already tested positive for COVID-19

M. *United States v. Williams*, 2020 U.S. Dist. LEXIS 58184 (D. Md.. April 2, 2020)

-court **denied** motion to review order of detention

-denied because:

1. heightened burden under 18 USC § 3143(a)(2)
 2. no medical records to substantiate asthma claim
- “The presence of the COVID-19 creates a "material bearing" on the issue of whether there are conditions of release that can protect the community from the danger that Defendant presents.” (4)

N. *United States v. Yu Zhou*, 2020 U.S. Dist. LEXIS 57981 (S.D. Ohio April 2, 2020)

-court **denied** motion to revoke detention

-denied because:

1. risk of flight
 2. no known cases in facility
- “The Court concurs that COVID-19 presents a novel and unprecedented change in circumstances.” (8)

April 1, 2020

A. *Hernandez v. Decker*, 2020 U.S. Dist. LEXIS 57122 (S.D.N.Y. April 1, 2020)

-court **granted** motion for release from ICE detention pursuant to *Mapp v. Reno*
-granted because:

1. Petitioner had a substantial claim for deliberate indifference
2. COVID-10 constitutes extraordinary circumstances

B. *United States v. Garcha*, 2020 U.S. Dist. LEXIS 57434 (N.D. Ca. April 1, 2020)

-court **granted** motion for release from pretrial detention

-granted because:

1. danger to Mr. Garcha's health is a compelling reason under 18 USC § 3142(i)
2. release is temporary, must surrender on May 4

C. *United States v. Jepsen*, 2020 U.S. Dist. LEXIS 57007 (D. Conn. April 1, 2020)

-court **granted** motion for compassionate release

-granted because:

1. Mr. Jepsen has less than eight weeks to serve and is immunocompromised

D. *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 56875 (E.D. Mich. April 1, 2020)

-court **denied** Government's motion for reconsideration of temporary revocation of detention

-denied because:

1. it doesn't matter that there aren't known cases in Saginaw Cty Jail

E. *United States v. Mason*, 2020 U.S. Dist. LEXIS 57457 (W.D. Wash. April 1, 2020)

-court **denied** motion to reopen detention hearing

-denied because:

1. Ms. Mason's extensive criminal history
2. Shown noncompliance with supervised release
3. no special factors that justify release because of COVID-19

F. *United States v. Penaloza*, 2020 U.S. Dist. LEXIS 56569 (D. Md. April 1, 2020)

-court **denied** motion to reconsider pretrial detention

-denied because:

1. changed circumstances created by COVID-19 doesn't tip the scales of detention to reverse earlier decision by the court

-“The presence of the Corona virus creates a "material bearing" on the issue of whether there are conditions of release that can protect the community from the danger that Defendant presents.” (4)

G. *United States v. Perez*, 2020 U.S. Dist. LEXIS 57265 (S.D.N.Y. April 1, 2020)

-court **granted** motion for reduction of imprisonment term under compassionate release

-granted because:

1. exceptions to exhaustion requirement apply here
2. Mr. Perez's undisputed fragile health

H. *United States v. Rodriguez*, 2020 U.S. Dist. LEXIS 58718 (E.D. Pa. April 1, 2020)

-court **granted** motion to reduce sentence under compassionate release statute
-granted because:
1. underlying medical conditions constitute extraordinary and compelling reasons
2. prison is a particularly dangerous place right now
3. Mr. Rodriguez served almost all of his sentence and has shown rehabilitation
-lots of useful language about the spread of the disease in BOP and BOP's inability to stop it (23)

I. *United States v. Roeder*, 2020 U.S. App. LEXIS 10246 (3rd Cir. April 1, 2020)

-court **granted** appeal and overturned denial of request to delay self-surrender date
-granted because:
1. original motion was unopposed and Mr. Roeder wasn't detained pretrial
2. because of exigent circumstances, court doesn't remand, granted release

March 31, 2020

A. *United States v. Chandler*, 2020 U.S. Dist. LEXIS 56240 (S.D.N.Y. March 31, 2020)

-court **granted** motion to be released on bail
-granted because:
1. Mr. Chandler is unable to prepare for trial with his counsel
2. COVID-19 is extraordinary circumstances

B. *United States v. French*, 2020 U.S. Dist. LEXIS 56155 (D. Me. March 31, 2020)

-court **granted** motion for temporary bail
-granted because:
1. 1st Cir. determined that defendants' appeals raised a "substantial question"
2. court has authority to release an incarcerated defendant pending appeal under 18 USC 3143(b)(1)
3. both defendants have health conditions that increase risk of COVID-19
4. no risk of flight or danger to community
-good language about dangers of COVID-19 in prison facilities

C. *United States v. Gonzalez*, 2020 U.S. Dist. LEXIS 56422 (E.D. Wa. March 31, 2020)

-court **granted** motion to reduce sentence under compassionate release
-granted because:
1. exhausted administrative remedies by petitioning the BOP and being denied
2. multiple chronic illnesses is extraordinary and compelling reason
3. not a danger to the community

D. *United States v. Nkanga*, 2020 U.S. Dist. LEXIS 56188 (S.D.N.Y. March 31, 2020).

-court **denied** motion for immediate release from custody
-denied because:
1. court does not have legal authority to release people who have already been sentenced
-good language about the urgency of the crisis

E. *United States v. Thomas*, 2020 U.S. Dist. LEXIS 55680 (W.D. Pa. March 31, 2020)

-court **denied** motion to reconsider detention order

-denied because:

1. Mr. Thomas could contract COVID-19 anywhere
2. precautions have been taken
3. court trusts facility to allow for confidential attorney-client phone calls

March 30, 2020

A. *United States v. Cornish*, 2020 U.S. Dist. LEXIS 54398 (E.D. Ky. March 30, 2020)

-court **granted** Government's motion to detain

-Mr. Cornish detained because:

1. gov established by clear and convincing evidence that Mr. Cornish is a danger to another or to the community
2. no indication that Mr. Cornish is in particularly poor health or at higher risk

B. *United States v. Hernandez*, 2020 U.S. Dist. LEXIS 56506 (S.D.N.Y. March 30, 2020)

-court **granted** temporary release from custody

-granted with conditions:

1. home incarceration in a homeless shelter
2. no travel documents, contact with co-defendants
3. status letter to court once a week with health update

C. *United States v. Lee*, 2020 U.S. Dist. LEXIS 55232 (E.D. Mich. March 30, 2020)

-court **denied** motion to revoke detention order

-denied because:

1. presumption of danger to community and flight risk not rebutted
2. "the COVID-19 pandemic cannot be the sole basis for releasing a defendant from custody pending trial; court must still consider the § 3142(g) factors" (10)

D. *United States v. Loveings*, 2020 U.S. Dist. LEXIS 54607 (W.D. Pa. March 30, 2020)

-court **denied** motion for reconsideration of order of detention

-denied because:

1. presumption of detention not rebutted
 - prior criminal history
 - prior history of violence, weapons, substance abuse
 - lack of stable residence, employment, family ties
2. nowhere to reside on home detention
3. no health conditions/vulnerabilities to COVID-19 except age
4. no known cases in Allegheny County jail

E. *United States v. McKenzie*, 2020 U.S. Dist. LEXIS 55503 (S.D.N.Y. March 30, 2020)

-court **granted** motion for temporary release from custody

-granted because:

1. MCC identified Mr. McKenzie as high risk for COVID-19
2. detailed home plan

March 29, 2020

A. *United States v. Jones*, 2020 U.S. Dist. LEXIS 54267 (W.D. Pa. March 29, 2020)

-court **denied** motion to reconsider detention order and release defendant on bond
-denied because:

1. defendant has not met burden to demonstrate the existence of compelling reasons that warrant temporary release
2. speculation at this point about what may or may not occur at the Allegheny County Jail doesn't constitute compelling reason

B. *United States v. Martin*, 2020 U.S. Dist. LEXIS 46046 (S.D. MD March 17, 2020)

-court **denied** appeal of detention order
-defendant has preexisting conditions and based his appeal on COVID state of emergency
-seeks release to home detention
-good language in opinion on "unprecedented magnitude of COVID-19 pandemic"
-denial based on:

1. no known cases at the particular facility (seeks release on mere speculation that he will become ill)
2. appeal must be based on individualized assessment of Bail Reform Act factors
3. initial assessment by magistrate judge was correct because of nature of charges against defendant
4. extensive criminal record

March 28, 2020

A. *United States v. Woods*, 2020 U.S. Dist. LEXIS 54268 (E.D. Mich. March 28, 2020)

-court **denied** motion to revoke detention order
-denied because:
1. sole basis for motion is ongoing COVID-19 pandemic
2. charges create presumption of detention that Mr. Woods did not overcome
-"the COVID-19 pandemic cannot be the sole basis for releasing a defendant from custody pending trial" (11)
-individualized assessment required

March 27, 2020

A. *Castillo v. Barr*, 2020 U.S. Dist. LEXIS 54425 (C.D. Ca., March 27, 2020)

-court **granted** petitioners' TRO
-granted because:
1. petitioners have serious health concerns

2. gov cannot put a civil detainee into a dangerous situation, especially where that dangerous situation was created by the government
-“COVID-19 is highly contagious and has a mortality rate ten times greater than influenza. Most troublesome is the fact that people infected with the coronavirus can be asymptomatic during the two to fourteen day COVID-19 incubation period. During that asymptomatic incubation period, infected people are, unknowingly, capable of spreading the coronavirus” (5)

B. *Coronel v. Decker*, 2020 U.S. Dist. LEXIS 53954 (S.D.N.Y. March 27, 2020)

-court **granted** petitioners’ habeas motion and TRO to release from ICE detention

-granted because:

1. petitioners’ uniquely serious risk from COVID-19 due to health conditions
2. confirmed cases at 2 of 3 facilities where petitioners are detained

-“being in immigration detention places petitioners at significantly higher risk of contracting COVID-19” (8)

-petition included declaration from a Dr. who said facility precautions aren’t enough

C. *Sacal-Micha v. Longoria*, 2020 U.S. Dist. LEXIS 53474 (S.D. Texas March 27, 2020)

-court **denied** writ of habeas corpus and complaint for injunctive relief

-denied because:

1. petition doesn’t present substantial claims on which Mr. Sacal is likely to succeed

-not likely to prove deliberate indifference to medical needs

2. claim just includes general concerns about COVID-19, not specific to facility
-no evidence precautions are insufficient

D. *United States v. Bastianelli*, 2020 U.S. Dist. LEXIS 53441 (W.D. Pa. March 27, 2020)

-court **denied** motion to reconsider detention

-denied because:

1. did not meet burden to rebut presumption of detention
2. gov established by clear and convincing evidence that Mr. Bastianelli was danger to community
3. no “compelling reason” for release (no serious health condition)

E. *United States v. Campagna*, 2020 U.S. Dist. LEXIS 54401 (S.D.N.Y. March 27, 2020)

-court **granted** motion to decrease sentence and transfer from halfway house to home incarceration

-granted because:

1. Mr. Campagna’s compromised immune system with COVID-19 constitutes an extraordinary and compelling reason to modify sentence
2. uncontested motion, gov agreed no danger to community

F. *United States v. Garza*, 2020 U.S. Dist. LEXIS 54228 (S.D. Ca. March 27, 2020)

-court **denied** ex parte emergency motion for judicial recommendation to warden of FCI for immediate release

-denied because:

1. court may not correct or modify a prison sentence once imposed
- court encourages Mr. Garza to seek relief from the BOP

G. *United States v. Harris*, 2020 U.S. Dist. LEXIS 53632 (D.D.C. March 27, 2020)

- court **granted** emergency motion for release pending sentencing
-granted because:

1. COVID-19 constitutes an “exceptional reason” under § 3145(c)
2. detention was a “close case” even before the pandemic developed

-“The Center for Disease Control and Prevention recommends keeping a distance of six feet from other people to minimize the possibility of infection, washing one’s hands often with soap and water, and using a hand sanitizer that contains at least 60% alcohol.” (4)

-“‘Infections that are transmitted through droplets,’ like COVID-19, ‘are particularly difficult to control in detention facilities, as 6-foot distancing and proper decontamination of surfaces is virtually impossible.’” (6)

“since the government urged the Court to wait and see, at least one person at the D.C. jail has tested positive for the virus...the uncertainty is endemic in the present circumstances, and that uncertainty cannot preclude courts from acting until the damage has been done” (16)

H. *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 53359 E.D. Mich. March 27, 2020)

- court **granted** motion for temporary revocation of detention
-granted because:

1. danger posed to Mr. Kennedy by COVID-19 pandemic constitutes independent compelling reason for temporary release under § 3142(i)
2. temporary release is necessary for Mr. Kennedy to prep pre-sentencing

defense

-“CDC acknowledged that correctional detention facilities ‘present unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff’ (4)

-“Even if all CDC’s interim recommendations are followed...Court is concerned that such measures will prove insufficient to stem deadly outbreaks” (5)

-“even if defendant did not have a heightened susceptibility to COVID-19, the public health crisis—and its impact on Defendant’s ability to present a defense—nonetheless satisfies § 3142(i)” (10)

-because of difficulty communicating with attorney under current conditions

-doesn’t matter that there are not known cases at Saginaw County Jail (12)

I. *United States v. Roman*, 2020 U.S. Dist. LEXIS 53956 (S.D.N.Y. March 27, 2020)

- court **granted** motion for bail pending sentencing under 18 USC § 3145(c)
-granted based on:

1. Mr. Roman’s risk of serious infection in custody (preexisting health issues)
2. known cases at MCC
3. no disciplinary charges while in custody at MCC

J. *Xuyue Zhang v. Barr*, 2020 U.S. Dist. LEXIS 54424 (C.D. Ca. March 27, 2020)

- court **granted** petitioner’s TRO
-granted because:

1. no danger to public if petitioner is released
2. stipulation between parties to prevent any flight risk
3. global pandemic which exposes petitioner to unnecessary risk and a potentially longer quarantine

March 26, 2020

A. *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191 (S.D.N.Y. March 26, 2020)

-court **granted** petitioners' habeas motion and TRO under FRCP Rule 65 to release them from ICE custody

-granted because:

1. held in facilities where staff or detainees have tested positive for COVID-19
2. each petitioner has a chronic medical condition
 - COVID-19 carries risk of death (7)

-“petitioners have met their showing of irreparable harm, in establishing the risk of harm to their health and constitutional rights” (6)

-“nature of detention facilities makes exposure and spread of the virus particularly harmful” (8)

-facilities' measures (screening detainees upon intake, isolating detainees who report symptoms, providing soap and hand sanitizer, increasing cleaning) are “patently insufficient to protect petitioners”

B. *United States v. Cox*, 2020 U.S. Dist. LEXIS 54427 (D. Nev. March 26, 2020)

-court **denied** motion for temporary release under § 3142(i)

-denied because:

1. Mr. Cox's danger to the community outweighs his higher risk of severe illness if infected with COVID-19
2. lack of housing means his only option would be halfway house, where there are similar concerns as in a detention facility
3. Mr. Cox hasn't shown that in-person visits with counsel are necessary to preparing a defense

-“while no cases have been reported at Southern Nevada Detention Center, it is likely only a matter of time before that occurs” (10)

C. *United States v. Johnson*, 2020 U.S. Dist. LEXIS 52759 (E.D. Mich. March 26, 2020)

-court **denied** motion to revoke detention order

-denied because:

1. presumption of detention case because of firearm charges
2. COVID-19 does not tip the balance in favor of pretrial release

D. *United States v. Morris*, 2020 U.S. Dist. LEXIS 52690 (D. Minn. March 26, 2020)

-court **denied** motion for release from custody pending sentencing

-denied because:

1. Mr. Morris's conviction carries mandatory detention provisions
2. Mr. Morris cannot show by clear and convincing evidence that he lacks the means or motive to flee and poses no threat to community
3. COVID-19 doesn't present exceptional reason to permit release

- no known cases at Sherburne County Jail
- jail has taken steps to prevent an outbreak

E. *United States v. Ramos*, 2020 U.S. Dist. LEXIS 52586 (D. Mass. March 26, 2020)

-court **granted** emergency motion for pre-trial release

-granted because:

1. medical conditions place Mr. Ramos at heightened risk
2. court finds COVID-19 diminishes risk of flight pending trial and reoffending
 - difficult to deal drugs during the pandemic (5)
3. home detention at his mother's residence

-“it is not possible for a medically vulnerable inmate to isolate himself in this institutional setting as recommended by the CDC” (4)

F. *United States v. Wilson*, 2020 U.S. Dist. LEXIS 52755 (E.D. Mich. March 26, 2020)

-court **denied** motion to revoke detention order

-denied because:

1. court has denied to prior motions to revoke detention
2. COVID-19 does not tip the balance in favor of pretrial release

G. *United States v. Witter*, 2020 U.S. Dist. LEXIS 53189 (S.D.N.Y. March 26, 2020)

-court **granted** motion to release pending sentencing

-granted because:

1. Mr. Witter has hypertension and is 57 years old
2. MCC already has confirmed COVID-19 cases
3. Clear and convincing evidence that Mr. Witter is neither likely to flee nor a danger to the community

-abided by conditions or release prior to remand

-close with adult children who live in the area

March 25, 2020

A. *United States v. Adams*, 2020 U.S. Dist. LEXIS 51729 (D. Md. March 25, 2020)

-court **denied** motion to review detention order

-denied because:

1. Mr. Adams failed to demonstrate extraordinary reasons
2. Mr. Adams failed to demonstrate by clear and convincing that he will not flee or be a danger
3. Facts of case (firearms) and criminal history

B. *United States v. Clark*, 2020 U.S. Dist. LEXIS 51390 (D. Kansas March 25, 2020)

-court **denied** motion for temporary release pursuant to 18 USC 3142(i)

-denied because:

1. court's prior finding Mr. Clark is a flight risk and risk of harm to others
2. did not make threshold showing that proposed release plan would address health concerns better than custody

-Mr. Clark has diabetes, court acknowledges certain conditions create heightened risk of becoming seriously ill of COVID (14)

- “whether a defendant’s particular circumstances warrant release in light of the COVID-19 pandemic ought to more properly considered on a case-by-case basis under the ‘another compelling reason’ prong of § 3142(i)” (9)
- no knowledge of cases at Leavenworth facility
- court discusses that Mr. Clark could spread COVID if released (22)

C. *United States v. Eberhart*, 2020 U.S. Dist. LEXIS 51909 (N.D. Ca. March 25, 2020)

- court **denied** application for immediate release
 - seeks modification of his sentence under the compassionate release provision of § 3582(C)(1)(A)(i)
- denied because:
 1. Mr.. Eberhart did not exhaust administrative remedies with the BOP
 2. Mr. Eberhart’s criminal history and supervised release status at time of

offense

March 23, 2020

A. *United States v. Gabelman*, 2020 U.S. Dist. LEXIS 52773 (D. Nev. March 23, 2020)

- court **denied** emergency motion for reconsideration
- denied because:
 - defendant is at risk of contracting COVID-19 anywhere
 - court acknowledged that spread of COVID-19 might be worse in prison but “court cannot release every detainee at risk of catching COVID-19 because the court would be obligated to release every detainee” (2)

B. *United States v. Williams*, 2020 U.S. Dist. LEXIS 50185 (D. Md.. March 23, 2020)

- court **denied** emergency motion for reconsideration of bond
- denied because:
 1. Mr. Williams has a history of misconduct (failing to report, reoffending)
 2. no suggestion of mistreatment, mismanagement or other concerns at the

facility

- no cases at the facility
- government has articulated measures implemented by facility
- 3. Mr. Williams has no physical vulnerabilities other than age

March 20, 2020

A. *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020)

- court **granted** emergency motion for temporary release from custody
- granted because:
 1. defendant is 62 yo, diabetic, weighs >300lbs (“age, physical and mental condition make him within the highest risk group of death if he were to become infected”)
 2. court recognized that facility had taken precautions and no one has yet tested positive, defendant is still subject to close quarters confinement
 3. “flight would be enormously more risky and complicated in light of the travel and commercial restrictions brought on by COVID-19”
 4. defendant would be subject to house arrest

B. *United States v. Halcro*, 2020 U.S. Dist. LEXIS 48903 (D. Mont. March 20, 2020)

-court **denied** motion for release pending appeal

-denied because:

1. defendant fails to raise a substantial question of law or fact regarding her sentence (COVID-19 was mentioned during sentencing so sentencing court considered that argument)
2. BOP has adopted quarantine procedure to process new inmates

C. *United States v. Hamilton*, 2020 U.S. Dist. LEXIS 49095 (E.D.N.Y. March 20, 2020)

-court **denied** emergency bail motion (immigration detention context)

1. defendant failed to meet burden to rebut presumption of danger to community given charges (murder while engaged in narcotics trafficking)
2. no evidence rebutting presumption of risk of flight

-defendant argues that given his advanced age and medical conditions, COVID-19 constitutes “another compelling reason” to permit temporary release

-outbreak is not sufficiently compelling “at this point in time”

-defendant has no pre-existing respiratory issues

March 19, 2020

A. *Dawson v. Asher*, 2020 U.S. Dist. LEXIS 47891 (W.D. Wash. March 19, 2020)

-court **denied** petitioners’ complaint seeking writ of habeas corpus or in alternative, injunction against ICE

-petitioners are individuals particularly vulnerable to COVID-19 in immigration detention

-denial based on:

1. 5th Amendment pretrial detention challenge doesn’t meet likelihood to succeed on merits standard

-no “express intent” to harm petitioners

-no authority that says detention itself becomes an “excessive” condition because of an infectious disease outbreak

-any relief would be to ameliorate conditions of confinement, not

release

2. Petitioners show possibility of irreparable harm but that it is likely

-no one in facility has been found to have tested positive for coronavirus

B. *Nikolic v. Decker*, 2020 U.S. Dist. LEXIS 48187 (S.D.N.Y. March 19, 2020)

-court **denied** letter request for immediate release in light of COVID-19

-petitioner requests court exercise its “inherent authority” to release habeas corpus petitioners from detention during pendency of petition

-court acknowledges this authority but says it should only be used in “unusual cases” where habeas petition raises substantial claims and extraordinary circumstances exist

-denied because:

-petitioner cannot demonstrate that his habeas petition raises substantial claims

C. *United States v. Gileno*, 2020 U.S. Dist. LEXIS 47590 (D. Conn. March 19, 2020)

- court **denied** modification of sentence to substitute incarceration with home detention
- motion to modify term of imprisonment based on compassionate release grounds
- denied based on:

- 1.** defendant's medical issues haven't really worsened since he was sentenced
- 2.** defendant hasn't shown that the BOP's plan to manage the pandemic is inadequate within defendant's facility

D. *United States v. Perez*, 2020 U.S. Dist. LEXIS 51867 (S.D.N.Y. March 19, 2020)

- court **granted** temporary release from custody during COVID-19 pandemic
- granted based on:

1. Mr. Perez's serious health issues and risk factors
2. compelling reasons exist for temporary release under § 3142(i)

E. *United States v. Stephens*, 2020 U.S. Dist. LEXIS 47846 (S.D.N.Y. March 19, 2020)

- court **granted** emergency motion for reconsideration of bail conditions
- granted based on:

1. strength of primary evidence showing danger to community undermined by new information
2. "unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent"

-"obstacles the current public health crisis pose to preparation of Defendant's defense constitute a compelling reason under 18 U.S.C. § 3142(i)"

March 17, 2020

A. *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. March 17, 2020)

-court **granted** motion to modify conditions of probation (specifically requirement to present himself to detention facility for intermittent confinement)

-argument based on:

1. conditions of confinement re: spread of coronavirus
2. specific conditions of particular facility that would facilitate spread

-these are pretty common to any facility (inability to social distance, lack of hygienic products, lack of medical care)

-discusses holes in the facility's announced remedial precautions

3. statutory language that allows for modification of probation
4. emergency relief necessary

Motions

I. Arguments Courts Have Found Persuasive

A. Individual defendant is at a heightened risk of serious health consequences if infected with COVID-19 because of underlying health concerns.

1. cites: *United States v. Perez*, 2020 U.S. Dist. LEXIS 51867 (S.D.N.Y. March 19, 2020) (lung disease), ; *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020) (diabetes, age, weight); *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191 (S.D.N.Y. March 26, 2020); *United States v. Ramos*, 2020 U.S. Dist. LEXIS 52586 (D. Mass. March 26, 2020) (diabetes, asthma); *United States v. Witter*, 2020 U.S. Dist. LEXIS 53189 (S.D.N.Y. March 26, 2020) (hypertension); *Castillo v. Barr*, 2020 U.S. Dist. LEXIS 54425 (C.D. Ca., March 27, 2020); *United States v. Resnick*, 2020 U.S. Dist. LEXIS 59091 (S.D.N.Y. April 2, 2020) (diabetes, end-stage liver disease); *United State v. Colvin*, 2020 U.S. Dist. LEXIS 57962 (D. Conn. April 2, 2020) (diabetes); *United States v. Rodriguez*, 2020 U.S. Dist. LEXIS 58718 (E.D. Pa. April 1, 2020) (diabetes); *United States v. Garcha*, 2020 U.S. Dist. LEXIS 57434 (N.D. Ca. April 1, 2020) (HIV)

2. useful language:

- i. “it is not possible for a medically vulnerable inmate to isolate himself in this institutional setting as recommended by the CDC” (*US v. Ramos* at 4)
- ii. “defendant's risk of serious infection while in custody as a result of his medical condition ‘present[s] a unique combination of circumstances giving rise to [a] situation that [is] out of the ordinary’” (*US v. Witter* at 4).
- iii. “The Court takes judicial notice that, for people of advanced age, with underlying health problems, or both, COVID-19 causes severe medical conditions and has increased lethality.” (*Basank v. Decker* at 9).

B. There are known cases of COVID-19 in the particular facility.

1. cites: *United States v. Witter*, 2020 U.S. Dist. LEXIS 53189 (S.D.N.Y. March 26, 2020); *Coronel v. Decker*, 2020 U.S. Dist. LEXIS 53954 (S.D.N.Y. March 27, 2020); *United States v. Roman*, 2020 U.S. Dist. LEXIS 53956 (S.D.N.Y. March 27, 2020); *United States v. Rodriguez*, 2020 U.S. Dist. LEXIS 58718 (E.D.. Pa. April 1, 2020)

- i. “The government's assurances that the BOP's "extraordinary actions" can protect inmates ring hollow given that these measures have already failed to prevent transmission of the disease at the facility where Mr. Rodriguez is housed” (*US v. Rodriguez* at 21).

C. Detention hearing was already a close call.

1. cite: *United States v. Harris*, 2020 U.S. Dist. LEXIS 53632 (D.D.C. March 27, 2020)

D. Conditions of detention facilities facilitate spread of virus.

1. cites: *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. March 17, 2020), *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191 (S.D.N.Y. March 26, 2020); *Coronel v. Decker*, 2020 U.S. Dist. LEXIS 53954 (S.D.N.Y. March 27, 2020), *United States v. Gabelman*, 2020 U.S. Dist. LEXIS 52773 (D. Nev. March 23, 2020); *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 53359 E.D. Mich. March 27, 2020); *United States v. Resnick*, 2020 U.S. Dist. LEXIS 59091 (S.D.N.Y. April 2, 2020); *United States v. Roeder*, 2020 U.S. App. LEXIS 10246 (3rd Cir. April 1, 2020)

2. useful language:

i. “The Washoe County Detention Facility also has limited access to personal hygiene items such as tissues, soap, disinfectant, or hot water, which prevent individuals from taking recommended precautions to minimize the spread of the virus. Moreover, if people cannot afford to buy personal hygiene products then their ability to maintain proper hygiene is even more limited.” (*US v. Barkman* at 6).

ii. “Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease” (*Basank v. Decker* at 3).

iii. “being in immigration detention places petitioners at significantly higher risk of contracting COVID-19” (*Coronel v. Decker* at 8)

iv. “the court agrees, that incarceration increases [defendant’s] risk of exposure to the virus.” (*US v. Ramos* at 4).

v. “CDC acknowledged that correctional detention facilities ‘present unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff’” (*US v. Kennedy* at 4).

vi. “It goes without saying that prisons generally are crowded spaces and therefore are less than conducive to the practice of social distancing.. During this rapidly evolving public health emergency, there are many valid concerns about the possibility of contagion in prisons.” (*US v. Roeder* at 4).

E. Detention facilities do not have adequate medical services

1. cites: *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. March 17, 2020)

2. useful language:

i. “There are also significant limitations on the detention facility's medical services. The detention facility does not have a hospital unit on-site, medical staffing in general is limited, and the Renown tent will quickly become overwhelmed if an outbreak occurs at the detention facility. It is unknown if the Washoe County Detention Facility possesses a single ventilator.” (*US v. Barkman* at 7).

ii.. “The Washoe County Detention Facility simply lacks the resources necessary to engage in aggressive screening and testing of inmates, correctional staff, law enforcement officers and other care and service providers who enter the facility. (*US v. Barkman* at 8).

F. Risk of flight is reduced because of COVID-19 pandemic

1. cites: *United States v. Ramos*, 2020 U.S. Dist. LEXIS 52586 (D. Mass. March 26, 2020); *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020)

2. useful language:

i. “At this time, Mr. Ramos cannot travel without a significant risk of exposure to the virus with the potentially severe health consequences that would follow, and therefore cannot readily flee the district.” (*US v. Ramos* at 5).

ii. “Flight would be enormously more risky and complicated in light of the travel and commercial restrictions brought on by the COVID-19 virus.” (*US v. Fellela* at 1).

G. COVID-19 restrictions interfere with access to counsel

1. cites: *United States v. Chandler*, 2020 U.S. Dist. LEXIS 56240 (S.D.N.Y. March 31, 2020); *United States v. Stephens*, 2020 U.S. Dist. LEXIS 47846 (S.D.N.Y. March 19, 2020)

2. useful language:

i. “The Bureau of Prisons on March 13 announced a 30-day suspension of all visits to federal correctional facilities, including the MCC. Since then, Chandler's counsel has been entirely unable to communicate with him in person or by video conference, and had only one phone call with Chandler

that lasted less than five minutes and was not private. The situation seems unlikely to improve in the near future. (*US v. Chandler* at 3).

ii. “obstacles the current public health crisis pose to preparation of Defendant’s defense constitute a compelling reason under 18 U.S.C. § 3142(i)” (*US v. Stephens* at 8).

II. Responses to Common Reasons for Denial

A. There are no known cases at the particular facility

1. Response: Given the nature of detention facilities, cases are inevitable and outbreaks will spread quickly. There is little to no testing available.

i. “Although I understand that no one has yet tested positive for the virus at Wyatt and I credit the Government’s representations about the precaution being taken by Wyatt personnel, this does not change the fact that [defendant] continues to be subject to close quarters confinement at Wyatt.” *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020)

ii. “While no cases have been reported at Southern Nevada Detention Center, it is likely only a matter of time before that occurs.” *United States v. Cox*, 2020 U.S. Dist. LEXIS 54427, 10 (D. Nev. March 26, 2020)

iii. “Since the government urged the Court to wait and see, at least one person at the D.C. jail has tested positive for the virus...the uncertainty is endemic in the present circumstances, and that uncertainty cannot preclude courts from acting until the damage has been done” (*United States v. Harris*, 2020 U.S. Dist. LEXIS 53632, 16 (D.D.C. March 27, 2020).

iii. “The United States argues that release is improper here because it was unaware of any known COVID-19 cases at Saginaw County jail. However, this argument fails to address the facts of the current global public health crisis—particularly as Michigan prisons are beginning to see exponential spread of the disease” *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 56875, 8 (E.D. Mich. April 1, 2020).

B. Individual defendant is not medically vulnerable

1. This virus can be deadly to anyone, especially with inadequate medical services.

i. “even if defendant did not have a heightened susceptibility to COVID-19, the public health crisis—and its impact on Defendant’s ability to present a defense—nonetheless satisfies § 3142(i)” *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 53359, 10 (E.D. Mich. March 27, 2020).

C. Facility is taking precautions to prevent spread

1. Response: The precautions taken aren't enough. Social distancing is necessary and impossible in the detention facility context.

i. "Respondents represented that...detention facilities...are taking certain measures to prevent the spread of virus: screening detainees upon intake for risk factors, isolating detainees who report symptoms, conducting video court appearances with only one detainee in the room at a time, providing soap and hand sanitizer to inmates, and increasing the frequency and intensity of cleaning jail facilities. These measures are patently insufficient to protect Petitioners" *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191, 17-18 (S.D.N.Y. March 26, 2020).

ii. "All levels of government nationwide have recently taken drastic measures in light of the COVID-19 pandemic to promote "social distancing" and to prohibit the congregation of large numbers of people with one another. But, as is true for most jails and prisons, the conditions of confinement at Wyatt are not compatible with these safeguards." *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020).

iii. "Even if all CDC's interim recommendations are followed...Court is concerned that such measures will prove insufficient to stem deadly outbreaks" *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 53359, 5 (E.D. Mich. March 27, 2020).

iv. "'Infections that are transmitted through droplets,' like COVID-19, 'are particularly difficult to control in detention facilities, as 6-foot distancing and proper decontamination of surfaces is virtually impossible.'" *United States v. Harris*, 2020 US. Dist. LEXIS 53632, 6 (D.D.C. March 27, 2020).

v. "Due to continuously changing circumstances surrounding the COVID-19 pandemic, it is unclear to what extent these measures have been or will be effective in mitigating spread of the disease." *United States v. Roeder*, 2020 U.S. App. LEXIS 10246, 5 (3rd Cir. April 1, 2020).

vi. "Realistically, the best – perhaps the only – way to mitigate the damage and reduce the death toll is to decrease the jail and prison population by releasing as many people as possible." *United States v. Nkanga*, 2020 U.S. Dist. LEXIS 56188 (S.D.N.Y. March 31, 2020).

D. Defendant failed to explain how release to home confinement would minimize risk of contracting COVID-19

1. This is coming up more often in recent cases, one of the factors of a four-factor test from *United States v. Clark*, 2020 U.S. Dist. LEXIS 51390 (D. Kansas March 25, 2020), *see also United States v. McDonald*, 2020 U.S. Dist. LEXIS 59474 (D. Nev. April 3, 2020).

2. Response: Detention facilities are uniquely vulnerable to COVID-19 and exacerbated cases.

i. See above language from §§ I.D and I.E re: detention facilitating spread of virus and inadequate medical care in facilities.

ii. “In light of the expectation that the COVID-19 pandemic will continue to grow and spread over the next several weeks, the Court concludes that the risks faced by Defendant will be minimized by her immediate release to home, where she will quarantine herself.” *United State v. Colvin*, 2020 U.S. Dist. LEXIS 57962, 10 (D.. Conn. April 2, 2020).

E. Release could increase the risk of others contracting COVID-19 on the outside

1. This is also coming up as one of the prongs of the four-factor test from *US v. Clark*, *US v. McDonald* and others

2. Response: Incarcerated people will be motivated to quarantine for two weeks in order to protect family members and loved ones. People who return from abroad are also being asked to quarantine for two weeks and are not being denied entry into the country or their homes.

i. Also provide details regarding size of the place Client is being released to, number of people living there and plan for self-isolation.

ii. “And any reservations this court may have had about Resnick's being a possible spreader of COVID-19 if released into the community has been assuaged by the release plan he has proffered.” Goes on to discuss probation department inspection, quarantine protocol, size and layout of apartment. *United States v. Resnick*, 2020 U.S. Dist. LEXIS 59091, 20 (S.D.N.Y. April 2, 2020)

F. For compassionate release motions: Defendant has failed to exhaust administrative remedies as required by § 3582(C)(1)(A)

1. Response: The COVID-19 pandemic satisfies exceptions to the exhaustion requirement.

i. “The Court concludes that all three exceptions to the exhaustion requirement apply to Defendant's request. First, if Defendant contracts COVID-19 before her appeals are exhausted, that undue delay might cause

her to endure precisely the "catastrophic health consequences" she now seeks to avoid. See CDC Guidance. Second, given the brief duration of Defendant's remaining term of imprisonment, the exhaustion requirement likely renders BOP incapable of granting adequate relief, as her sentence will likely already have expired by the time her appeals are exhausted and would certainly already have expired by the time the thirty-day waiting period ends. Third, Defendant would be subjected to undue prejudice—the heightened risk of severe illness—while attempting to exhaust her appeals.” *United State v. Colvin*, 2020 U.S. Dist. LEXIS 57962, 5 (D. Conn. April 2, 2020).

ii. “The Court concludes that requiring him to exhaust administrative remedies, given his unique circumstances and the exigency of a rapidly advancing pandemic, would result in undue prejudice and render exhaustion of the full BOP administrative process both futile and inadequate.” *United States v. Perez*, 2020 U.S. Dist. LEXIS 57265, 7 (S.D.N.Y. April 1, 2020)

III. Case Briefs

April 3, 2020

A. *United States v. Bell*, 2020 U.S. Dist. LEXIS 58850 (E.D. Mich. April 3, 2020)

-court **denied** motion for pretrial release

-denied because:

1. court used four factors from *McDonald* (above) to decide motion

-Mr. Bell hasn't demonstrated exposure to virus

-no information about Mr. Ramos's home plan

B. *United States v. Gold*, 2020 U.S. Dist. LEXIS 59245 (N.D. Ohio April 3, 2020)

-court **denied** motion to release from custody

-denied because:

1. Mr. Gold evaded arrest for 324 days so is too much of a flight risk

C. *United States v. Johnson*, 2020 U.S. Dist. LEXIS 59206 (D. Md. April 3, 2020)

-court **denied** motion to modify sentence under 18 USC § 3582(c)(1)(A)(i)

-denied because:

1. there is no exception to exhaustion of administrative remedies requirement under § 3582(c)(1)

D. *United States v. Martinez*, 2020 U.S. Dist. LEXIS 59112 (W.D. Okla. April 3, 2020)

-court **denied** motion to reconsider release pending sentencing

-denied because:

1. within the context of the pandemic, Mr. Martinez's situation isn't exceptional

-no known exposure to COVID-19

-jail has established comprehensive precautionary measures

E. *United States v. Mendoza*, 2020 U.S. Dist. LEXIS 58880 (M.D. Pa. April 3, 2020)

-court **denied** motion for review of detention order

-denied because:

1. no underlying health condition
2. no known cases at detention facility
3. precautions put in place for health and access to lawyers

F. *United States v. McDonald*, 2020 U.S. Dist. LEXIS 59474 (D. Nev. April 3, 2020)

-court **denied** motion for emergency temporary release

-denied based on four factors:

1. original grounds for pretrial detention
2. specificity of stated COVID-19 concerns
3. extent to which release plan is tailored to mitigate or exacerbate other COVID-19 risks to Defendant
4. the likelihood that Defendant's proposed release would increase COVID-19 risk to others

G. *United States v. Moran*, 2020 U.S. Dist. LEXIS 58574 (D. Md. April 3, 2020)

-court **denied** motion for reconsideration of detention order

-denied because:

1. COVID-19 doesn't relieve court of responsibilities to ensure presence of defendant and safety of community
2. not a candidate for home detention because prior drug trafficking conviction and current drug trafficking case

H. *United States v. Sundblad*, 2020 U.S. Dist. LEXIS 59193 (D.S.C. April 3, 2020)

-court **denied** motion for compassionate release

-denied because:

1. district court doesn't have the authority to modify or reduce sentence under compassionate release where defendant hasn't first petitioned the BOP

April 2, 2020

A. *United State v. Colvin*, 2020 U.S. Dist. LEXIS 57962 (D. Conn. April 2, 2020)

-court **granted** motion for compassionate release

-granted because:

1. Exceptions to exhaustion of administrative remedies requirement apply
2. Mr. Colvin's diabetes serves as extraordinary and compelling reasons justifying immediate release under § 3582(c)(1)(A)

B. *United States v. Credidio*, 2020 U.S.. Dist. LEXIS (S.D.N.Y. April 2, 2020)

-court **denied** writ of habeas corpus

-denied because:

1. court has no legal authority to provide the relief Ms. Credidio seeks
- court encourages the BOP to treat the matter with urgency and designate Ms. Credidio to a facility enabling her to leave the MCC

C. *United States v. Crosby*, 2020 U.S. Dist. LEXIS (D. Md. April 2, 2020)

-court **denied** motion for reconsideration of detention

-denied because:

1. COVID-19 is just one factor to consider
2. Mr. Crosby “only” a higher risk of infection due to pneumonia, asthma, need for an albuterol inhaler

D. *United States v. Gagne*, 2020 U.S. Dist. LEXIS 57957 (D. Conn. April 2, 2020)

-court **denied** motion to reduce sentence

-denied because:

1. Ms. Gagne did not satisfy exhaustion of administrative remedies requirement under § 3582(c)(1)(A)
 - did not present “unique circumstances warranting excusal of exhaustion requirement (11)

E. *United States v. Hernandez*, 2020 U.S. Dist. LEXIS 58739 (S.D.N.Y. April 2, 2020)

-court **granted** motion for compassionate release

-granted because:

1. Mr. Hernandez exhausted administrative remedies
 2. Mr. Hernandez has asthma
- “ The COVID-19 pandemic is extraordinary and unprecedented in modern times in this nation. It presents a clear and present danger to free society for reasons that need no elaboration” (7)

F. *United States v. Kahn*, 2020 U.S. Dist. LEXIS 58411 (S. D. Fla. April 2, 2020)

-court **denied** emergency motion to set bond

-denied because:

1. Mr.. Kahn previously had his bond revoked
- “the COVID-19 pandemic is a valid factor for this Court to consider in determining appropriate conditions of release at a bond hearing.” (18)

G. *United States v. Lunnie*, 2020 U.S. Dist. LEXIS 57764 (E.D. Ark. April 2, 2020)

-court **denied** motion for release on bond

-denied because:

1. Mr. Lunnie did not show a sufficiently compelling reason for release
 - arguments about COVID-19 are too speculative and general
 - despite Mr. Lunnie’s serious underlying health concerns
2. used the four-factor test from *US v. McDonald*

H. *United States v. Molina*, 2020 U.S. Dist. LEXIS 57669 (N.D. Ala. April 2, 2020)

-court **denied** motion requesting release and transfer to home confinement

-denied because:

1. no exceptional circumstances warranting presentencing release
2. Mr.. Molina is a paraplegic but this isn’t a new condition
3. facility has precautions in place against COVID-19

I. *United States v. Pritchett*, 2020 U.S. Dist. LEXIS 57862 (W.D. Pa. April 2, 2020)

-court **denied** motion for release pending trial or request for furlough

-denied because:

1. facility is taking precautions
2. Mr. Pritchett can contract the virus on the outside too

J. *United States v. Resnick*, 2020 U.S. Dist. LEXIS 59091 (S.D.N.Y. April 2, 2020)

-court **granted** motion for compassionate release

-granted because:

1. Mr. Resnick lives with chronic medical conditions (diabetes, liver disease)
2. Mr. Resnick is close to meeting criteria for BOP's Elderly Reentry Pilot Program
3. Mr. Resnick exhausted administrative remedies in the BOP

K. *United States v. Robinson*, 2020 U.S. Dist. LEXIS 58186 (D. Md.. April 2, 2020)

-court **denied** motion for reconsideration of pretrial detention

-denied because:

1. no pretrial services to ensure supervision
2. "no greater danger to the community than armed drug traffickers"

L. *United States v. West*, 2020 U.S. Dist. LEXIS 58182 (D. Md. April 2, 2020)

-court **denied** motion for reconsideration of pretrial detention

-denied because:

1. danger to the community finding, firearm offense
 2. no pretrial services to ensure supervision
- Mr. West has already tested positive for COVID-19

M. *United States v. Williams*, 2020 U.S. Dist. LEXIS 58184 (D. Md.. April 2, 2020)

-court **denied** motion to review order of detention

-denied because:

1. heightened burden under 18 USC § 3143(a)(2)
 2. no medical records to substantiate asthma claim
- “The presence of the COVID-19 creates a "material bearing" on the issue of whether there are conditions of release that can protect the community from the danger that Defendant presents.” (4)

N. *United States v. Yu Zhou*, 2020 U.S. Dist. LEXIS 57981 (S.D. Ohio April 2, 2020)

-court **denied** motion to revoke detention

-denied because:

1. risk of flight
 2. no known cases in facility
- “The Court concurs that COVID-19 presents a novel and unprecedented change in circumstances.” (8)

April 1, 2020

A. *Hernandez v. Decker*, 2020 U.S. Dist. LEXIS 57122 (S.D.N.Y. April 1, 2020)

-court **granted** motion for release from ICE detention pursuant to *Mapp v. Reno*
-granted because:

1. Petitioner had a substantial claim for deliberate indifference
2. COVID-10 constitutes extraordinary circumstances

B. *United States v. Garcha*, 2020 U.S. Dist. LEXIS 57434 (N.D. Ca. April 1, 2020)

-court **granted** motion for release from pretrial detention

-granted because:

1. danger to Mr. Garcha's health is a compelling reason under 18 USC § 3142(i)
2. release is temporary, must surrender on May 4

C. *United States v. Jepsen*, 2020 U.S. Dist. LEXIS 57007 (D. Conn. April 1, 2020)

-court **granted** motion for compassionate release

-granted because:

1. Mr. Jepsen has less than eight weeks to serve and is immunocompromised

D. *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 56875 (E.D. Mich. April 1, 2020)

-court **denied** Government's motion for reconsideration of temporary revocation of detention

-denied because:

1. it doesn't matter that there aren't known cases in Saginaw Cty Jail

E. *United States v. Mason*, 2020 U.S. Dist. LEXIS 57457 (W.D. Wash. April 1, 2020)

-court **denied** motion to reopen detention hearing

-denied because:

1. Ms. Mason's extensive criminal history
2. Shown noncompliance with supervised release
3. no special factors that justify release because of COVID-19

F. *United States v. Penaloza*, 2020 U.S. Dist. LEXIS 56569 (D. Md. April 1, 2020)

-court **denied** motion to reconsider pretrial detention

-denied because:

1. changed circumstances created by COVID-19 doesn't tip the scales of detention to reverse earlier decision by the court

-“The presence of the Corona virus creates a "material bearing" on the issue of whether there are conditions of release that can protect the community from the danger that Defendant presents.” (4)

G. *United States v. Perez*, 2020 U.S. Dist. LEXIS 57265 (S.D.N.Y. April 1, 2020)

-court **granted** motion for reduction of imprisonment term under compassionate release

-granted because:

1. exceptions to exhaustion requirement apply here
2. Mr. Perez's undisputed fragile health

H. *United States v. Rodriguez*, 2020 U.S. Dist. LEXIS 58718 (E.D. Pa. April 1, 2020)

-court **granted** motion to reduce sentence under compassionate release statute
-granted because:
1. underlying medical conditions constitute extraordinary and compelling reasons
2. prison is a particularly dangerous place right now
3. Mr. Rodriguez served almost all of his sentence and has shown rehabilitation
-lots of useful language about the spread of the disease in BOP and BOP's inability to stop it (23)

I. *United States v. Roeder*, 2020 U.S. App. LEXIS 10246 (3rd Cir. April 1, 2020)

-court **granted** appeal and overturned denial of request to delay self-surrender date
-granted because:
1. original motion was unopposed and Mr. Roeder wasn't detained pretrial
2. because of exigent circumstances, court doesn't remand, granted release

March 31, 2020

A. *United States v. Chandler*, 2020 U.S. Dist. LEXIS 56240 (S.D.N.Y. March 31, 2020)

-court **granted** motion to be released on bail
-granted because:
1. Mr. Chandler is unable to prepare for trial with his counsel
2. COVID-19 is extraordinary circumstances

B. *United States v. French*, 2020 U.S. Dist. LEXIS 56155 (D. Me. March 31, 2020)

-court **granted** motion for temporary bail
-granted because:
1. 1st Cir. determined that defendants' appeals raised a "substantial question"
2. court has authority to release an incarcerated defendant pending appeal under 18 USC 3143(b)(1)
3. both defendants have health conditions that increase risk of COVID-19
4. no risk of flight or danger to community
-good language about dangers of COVID-19 in prison facilities

C. *United States v. Gonzalez*, 2020 U.S. Dist. LEXIS 56422 (E.D. Wa. March 31, 2020)

-court **granted** motion to reduce sentence under compassionate release
-granted because:
1. exhausted administrative remedies by petitioning the BOP and being denied
2. multiple chronic illnesses is extraordinary and compelling reason
3. not a danger to the community

D. *United States v. Nkanga*, 2020 U.S. Dist. LEXIS 56188 (S.D.N.Y. March 31, 2020).

-court **denied** motion for immediate release from custody
-denied because:
1. court does not have legal authority to release people who have already been sentenced
-good language about the urgency of the crisis

E. *United States v. Thomas*, 2020 U.S. Dist. LEXIS 55680 (W.D. Pa. March 31, 2020)

-court **denied** motion to reconsider detention order

-denied because:

1. Mr. Thomas could contract COVID-19 anywhere
2. precautions have been taken
3. court trusts facility to allow for confidential attorney-client phone calls

March 30, 2020

A. *United States v. Cornish*, 2020 U.S. Dist. LEXIS 54398 (E.D. Ky. March 30, 2020)

-court **granted** Government's motion to detain

-Mr. Cornish detained because:

1. gov established by clear and convincing evidence that Mr. Cornish is a danger to another or to the community
2. no indication that Mr. Cornish is in particularly poor health or at higher risk

B. *United States v. Hernandez*, 2020 U.S. Dist. LEXIS 56506 (S.D.N.Y. March 30, 2020)

-court **granted** temporary release from custody

-granted with conditions:

1. home incarceration in a homeless shelter
2. no travel documents, contact with co-defendants
3. status letter to court once a week with health update

C. *United States v. Lee*, 2020 U.S. Dist. LEXIS 55232 (E.D. Mich. March 30, 2020)

-court **denied** motion to revoke detention order

-denied because:

1. presumption of danger to community and flight risk not rebutted
2. "the COVID-19 pandemic cannot be the sole basis for releasing a defendant from custody pending trial; court must still consider the § 3142(g) factors" (10)

D. *United States v. Loveings*, 2020 U.S. Dist. LEXIS 54607 (W.D. Pa. March 30, 2020)

-court **denied** motion for reconsideration of order of detention

-denied because:

1. presumption of detention not rebutted
 - prior criminal history
 - prior history of violence, weapons, substance abuse
 - lack of stable residence, employment, family ties
2. nowhere to reside on home detention
3. no health conditions/vulnerabilities to COVID-19 except age
4. no known cases in Allegheny County jail

E. *United States v. McKenzie*, 2020 U.S. Dist.. LEXIS 55503 (S.D.N.Y. March 30, 2020)

-court **granted** motion for temporary release from custody

-granted because:

1. MCC identified Mr. McKenzie as high risk for COVID-19
2. detailed home plan

March 29, 2020

A. *United States v. Jones*, 2020 U.S. Dist. LEXIS 54267 (W.D. Pa. March 29, 2020)

-court **denied** motion to reconsider detention order and release defendant on bond
-denied because:

1. defendant has not met burden to demonstrate the existence of compelling reasons that warrant temporary release
2. speculation at this point about what may or may not occur at the Allegheny County Jail doesn't constitute compelling reason

B. *United States v. Martin*, 2020 U.S. Dist. LEXIS 46046 (S.D. MD March 17, 2020)

-court **denied** appeal of detention order
-defendant has preexisting conditions and based his appeal on COVID state of emergency
-seeks release to home detention
-good language in opinion on "unprecedented magnitude of COVID-19 pandemic"
-denial based on:

1. no known cases at the particular facility (seeks release on mere speculation that he will become ill)
2. appeal must be based on individualized assessment of Bail Reform Act factors
3. initial assessment by magistrate judge was correct because of nature of charges against defendant
4. extensive criminal record

March 28, 2020

A. *United States v. Woods*, 2020 U.S. Dist. LEXIS 54268 (E.D. Mich. March 28, 2020)

-court **denied** motion to revoke detention order
-denied because:
1. sole basis for motion is ongoing COVID-19 pandemic
2. charges create presumption of detention that Mr. Woods did not overcome
-"the COVID-19 pandemic cannot be the sole basis for releasing a defendant from custody pending trial" (11)
-individualized assessment required

March 27, 2020

A. *Castillo v. Barr*, 2020 U.S. Dist. LEXIS 54425 (C.D. Ca., March 27, 2020)

-court **granted** petitioners' TRO
-granted because:
1. petitioners have serious health concerns

2. gov cannot put a civil detainee into a dangerous situation, especially where that dangerous situation was created by the government
-“COVID-19 is highly contagious and has a mortality rate ten times greater than influenza. Most troublesome is the fact that people infected with the coronavirus can be asymptomatic during the two to fourteen day COVID-19 incubation period. During that asymptomatic incubation period, infected people are, unknowingly, capable of spreading the coronavirus” (5)

B. *Coronel v. Decker*, 2020 U.S. Dist. LEXIS 53954 (S.D.N.Y. March 27, 2020)

-court **granted** petitioners’ habeas motion and TRO to release from ICE detention

-granted because:

1. petitioners’ uniquely serious risk from COVID-19 due to health conditions
2. confirmed cases at 2 of 3 facilities where petitioners are detained

-“being in immigration detention places petitioners at significantly higher risk of contracting COVID-19” (8)

-petition included declaration from a Dr. who said facility precautions aren’t enough

C. *Sacal-Micha v. Longoria*, 2020 U.S. Dist. LEXIS 53474 (S.D. Texas March 27, 2020)

-court **denied** writ of habeas corpus and complaint for injunctive relief

-denied because:

1. petition doesn’t present substantial claims on which Mr. Sacal is likely to succeed

-not likely to prove deliberate indifference to medical needs

2. claim just includes general concerns about COVID-19, not specific to facility
- no evidence precautions are insufficient

D. *United States v. Bastianelli*, 2020 U.S. Dist. LEXIS 53441 (W.D. Pa. March 27, 2020)

-court **denied** motion to reconsider detention

-denied because:

1. did not meet burden to rebut presumption of detention
2. gov established by clear and convincing evidence that Mr. Bastianelli was danger to community
3. no “compelling reason” for release (no serious health condition)

E. *United States v. Campagna*, 2020 U.S. Dist. LEXIS 54401 (S.D.N.Y. March 27, 2020)

-court **granted** motion to decrease sentence and transfer from halfway house to home incarceration

-granted because:

1. Mr. Campagna’s compromised immune system with COVID-19 constitutes an extraordinary and compelling reason to modify sentence
2. uncontested motion, gov agreed no danger to community

F. *United States v. Garza*, 2020 U.S. Dist. LEXIS 54228 (S.D. Ca. March 27, 2020)

-court **denied** ex parte emergency motion for judicial recommendation to warden of FCI for immediate release

-denied because:

1. court may not correct or modify a prison sentence once imposed
- court encourages Mr. Garza to seek relief from the BOP

G. *United States v. Harris*, 2020 U.S. Dist. LEXIS 53632 (D.D.C. March 27, 2020)

- court **granted** emergency motion for release pending sentencing
-granted because:

1. COVID-19 constitutes an “exceptional reason” under § 3145(c)
2. detention was a “close case” even before the pandemic developed

-“The Center for Disease Control and Prevention recommends keeping a distance of six feet from other people to minimize the possibility of infection, washing one’s hands often with soap and water, and using a hand sanitizer that contains at least 60% alcohol.” (4)

-“‘Infections that are transmitted through droplets,’ like COVID-19, ‘are particularly difficult to control in detention facilities, as 6-foot distancing and proper decontamination of surfaces is virtually impossible.’” (6)

“since the government urged the Court to wait and see, at least one person at the D.C. jail has tested positive for the virus...the uncertainty is endemic in the present circumstances, and that uncertainty cannot preclude courts from acting until the damage has been done” (16)

H. *United States v. Kennedy*, 2020 U.S. Dist. LEXIS 53359 E.D. Mich. March 27, 2020)

- court **granted** motion for temporary revocation of detention
-granted because:

1. danger posed to Mr. Kennedy by COVID-19 pandemic constitutes independent compelling reason for temporary release under § 3142(i)
2. temporary release is necessary for Mr. Kennedy to prep pre-sentencing

defense

-“CDC acknowledged that correctional detention facilities ‘present unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff’ (4)

-“Even if all CDC’s interim recommendations are followed...Court is concerned that such measures will prove insufficient to stem deadly outbreaks” (5)

-“even if defendant did not have a heightened susceptibility to COVID-19, the public health crisis—and its impact on Defendant’s ability to present a defense—nonetheless satisfies § 3142(i)” (10)

-because of difficulty communicating with attorney under current conditions

-doesn’t matter that there are not known cases at Saginaw County Jail (12)

I. *United States v. Roman*, 2020 U.S. Dist. LEXIS 53956 (S.D.N.Y. March 27, 2020)

- court **granted** motion for bail pending sentencing under 18 USC § 3145(c)
-granted based on:

1. Mr. Roman’s risk of serious infection in custody (preexisting health issues)
2. known cases at MCC
3. no disciplinary charges while in custody at MCC

J. *Xuyue Zhang v. Barr*, 2020 U.S. Dist. LEXIS 54424 (C.D. Ca. March 27, 2020)

- court **granted** petitioner’s TRO
-granted because:

1. no danger to public if petitioner is released
2. stipulation between parties to prevent any flight risk
3. global pandemic which exposes petitioner to unnecessary risk and a potentially longer quarantine

March 26, 2020

A. *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191 (S.D.N.Y. March 26, 2020)

-court **granted** petitioners' habeas motion and TRO under FRCP Rule 65 to release them from ICE custody

-granted because:

1. held in facilities where staff or detainees have tested positive for COVID-19
2. each petitioner has a chronic medical condition

-COVID-19 carries risk of death (7)

-“petitioners have met their showing of irreparable harm, in establishing the risk of harm to their health and constitutional rights” (6)

-“nature of detention facilities makes exposure and spread of the virus particularly harmful” (8)

-facilities' measures (screening detainees upon intake, isolating detainees who report symptoms, providing soap and hand sanitizer, increasing cleaning) are “patently insufficient to protect petitioners”

B. *United States v. Cox*, 2020 U.S. Dist. LEXIS 54427 (D. Nev. March 26, 2020)

-court **denied** motion for temporary release under § 3142(i)

-denied because:

1. Mr. Cox's danger to the community outweighs his higher risk of severe illness if infected with COVID-19
2. lack of housing means his only option would be halfway house, where there are similar concerns as in a detention facility
3. Mr. Cox hasn't shown that in-person visits with counsel are necessary to preparing a defense

-“while no cases have been reported at Southern Nevada Detention Center, it is likely only a matter of time before that occurs” (10)

C. *United States v. Johnson*, 2020 U.S. Dist. LEXIS 52759 (E.D. Mich. March 26, 2020)

-court **denied** motion to revoke detention order

-denied because:

1. presumption of detention case because of firearm charges
2. COVID-19 does not tip the balance in favor of pretrial release

D. *United States v. Morris*, 2020 U.S. Dist. LEXIS 52690 (D. Minn. March 26, 2020)

-court **denied** motion for release from custody pending sentencing

-denied because:

1. Mr. Morris's conviction carries mandatory detention provisions
2. Mr. Morris cannot show by clear and convincing evidence that he lacks the means or motive to flee and poses no threat to community
3. COVID-19 doesn't present exceptional reason to permit release

- no known cases at Sherburne County Jail
- jail has taken steps to prevent an outbreak

E. *United States v. Ramos*, 2020 U.S. Dist. LEXIS 52586 (D. Mass. March 26, 2020)

-court **granted** emergency motion for pre-trial release

-granted because:

1. medical conditions place Mr. Ramos at heightened risk
2. court finds COVID-19 diminishes risk of flight pending trial and reoffending
 - difficult to deal drugs during the pandemic (5)
3. home detention at his mother's residence

-“it is not possible for a medically vulnerable inmate to isolate himself in this institutional setting as recommended by the CDC” (4)

F. *United States v. Wilson*, 2020 U.S. Dist. LEXIS 52755 (E.D. Mich. March 26, 2020)

-court **denied** motion to revoke detention order

-denied because:

1. court has denied to prior motions to revoke detention
2. COVID-19 does not tip the balance in favor of pretrial release

G. *United States v. Witter*, 2020 U.S. Dist. LEXIS 53189 (S.D.N.Y. March 26, 2020)

-court **granted** motion to release pending sentencing

-granted because:

1. Mr. Witter has hypertension and is 57 years old
2. MCC already has confirmed COVID-19 cases
3. Clear and convincing evidence that Mr. Witter is neither likely to flee nor a danger to the community

-abided by conditions or release prior to remand

-close with adult children who live in the area

March 25, 2020

A. *United States v. Adams*, 2020 U.S. Dist. LEXIS 51729 (D. Md. March 25, 2020)

-court **denied** motion to review detention order

-denied because:

1. Mr. Adams failed to demonstrate extraordinary reasons
2. Mr. Adams failed to demonstrate by clear and convincing that he will not flee or be a danger
3. Facts of case (firearms) and criminal history

B. *United States v. Clark*, 2020 U.S. Dist. LEXIS 51390 (D. Kansas March 25, 2020)

-court **denied** motion for temporary release pursuant to 18 USC 3142(i)

-denied because:

1. court's prior finding Mr. Clark is a flight risk and risk of harm to others
2. did not make threshold showing that proposed release plan would address health concerns better than custody

-Mr. Clark has diabetes, court acknowledges certain conditions create heightened risk of becoming seriously ill of COVID (14)

- “whether a defendant’s particular circumstances warrant release in light of the COVID-19 pandemic ought to more properly considered on a case-by-case basis under the ‘another compelling reason’ prong of § 3142(i)” (9)
- no knowledge of cases at Leavenworth facility
- court discusses that Mr. Clark could spread COVID if released (22)

C. *United States v. Eberhart*, 2020 U.S. Dist. LEXIS 51909 (N.D. Ca. March 25, 2020)

- court **denied** application for immediate release
 - seeks modification of his sentence under the compassionate release provision of § 3582(C)(1)(A)(i)
- denied because:
 1. Mr.. Eberhart did not exhaust administrative remedies with the BOP
 2. Mr. Eberhart’s criminal history and supervised release status at time of

offense

March 23, 2020

A. *United States v. Gabelman*, 2020 U.S. Dist. LEXIS 52773 (D. Nev. March 23, 2020)

- court **denied** emergency motion for reconsideration
- denied because:
 - defendant is at risk of contracting COVID-19 anywhere
 - court acknowledged that spread of COVID-19 might be worse in prison but “court cannot release every detainee at risk of catching COVID-19 because the court would be obligated to release every detainee” (2)

B. *United States v. Williams*, 2020 U.S. Dist. LEXIS 50185 (D. Md.. March 23, 2020)

- court **denied** emergency motion for reconsideration of bond
- denied because:
 1. Mr. Williams has a history of misconduct (failing to report, reoffending)
 2. no suggestion of mistreatment, mismanagement or other concerns at the

facility

- no cases at the facility
- government has articulated measures implemented by facility
- 3. Mr. Williams has no physical vulnerabilities other than age

March 20, 2020

A. *United States v. Fellela*, 2020 U.S. Dist. LEXIS 49198 (D. Conn. March 20, 2020)

- court **granted** emergency motion for temporary release from custody
- granted because:
 1. defendant is 62 yo, diabetic, weighs >300lbs (“age, physical and mental condition make him within the highest risk group of death if he were to become infected”)
 2. court recognized that facility had taken precautions and no one has yet tested positive, defendant is still subject to close quarters confinement
 3. “flight would be enormously more risky and complicated in light of the travel and commercial restrictions brought on by COVID-19”
 4. defendant would be subject to house arrest

B. *United States v. Halcro*, 2020 U.S. Dist. LEXIS 48903 (D. Mont. March 20, 2020)

-court **denied** motion for release pending appeal

-denied because:

1. defendant fails to raise a substantial question of law or fact regarding her sentence (COVID-19 was mentioned during sentencing so sentencing court considered that argument)
2. BOP has adopted quarantine procedure to process new inmates

C. *United States v. Hamilton*, 2020 U.S. Dist. LEXIS 49095 (E.D.N.Y. March 20, 2020)

-court **denied** emergency bail motion (immigration detention context)

1. defendant failed to meet burden to rebut presumption of danger to community given charges (murder while engaged in narcotics trafficking)
2. no evidence rebutting presumption of risk of flight

-defendant argues that given his advanced age and medical conditions, COVID-19 constitutes “another compelling reason” to permit temporary release

-outbreak is not sufficiently compelling “at this point in time”

-defendant has no pre-existing respiratory issues

March 19, 2020

A. *Dawson v. Asher*, 2020 U.S. Dist. LEXIS 47891 (W.D. Wash. March 19, 2020)

-court **denied** petitioners’ complaint seeking writ of habeas corpus or in alternative, injunction against ICE

-petitioners are individuals particularly vulnerable to COVID-19 in immigration detention

-denial based on:

1. 5th Amendment pretrial detention challenge doesn’t meet likelihood to succeed on merits standard

-no “express intent” to harm petitioners

-no authority that says detention itself becomes an “excessive” condition because of an infectious disease outbreak

-any relief would be to ameliorate conditions of confinement, not

release

2. Petitioners show possibility of irreparable harm but that it is likely

-no one in facility has been found to have tested positive for coronavirus

B. *Nikolic v. Decker*, 2020 U.S. Dist. LEXIS 48187 (S.D.N.Y. March 19, 2020)

-court **denied** letter request for immediate release in light of COVID-19

-petitioner requests court exercise its “inherent authority” to release habeas corpus petitioners from detention during pendency of petition

-court acknowledges this authority but says it should only be used in “unusual cases” where habeas petition raises substantial claims and extraordinary circumstances exist

-denied because:

-petitioner cannot demonstrate that his habeas petition raises substantial claims

C. *United States v. Gileno*, 2020 U.S. Dist. LEXIS 47590 (D. Conn. March 19, 2020)

- court **denied** modification of sentence to substitute incarceration with home detention
- motion to modify term of imprisonment based on compassionate release grounds
- denied based on:

1. defendant's medical issues haven't really worsened since he was sentenced
2. defendant hasn't shown that the BOP's plan to manage the pandemic is inadequate within defendant's facility

D. *United States v. Perez*, 2020 U.S. Dist. LEXIS 51867 (S.D.N.Y. March 19, 2020)

- court **granted** temporary release from custody during COVID-19 pandemic
- granted based on:

1. Mr. Perez's serious health issues and risk factors
2. compelling reasons exist for temporary release under § 3142(i)

E. *United States v. Stephens*, 2020 U.S. Dist. LEXIS 47846 (S.D.N.Y. March 19, 2020)

- court **granted** emergency motion for reconsideration of bail conditions
- granted based on:

1. strength of primary evidence showing danger to community undermined by new information
2. "unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent"

-"obstacles the current public health crisis pose to preparation of Defendant's defense constitute a compelling reason under 18 U.S.C. § 3142(i)"

March 17, 2020

A. *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. March 17, 2020)

-court **granted** motion to modify conditions of probation (specifically requirement to present himself to detention facility for intermittent confinement)

-argument based on:

1. conditions of confinement re: spread of coronavirus
2. specific conditions of particular facility that would facilitate spread

-these are pretty common to any facility (inability to social distance, lack of hygienic products, lack of medical care)

-discusses holes in the facility's announced remedial precautions

3. statutory language that allows for modification of probation
4. emergency relief necessary

