

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

MARIA ALEJANDRA CELIMEN SAVINO,
JULIO CESAR MEDEIROS NEVES, and all
those similarly situated,

Petitioners-Plaintiffs,

v.

STEVEN J. SOUZA,

Respondent-Defendant.

Case No. 1:20-cv-10617 WGY

BRIEFING ON INDIVIDUAL APPLICATIONS FOR BAIL
WEDNESDAY, APRIL 8, 2020

1. Nikiforidis, Georgis
2. Almanzar, Juan
3. Peguero-Vasquez, Victor
4. Kita Tshimanga, Antoni
5. Vargas, Cesar
6. Ferreira, Pamlar
7. Jaramillo-Quiroz, Hector
8. Al Amiri, Salim
9. Hussein, Hussein
10. Mota, Osvaldo

INTRODUCTION

Plaintiffs respectfully submit this briefing on the individual applications for bail that are scheduled for the Court's consideration on April 8, 2020. Information that is common to a number of applications (*e.g.*, briefing on CDC high-risk medical conditions) has previously been filed with this Court, *see* ECF 52, and is incorporated here by reference. Two other common issues that may arise for those on today's list and subsequent lists are briefed below.

The individualized briefings that are attached hereto as Exhibits 1-10 also include the following information for each individual: a) Biographical Information; b) Medical Condition; c) Plans For Transportation/Lodging If Released; d) Criminal History; and e) Immigration History.¹

OTHER PENDING ISSUES

In addition to the ten individuals on for hearing today, Plaintiffs' Motion to Add Individual to Subclass One, ECF 40 (regarding misclassification of named Plaintiff Maria Alejandra Celiman Savino due to error on government spreadsheet), remains pending. That motion is fully briefed. *See* ECF 42 (government opposition). The Court separately denied Defendant's Motion to Dismiss her from the case, *see* ECF 53 (order), but has not yet ruled on the motion at ECF 40 or the substance of her individual claim. Ms. Savino has severe asthma, no criminal convictions, and no pending charges (none of which the government disputes), *see* ECF 42, and but for the government's spreadsheet error, she would have been considered for release with the rest of Subclass One last week. Plaintiffs respectfully request that Court review her case.

¹ As before, if the Court determines that there are certain records or additional evidence that is needed, or wishes the included material to be presented in a different format, Plaintiffs respectfully request that the Court so inform counsel, so that we may attempt to provide it to the Court expeditiously.

In addition, concurrently with this Briefing, Plaintiffs have also filed a Motion For Expedited Informal Discovery. In light of the Court’s setting of a hearing for Thursday, April 9, 2020 regarding questions of facility space, Plaintiffs request basic information from Defendant that will help illuminate these questions. Plaintiffs hope to provide the Court with the views of physicians and public health professionals, as the Court requested, and the information Plaintiffs seek from Defendant on facility space would aid in that endeavor.

COMMON ISSUES IN INDIVIDUALIZED BRIEFINGS

I. The COVID-19 pandemic continues to escalate in Massachusetts.

	<u>COVID-19 Deaths (MA)</u>	<u>COVID-19 Cases (MA)²</u>
<i>March 27, 2020 (Date of Complaint Filing)</i>	35	3240
<i>April 7, 2020</i>	356 (increase of 96 in last 24 hours)	15,202 (increase of 1,365 in last 24 hours)

II. Travel Restrictions Make Deportation Of Certain Class Members Unlikely.

The unprecedented threat of COVID-19 has driven countries around the world to close their borders in an attempt to slow the spread of the virus, calling into question the ability of ICE to effectuate the removal of foreign nationals to countries with broad restrictions in place. As a result, ICE as a practical matter is unable to deport many individuals who are subject to a final order of removal, leaving them at a heightened risk of exposure to COVID-19 due to the prolongation of their detention with no clear end in sight.

² Source: <https://www.mass.gov/info-details/covid-19-cases-quarantine-and-monitoring>

The following countries, of which individuals from the Court's list are nationals, have suspended arrival of incoming passengers and effectively closed their borders: Dominican Republic, Democratic Republic of the Congo (DRC), Peru, Iraq, South Africa, Cape Verde, Guatemala, Honduras, Venezuela, Ecuador, Trinidad and Tobago, St. Lucia, Kenya, Colombia, and El Salvador. The list continues to grow as countries react to the continuing escalation of the pandemic.

The **Dominican Republic** has suspended the arrival of incoming passengers and effectively closed its borders.³ The Ministry of Tourism has confirmed the extension of the border closures and other restrictions suspending all inbound and outbound flights until at least April 18.⁴ On March 20, 2020, the government of the **Democratic Republic of Congo** ordered the closure of its borders along with the Embassy and all consular services due to the COVID-19 outbreak.⁵ The DRC's state of emergency and the suspension of all international flights currently remains in effect.⁶

Peru was among the first nations to completely close its external borders, on March 15, 2020, due to the threat of the virus.⁷ The government of Peru has shut down all international travel in and out of the country. At the close of the initial 15-day period, Peru's national state of emergency remained in effect, and the country has extended its total ban on international travel

³ See U.S. Embassy in Dominican Republic, *COVID-19 Information*, <https://do.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

⁴ Dominican Republic Ministry of Tourism, *Information on Coronavirus (COVID-19)*, <https://www.godominicanrepublic.com/newsroom/coronavirus/> (last visited Apr. 7, 2020) ("From April 3rd and for the following 15 days, the country's borders will remain closed by land, sea and air, so all flights to and from Dominican Republic from said date and time will be suspended.").

⁵ Democratic Republic of the Congo Consular Services, *Coronavirus Advisory* <https://www.ambardcusa.org/> (last visited Apr. 7, 2020).

⁶ U.S. Embassy in the Democratic Republic of the Congo, *COVID-19 Information*, <https://cd.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

⁷ See U.S. Embassy in Peru, *COVID-19 Information* <https://pe.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

for 13 more days, until at least April 12, 2020. Jorge Chávez International Airport in Lima closed to the public on March 17 and remains closed indefinitely.⁸

All flights to and from **Iraq** have been suspended for weeks; on March 28, the Iraqi government extended this suspension until April 11, 2020 along with a statement that an even further extension was possible due to rapidly changing circumstances surrounding the pandemic.⁹ Since March 18, **South Africa** has barred admission to travelers from the United States and other countries ravaged by severe outbreaks of COVID-19 and has strongly urged even those not covered by the ban to avoid all travel.¹⁰ On March 26, the government announced a nationwide lockdown for at least 21 days, triggering increased restrictions on international travel, including the suspension of flights from Lanseria Airport in Johannesburg.¹¹

The government of **Cape Verde** suspended commercial passenger flights starting March 19, including flights to and from the United States.¹² These restrictions will remain in place for at least three weeks and may be renewed thereafter, and the country is in a state of emergency through at least April 17.¹³ **Guatemala** has declared a national “state of calamity” until May 5¹⁴ and has even specifically blocked U.S. deportation flights in an attempt to combat the virus’s

⁸ *Id.*

⁹ U.S. Embassy in Iraq, COVID-19 Information, <https://iq.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

¹⁰ U.S. Embassy in South Africa, *COVID-19 Information*, <https://za.usembassy.gov/covid-19-information-2/> (last visited Apr. 7, 2020).

¹¹ *See* Statement by President Cyril Ramaphosa on escalation of measures to combat the Covid-19 epidemic, Union Buildings, Tshwane, <http://www.thepresidency.gov.za/speeches/statement-president-cyril-ramaphosa-escalation-measures-combat-covid-19-epidemic%2C-union> (last visited Apr. 7, 2020).

¹² U.S. Embassy in Cabo Verde, *COVID-19 Information*, <https://cv.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

¹³ *Id.*

¹⁴ U.S. Embassy in Guatemala, *Update on Guatemala’s State of Calamity Declaration, Border Closings, the Nationwide Curfew, and Blockades*, <https://gt.usembassy.gov/please-see-this-link-for-an-update-on-guatemalas-state-of-calamity-declaration-border-closings-the-nationwide-curfew-and-blockades/> (last visited Apr. 7, 2020).

spread.¹⁵ **Honduras** has closed its land, air, and sea borders as of March 15 until further notice.¹⁶ On March 17, **Venezuela** suspended all international travel until April 13, and additional travel/movement restrictions are likely to be put into effect with little or no advance notice.¹⁷ **Ecuador** has prohibited entry by all non-Ecuadorians and most Ecuadorians via land, air, and sea.¹⁸

Trinidad and Tobago has closed its international borders to all travelers, including Trinidad and Tobago nationals, and suspend all commercial flights into the country.¹⁹ **St. Lucia** has closed its seaports and airports.²⁰ **Kenya** banned international flights into and out of the country starting March 25, and the ban was extended on April 6 for at least an additional 30 days.²¹ The government of **Colombia** has closed all international travel in and out of Colombia and restricted internal domestic travel within Colombia.²² On April 6, the President of **El Salvador** extended the national quarantine by an additional 15 days, marking day 17 of a now 45-day national quarantine in El Salvador.²³

¹⁵ Molly O’Toole, *Guatemala turns tables, blocking U.S. deportations because of coronavirus*, L.A. Times, March 17, 2020, <https://www.latimes.com/politics/story/2020-03-17/guatemala-close-borders-to-americans-trumps-deportation-flights> (last visited Apr. 7, 2020).

¹⁶ U.S. Embassy in Honduras, *COVID-19 Information*, <https://hn.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

¹⁷ U.S. Embassy in Venezuela, *COVID-19 Information*, <https://ve.usembassy.gov/u-s-citizen-services/security-and-travel-information/covid-19-information/> (last visited Apr. 7, 2020).

¹⁸ U.S. Embassy in Ecuador, *COVID-19 Information*, <https://ec.usembassy.gov/covid-19-information-ecu-2/> (last visited Apr. 7, 2020).

¹⁹ U.S. Embassy in Trinidad & Tobago, *COVID-19 Information*, <https://tt.usembassy.gov/health-alert-u-s-embassy-port-of-spain-trinidad-and-tobago-march-21-2020/> (last visited Apr. 7, 2020).

²⁰ U.S. Embassy in Barbados, the Eastern Caribbean, and the OECS, *COVID-19 Information*, <https://bb.usembassy.gov/u-s-citizen-services/covid-19-information/> (last visited Apr. 7, 2020).

²¹ U.S. Embassy in Kenya, *COVID-19 Information*, <https://ke.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

²² U.S. Embassy in Colombia, *COVID-19 Information*, <https://co.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

²³ U.S. Embassy in El Salvador, *COVID-19 Information*, <https://sv.usembassy.gov/covid-19-information/> (last visited Apr. 7, 2020).

II. Pending Habeas Petitions Do Not Bar Relief.

Some class members may have filed individual habeas petitions, often *pro se*, seeking relief from detention based on legal claims unrelated to the threat to their health and safety posed by detention during the present global pandemic, particularly seeking to assert rights under the *Reid v. Donelan* and *Brito v. Barr* class action orders. As this Court has recognized, however, the COVID-19 claims in this case are “markedly different” from those raised in other individual habeas petitions. ECF No. 53 (denying motion to dismiss claims of named petitioner Savino despite pendency of *pro se Brito* petition). To the extent any such petitions have been filed, they do not bar the Court from considering relief in this case.

First, class members who have filed independent habeas petitions are not pursuing the same issues presented in the instant petition, as this Court has already recognized. ECF 53. Class members seek immediate release from Defendant’s custody because continued confinement at the Bristol Facilities in the midst of the COVID-19 global pandemic violates the Fifth Amendment and the Rehabilitation Act. ECF 1. On information and belief, the class members who have previously filed individual habeas petitions have not raised these claims. Most commonly, such individual petitions seek a procedurally adequate bond hearing according to the procedures announced in *Brito v. Barr*, 415 F. Supp. 3d 258 (D. Mass. 2019),²⁴ or a first bond hearing or procedurally adequate bond hearing under *Reid v. Donelan*, 390 F. Supp. 3d 201 (D. Mass. 2019).²⁵ These are “markedly different” claims from those at issue here. ECF 53.

²⁴ In *Brito*, Chief Judge Saris held that the Immigration Court had imposed an unconstitutional burden and standard of proof in bond hearings and that persons detained under 8 U.S.C. § 1226(a) who had received an improper bond hearing might receive a second one upon a showing of prejudice. 415 F.Supp.3d at 269.

²⁵ In *Reid*, Chief Judge Saris held that an individual detained under 8 U.S.C. § 1226(c) who could demonstrate via a habeas petition that their detention had become unreasonably prolonged would be eligible for consideration for bond by an Immigration Judge. 390 F. Supp. 3d at 219, 221-22, 228.

Second, no authority precludes this Court from reviewing the instant habeas petition while a class member has an individual open petition on file. This petition is filed pursuant to 28 U.S.C. § 2241 and the Constitution, Complaint, ECF 1 ¶ 44. Neither Rule 9 of the Federal Rules Governing Section 2254 and 2255 Habeas Petitions nor 28 U.S.C. § 2244(b)(3), (4), for instance, require an individual petitioner to secure permission from the First Circuit, because § 2244 does not apply to § 2241 petitions. *Barapind v. Reno*, 225 F.3d 1100, 1111 (9th Cir. 2000) (holding § 2244(b) does not apply to habeas petitions filed under § 2241); *Valona v. United States*, 138 F.3d 693, 694 (7th Cir. 1998) (same); *Zayas v. I.N.S.*, 311 F.3d 247, 255 (3rd Cir. 2002) (same).

Third, it is in the interests of judicial economy, fairness, and public safety for this Court to consider individuals under the instant review structure despite the existence of individual habeas petitions.

For the foregoing reasons, any individual petitions previously filed by class members present no obstacle to the Court's considering of their release in this matter.

CONCLUSION

Plaintiffs submit that for the foregoing reasons, as well as the specific reasons laid out in the attached individualized briefings, this Court should grant the release of all detainees on the April 8, 2020 list.

April 7, 2020
Respectfully Submitted,

 /s/ Oren Sellstrom
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CERTIFICATE OF SERVICE

I hereby certify that, on April 7, 2020 a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of this court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

Date: April 7, 2020

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