

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS**

Florian Crainic, *et al.*,

Petitioners-Plaintiffs,

v.

Chad Kolitwenzew, *et al.*,

Respondents-Defendants.

Case No.  
2:20-cv-2138-SEM-THS

**REMAINING PETITIONERS' REPLY MEMORANDUM IN SUPPORT OF  
AMENDED EMERGENCY JOINT PETITION FOR A WRIT OF HABEAS CORPUS<sup>1</sup>**

In its response to Petitioners' Amended Emergency Joint Habeas Petition, the United States admits many of the material facts that support a finding that Petitioners have preexisting medical conditions and, in some cases, are have advanced age, which place them at high risk of severe COVID-19. These facts show that Petitioners face a *one in seven* chance of death from COVID-19. Yet, the government opposes release by tarring all Petitioners with the same brush as criminals (even though two petitioners have no criminal records), dangers to their communities (even though most petitioners have no history of violent crime), flight risks (without evidence), and most of all, liars. *See Gov't Br.*, Dkt. 76 at 2.

In a separate brief, Petitioner Owolabi showed how the government's sweeping generalizations and accusations of misrepresentation do not withstand scrutiny with respect to

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<sup>1</sup> Pursuant to the Court's July 7, 2020 text order, this reply brief concerns the habeas claims of Petitioners Mario Arnaldo Gonzalez Torres, Orlando Rafael Chinchilla-Rivas, Juan Manuel Rositas-Martinez, and Florian Crainic. This morning, Petitioners' counsel was informed that Petitioner Yacub Sobhi Ibrahim was released from the Jerome Combs Detention Center for deportation to Brazil. Petitioners' counsel informed counsel for the United States on July 7, 2020 that Petitioner Ismail Misankov intends to seek leave of court to dismiss his habeas claim, and the parties are continuing to discuss whether the government will consent to such a motion.

him. *See* Dkt. 88 at 1-9. The same is true of the Petitioners who submit this brief. For example, the government contends that release of Mr. Gonzalez Torres will endanger the community, but he has no criminal history, much less a history of violence. Gov't Br. at 1–2. In another example, the government attacks Mr. Chinchilla-Rivas's credibility by contending that he cannot suffer from asthma because he has never been diagnosed for this condition by any medical professional. Gov't Br. at 54. But the record shows that Mr. Chinchilla-Rivas was treated for this condition in prior detention facilities, reported his asthma to staff of the Jerome Combs Detention Center (“JCDC”) during the intake process, and was diagnosed and prescribed an inhaler as recently as 2017.

Moreover, as addressed in Mr. Owolabi's reply brief, the record continues to show that conditions in the JCDC fail to protect Petitioners from COVID-19—a highly contagious and potentially lethal disease. Dkt. 88 at 10–15. JCDC still does not follow ICE guidelines to ensure that it has a written, comprehensive COVID-19 mitigation plan to ensure responsiveness across medical and correctional staff to the evolving COVID-19 threat and public health guidelines, including CDC recommendations. The facility fails to ensure that all ICE detainees—or at *least* those with underlying medical conditions—are single celled. The JCDC is unprepared for a COVID-19 outbreak because it lacks sufficient medical staff to monitor quarantined or isolated patients and to respond to patients who require hospitalization. Nor has the JCDC tested *any* asymptomatic detainees without known exposure pursuant to CDC guidance for settings with vulnerable people who are in close quarters for extended periods of time, despite CDC recommendations issued almost one month ago.

Nevertheless, based on this record, the government continues to proclaim that the JCDC's “measures have been successful, as there have been no confirmed cases of COVID-19 inside the

facility.” Gov’t Br. at 3. There is no reason to believe that the JCDC will escape the fate of other jails in communities hard hit by COVID-19, where confirmed cases of COVID-19 emerged after the filing of litigation. *See Malam v. Adducci*, No. 20-10829, 2020 WL 3512850, at \*6 (E.D. Mich. June 28, 2020) (describing how six detainees and staff at a Michigan jail tested positive for COVID-19 by June 17, 2020—six weeks after ICE represented to a federal court success in ensuring “zero confirmed cases of COVID-19” and “concrete plans in place to reduce the risk of exposure and spread”).

For all of these reasons, those set forth in Petitioners’ previous briefs (Dkt. 69, Dkt. 88), and those detailed below, the detentions of Petitioners Mario Arnaldo Gonzalez Torres, Orlando Rafael Chinchilla-Rivas, Juan Manuel Rositas-Martinez, and Florian Crainic do not further any legitimate, non-punitive government interest. This Court is thus well within its authority to release these individuals, subject to any conditions the Court may deem appropriate.

## **I. Mario Gonzalez Torres**

### **a. Mr. Gonzalez Torres is at risk of serious illness and death from COVID-19.**

Mario Gonzalez Torres is a 51-year-old man who has hypertension, elevated cholesterol, and a body-mass index (BMI) of 33.2. Gonzalez Torres Decl., Dkt. 57 ¶¶ 6–7, 9. His age, weight, and medical conditions put him at a heightened risk of serious illness or death from COVID-19.

Although Mr. Gonzalez Torres’s medical risk cannot be seriously questioned, the government nonetheless attempts to do so. As is its wont, the government has inaccurately accused Mr. Gonzalez Torres of “distort[ing] his medical record by omitting key facts and disregarding his own responsibilities for his conditions.” Gov’t. Br. at 48. For example, the government claims that Mr. Gonzalez Torres “does not disclose that his hypertension has been

controlled,” and that his blood pressure readings have been “within normal limits” of 110-128/60-80. *Id.* This is incorrect.

First, as the CDC has found, hypertension is a risk factor for severe outcomes from COVID-19, period.<sup>2</sup> Second, Mr. Gonzalez Torres has had at least six elevated or hypertensive blood pressure readings since he began taking medication for hypertension at the end of 2019, including three *in June 2020 alone*:

1/6/2020	125/73
3/31/2020	130/88
4/4/2020	128/88
6/9/2020	140/100
6/10/2020	140/80
6/23/2020	132/70

*See* Glenberg Decl. Ex. C at JCDC-USA1081, 1101, 1511–12; Second Supp. Glenberg Decl. Ex. M at JCDC-USA1523.<sup>3</sup>

Next, the government dismisses Mr. Gonzalez Torres’s elevated cholesterol as either “not serious” or his own fault. Gov’t. Br. at 49. Notably, Mr. Gonzalez Torres does not and need not rely primarily on his elevated cholesterol to establish his medical vulnerability; his age, obesity, and hypertension are per-se risk factors. That does not stop the government from falsely attacking his credibility on the issue, however. The medical records do not support PA Haggard’s claim that he twice “refused” medication. Third Haggard Decl., Dkt. 75-2 ¶ 12. Rather, on May 21, 2020, attending provider Nicholas Cannataro “counseled [Mr. Gonzalez Torres] on nutrition,

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<sup>2</sup> Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People of Any Age with Underlying Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited June 26, 2020), Supp. Choudhury Decl. Ex. 62, Dkt. 64-1 at 47.

<sup>3</sup> A “normal” blood pressure is 120/80. A blood pressure reading is above normal if the systolic (upper) number *or* the diastolic (lower) number is above normal. Ctrs. for Disease Control and Prevention, *Facts About Hypertension*, <https://www.cdc.gov/bloodpressure/facts.htm> (last visited July 10, 2020), attached as Ex. 75 to the Third Supp. Choudhury Decl.

exercise and weight loss” and noted that he would “like to try to reduce cholesterol with diet and exercise” and that “no medication [was prescribed] at the time.” Glenberg Decl. Ex. C at JCDC-USA1083. The record does not indicate that medication was recommended or even offered, much less a documented “refusal” of medication.<sup>4</sup> *Id.* Mr. Gonzalez Torres’s attempt to control his cholesterol with diet and exercise does not reflect a failure to take his condition seriously, quite the opposite. As the government acknowledges, he has lost five pounds since intake. Gov’t Br. at 49.

The government attempts to diminish the risk posed by Mr. Gonzalez Torres’s obesity by characterizing him as merely “overweight” and noting that he has been “counseled” about diet and exercise. Gov’t Br. at 49. But under CDC guidelines, any person with a BMI of 30 or above is obese and therefore at heightened risk for severe illness and death from COVID-19.<sup>5</sup> Even after losing a few pounds, Mr. Gonzalez Torres’ current weight of 193.5 lbs. yields a BMI of 33.2. *Id.*; Glenberg Decl. Ex. C at JCDC-USA1491.

**b. Mr. Gonzalez Torres's release will not endanger the community or undermine his appearance for deportation.**

Notwithstanding Mr. Gonzalez Torres’s clear medical vulnerabilities and this Court’s multiple prior rulings granting release to medically vulnerable detainees due to inadequate

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<sup>4</sup> Immigration and Customs Enforcement, *National Detention Standards 2019*, [https://www.ice.gov/doclib/detention-standards/2019/4\\_3.pdf](https://www.ice.gov/doclib/detention-standards/2019/4_3.pdf) (last visited July 10, 2020), attached as Ex. 76 to the Third Supp. Choudhury Decl. (indicating that “[i]f the detainee refuses to consent to treatment, medical staff will explain the medical risks to the detainee of declining treatment and make reasonable efforts to convince the detainee to voluntarily accept treatment in a language or manner that the detainee understands. Medical staff will document their treatment efforts and the refusal of treatment in the detainee’s medical record.”).

<sup>5</sup> Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People of Any Age with Underlying Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited June 26, 2020), Ex. 62 to the Supp. Choudhury Decl., Dkt. 64-1 at 48.

conditions at JCDC, the government baselessly accuses Mr. Gonzalez Torres of using his habeas petition to “re-litigate” his immigration case. Gov’t Br. at 46. But Mr. Gonzalez Torres has not and could not ask this Court to review the denial of his asylum petition or otherwise grant immigration relief or prevent his deportation. He is well aware that his asylum case was denied and that he has a final order of removal against him. Gonzalez Torres Decl. ¶ 15. He simply asks to spend the time between now and his removal in a place where he can protect himself from COVID-19. The government’s apparent outrage at this request is inexplicable.

The government also accuses Mr. Gonzalez Torres of refusing to assist with the removal process, Gov’t Br. at 46, ignoring the explanation he has already provided in his declaration. On June 1, 2020, a deportation officer approached Mr. Gonzalez Torres to serve him with a Notice to Alien of File Custody Review. Gonzalez Torres Decl. ¶ 41; Third Supp. Choudhury Decl. Ex. 74. The Deportation Officer spoke to Mr. Gonzalez Torres in English and handed him the form written in English. *Id.* No Spanish interpreter was available during this encounter, and Mr. Gonzalez Torres was not given a Spanish-translated form. *Id.* Since Mr. Gonzalez Torres does not speak English, he declined to sign the document because he had no idea what it meant. *Id.* He is “willing to cooperate with ICE in obtaining [his] travel documents, just as [he has] cooperated with ICE whenever [he is] provided an interpreter.” *Id.*

The government further claims that Mr. Gonzalez Torres should not be released because his asylum application was denied “in part” because of credibility concerns. Gov’t Br. at 46, 50. Mr. Gonzalez Torres, who knows nothing about the American legal system and who, again, does not speak English, navigated a credible fear interview, an asylum application, and two immigration hearings *pro se*. Gonzalez Torres Decl. ¶ 15; Declaration of Salazar, Dkt. 75-3 at ¶ 38. Unfortunately, these are not ideal circumstances under which to pursue a claim for asylum.

That he failed to persuade an Immigration Judge of his entitlement to asylum does not suggest that he cannot be trusted with some modicum of freedom in a safe place until he is removed.

Furthermore, by August 1, 2020, Mr. Gonzalez Torres will have exceeded 90 days in detention after his final order of removal. Gov't Br. at 46; Gonzalez Torres Decl. ¶ 15. In total, he will have been detained for almost 12 months. Gonzalez Torres Decl. ¶ 14. The Cuban border is closed until at least August 1, 2020 due to the COVID-19 crisis and ERO has not been able to finalize travel arrangements to deport Mr. Gonzalez Torres. Declaration of Salazar, Dkt. 75-3 ¶ 47. Although ERO has begun a third country repatriation process, the status and length of this process is unknown. Mr. Gonzalez Torres faces a potentially lengthy detention in conditions where he is at heightened risk of contracting potentially lethal COVID-19.

As the government has acknowledged, Mr. Gonzalez Torres has no criminal record. He is neither a danger to others nor a flight risk. The government's interest in his continued detention is minimal. His age, obesity, and hypertension place him at risk for serious illness or death from COVID-19. His continued detention violates his rights under the Due Process Clause of the Fifth Amendment.

## **II. Orlando Rafael Chinchilla-Rivas**

### **a. Mr. Chinchilla-Rivas is at risk of serious illness and death from COVID-19.**

Mr. Chinchilla-Rivas is 19 years old, obese, suffers from untreated asthma, and has a history of smoking. Chinchilla-Rivas Decl., Dkt. 58 ¶¶ 7–17 (untreated asthma); *id.* ¶ 20 (height and weight corresponding to BMI of 31.1); *id.* ¶ 21 (history of smoking). Dr. Venters finds, in his expert opinion, that Mr. Chinchilla-Rivas is “at high risk of experiencing severe illness or death if he were to become infected with COVID-19.” Supp. Venters. Decl., Dkt. 63 ¶ 21. The

government challenges each of the medical and health conditions placing Mr. Chinchilla-Rivas at risk. But their arguments are contradicted by the record and inconsistent with CDC guidelines.

First, there record contradicts the government's accusation that Mr. Chinchilla-Rivas is lying about his asthma and their bold claim that he "has *never* been diagnosed by a doctor or any medical professional with asthma." Gov't Br. at 53 (emphasis supplied). It is undisputed that Mr. Chinchilla-Rivas was prescribed an inhaler at the Clay County Jail and the Pulaski County Jail. Chinchilla-Rivas Decl., Dkt. 58 ¶ 11. It is also undisputed that he informed JCDC staff during the intake process that he suffers from asthma, a fact that is documented on his intake form. Chinchilla-Rivas Decl. ¶ 12; Glenberg Decl. Ex. D; Gov't Br. at 54.

Moreover, in 2017, Mr. Chinchilla-Rivas was prescribed an albuterol inhaler to treat his asthma by Dr. Daniel C. Linfesty. Supplemental Declaration of Malita Picasso ("Supp. Picasso Decl.") Ex. A. Dr. Linfesty directed Mr. Chinchilla-Rivas to "Inhale 2 puffs every 6 (six) hours as needed for wheezing." *Id.*

The fact that Mr. Chinchilla-Rivas reported his asthma and need for an inhaler upon arrival at JCDC should have triggered medical staff to provide him an immediate and thorough exam as to his need for an inhaler and to order one for him, consistent. There is no reasonable explanation for why JCDC medical staff did not take these steps. Instead, the government contends that only *after* his inclusion in this action, JCDC medical staff conducted a test, and that the test purportedly shows Mr. Chinchilla-Rivas "does not need an inhaler." Haggard Decl., Dkt. 75 ¶ 20. JCDC's lack of care for Mr. Chinchilla's asthma is contrary to CDC guidance advising



that people with moderate-to-severe asthma keep their condition under control during the pandemic by strictly observing their asthma treatment plan.<sup>6</sup>

Second, the government asks the Court to ignore the CDC's recent guidance recognizing that obesity—defined as having a Body Mass Index (BMI) of 30 or more—is a risk factor for severe illness and death from COVID-19.<sup>7</sup> The previous CDC guidance found a risk of severe illness and death from COVID-19 only for those suffering from morbid obesity, defined as having a BMI equal to or greater than 40.<sup>8</sup> But “[b]ased on a detailed review of available evidence to date,” the CDC concluded that “[t]here was consistent evidence (from multiple small studies or a strong association from a large study)” that obesity—not just morbid obesity—is a risk factor for severe COVID-19.<sup>9</sup>

This Court has, on several occasions, recognized that obesity increases the risk of severe outcomes from COVID-19, particularly when coupled with other medical and health conditions that increase the risk of severe disease. *See, e.g. United States v. Thompson*, 2020 WL 3470300 (C.D. Ill., June 25, 2020); *United States c. Spencer Harris*, 2020 WL 3483559 (C.D. Ill., June 25, 2020).

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<sup>6</sup> Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People with Moderate to Severe Asthma*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html> (last visited June 25, 2020), Ex. 61 to the Supp. Choudhury Decl., at Dkt. 64-1 at 38.

<sup>7</sup> Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People of Any Age with Underlying Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited June 26, 2020), Ex. 62 to the Supp. Choudhury Decl., Dkt. 64-1 at 48.

<sup>8</sup> Ctrs. For Disease Control and Prevention, *Coronavirus Disease 2019 (COVID019): People Who Are at Higher Risk*, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (last visited May 12, 2020), Ex. 21 to the Choudhury Decl., Dkt 7-2 at 74.

<sup>9</sup> Ctrs. for Disease Control and Prevention, CDC Newsroom, CDC Updates, Expands List of People at Risk of Severe COVID-19 Illness, <https://www.cdc.gov/media/releases/2020/p0625-update-expands-covid-19.html> (last visited June 26, 2020), Ex. 63 to the Supp. Choudhury Decl.

Third, the government provides no persuasive authority for its claim that in the case of Mr. Chinchilla-Rivas smoking does *not* increase the risk of severe COVID-19 because he is not permitted to currently smoke. Gov't Br. at 58. As discussed above, Mr. Chinchilla-Rivas is obese *and* has untreated asthma in addition to a history of cigarette smoking. *See* Chinchilla-Rivas Decl., Dkt. 58 ¶¶ 7–17, 20–21. The government does not point to evidence for the position that for an individual with these multiple conditions, the mere cessation of smoking eliminates the increased risk of severe COVID-19 attributable to an extensive history of cigarette smoking. *See* Govt. Br. at 56–58. Moreover, the government's argument that cigarette smoke may “reduce the potential for COVID-9 infection,” Gov't Br. at 56–58, relies on an article citing to an April 2020 study that supports the conclusion that an extensive history of smoking increases an individual's risk of serious illness and death from COVID-19. The researcher quoted in the article describes the study's findings as follows:

It is obviously inappropriate to suggest that anyone should initiate smoking or continue to smoke, due to the well-established smoking-related morbidities and the large number of toxic chemicals in cigarette smoke. Furthermore, it is unlikely that any other compound in tobacco cigarette smoke, besides nicotine, would be implicated to the potential benefits observed in smokers. Moreover, due to the adverse effects of smoking and the fact that many smokers would suffer from comorbidities (such as cardiovascular disease, COPD etc.), it is expected that the potential benefits of nicotine would be masked by the adverse effects of smoking.<sup>10</sup>

This Court also recently considered the CDC's recognition that “[l]ong-standing systemic health and social inequities have put some members of racial and ethnic minority groups at increased risk of getting COVID-19 or experiencing severe illness, regardless of age[, and] [a]mong some racial and ethnic minority groups, including . . . Hispanics and Latinos . . .

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<sup>10</sup> Konstantinos Farsalinos, *et. al.*, *Toxicol Rep.* 7: 658-663 (April 30, 2020), *Nicotine and SARS-CoV-2: COVID-19 may be a disease of the nicotinic cholinergic system*, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7192087/> (last visited July 10, 2020), attached as Ex. 77 to the Third Supp. Choudhury Decl.

evidence points to higher rates of hospitalization or death from COVID-19 than among non-Hispanic white persons.” *United States of America v. Spencer Harris*, No. 06-cr-30058, 2020 WL 3483559, at \*3 (C.D. Ill., June 26, 2020).

**b. Mr. Chinchilla-Rivas's release will not endanger the community or undermine his appearance in immigration proceedings or deportation.**

First, Mr. Chinchilla-Rivas’s continued detention is not rationally related to any government interest in keeping the public safe. The government repeatedly accuses Mr. Chinchilla-Rivas of deliberately seeking to mislead the Court for not describing the full details of his criminal history in his declaration. *See* Gov’t Br. 50–51. Mr. Chinchilla-Rivas is a 19-year old who accurately informed the court that he has one criminal conviction, and that the conviction was for a nonviolent misdemeanor of resisting law enforcement. Chinchilla-Rivas Decl., Dkt. 58 ¶¶ 47–48. Juvenile adjudications of delinquency are not criminal convictions, and juvenile records are sealed in recognition of the unique attributes of adolescence. Juveniles generally lack maturity and possess an “underdeveloped sense of responsibility[,]” which can lead them to act impulsively. *Roper v. Simmons*, 543 U.S. 551, 569-570 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). “The susceptibility of juveniles to immature and irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult.” *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)). Mr. Chinchilla-Rivas is aware that the government has his juvenile records and would use them in opposition to his claim for release.

The government further accuses Mr. Chinchilla-Rivas of withholding information about his October 2019 arrest for unlicensed possession of a handgun. Gov’t Br. at 51. It goes so far as to describe the type of weapons that Mr. Chinchilla was charged with possessing. Notably, the

government misleadingly fails to inform the Court that this unlicensed handgun charge, which they claimed was pending, was in fact *dismissed* on June 17, 2020. Supp. Picasso Decl. Ex. B.

Moreover, Mr. Chinchilla-Rivas's juvenile and criminal record should not bar his release in the face of serious harm and potentially death from COVID-19 in the JCDC. This Court has ordered the compassionate release of a medically vulnerable federal prisoner convicted of possession of a firearm in the furtherance of a federal drug trafficking crime, finding that his release did not pose a danger to the safety to the community. *United States v. Common*, No. 20-cv-345-SMY, 2020 WL 3412233 (C.D. Ill., June 22, 2020). Other courts have similarly ordered the release of immigration detainees with criminal histories that include firearm arrests and convictions. *See e.g., Galan-Reyes v. Acoff*, No. 20-cv-345-SMY, 2020 WL 2497133 (S.D. Ill., May 14, 2020)(ordering the release of an ICE detainee who had been arrested in 2019 for handgun possession); *Singh v. Barr*, No. 20-cv-02346-VKD, 2020 WL 2512410 (N.D. CA, May 15, 2020) (converting TRO into PI and permitting the continued release of an ICE detainee with multiple felony convictions including unlawful possession of firearm given the danger presented by the COVID-19 pandemic).

In light of the grave circumstances surrounding the COVID-19 pandemic, courts across the country have ordered the release of medically vulnerable ICE detainees, even where they have had extensive criminal histories that are comparable to, and even exceed, that of Mr. Chinchilla-Rivas in both scope and gravity. *See Jose B.R. v. Tsoukaris*, No. CV 20-3347 (MCA), 2020 WL 2744586, at \*1 (D.N.J. May 27, 2020) (burglary); *Robenson v. Decker*, No. CV 20-5141 (KM), 2020 WL 2611544, at \*2 (D.N.J. May 22, 2020) (driving while intoxicated, contempt of court, second-degree criminal contempt, second-degree harassment, second-degree strangulation, second-degree assault, and third-degree assault); *Medeiros v. Martin*, No. 20-178

WES, 2020 WL 2104897, at \*5 (D.R.I. May 1, 2020) (domestic violence, assault with a dangerous weapon, domestic assault, battery, assault to rape); *Pimentel-Estrada v. Barr*, No. C20-495 RSM-BAT, 2020 WL 2092430, at \*17 (W.D. Wash. Apr. 28, 2020) (possession of one pound of methamphetamine with intent to distribute); *Bent v. Barr*, No. 19-CV-06123-DMR, 2020 WL 1812850, at \*7 (N.D. Cal. Apr. 9, 2020) (voluntary manslaughter and attempted murder); *Castillo v. Barr*, No. CV 20-00605 TJH (AFMx), 2020 WL 1502864, at \*5 (C.D. Cal. Mar. 27, 2020) (driving under the influence).

Finally, any lingering concerns regarding Mr. Chinchilla-Rivas's release can be addressed through release conditions, which this Court and others have recognized in granting the release of medically vulnerable ICE detainees amidst the COVID-19 pandemic. *See e.g.*, *Ochoa v. Kolutwenzew*, 20-cv-2135, 2020 WL 2850706, at \*13 (C.D. Ill., June 2, 2020) (granting the release of a medically vulnerable ICE detainee with an extensive criminal history that included a domestic battery conviction, and noting that, "conditions of release can be put in place to ensure he is not a danger to the public."); *Ricardo H.R. v. Decker*, No. 20-5134, 2020 WL 3542306, at \*10 (D. NJ, June 30, 2020) ("Having considered Petitioner's individualized circumstances, including his criminal history, the Court is satisfied that there are reasonable conditions that can adequately protect the public and ensure his appearance for future immigration proceedings.").

Second, Mr. Chinchilla-Rivas's continued detention is not rationally related to any government interest in ensuring that he appears at immigration court proceedings and, if a final removal order is entered, his deportation. There is no evidence to suggest that he is a flight risk. Mr. Chinchilla-Rivas is currently in immigration proceedings, and it is entirely unclear how long

those proceedings will take. Gov't Br. at 53. Mr. Chinchilla-Rivas has been in ICE custody since October of 2019. Chinchilla-Rivas Decl., Dkt. 58 ¶ 6.

Even if there were a final order of removal, it is entirely uncertain when the government would be able to secure arrangements for Mr. Chinchilla-Rivas for travel back to Honduras, given extensive international travel restrictions amidst the ongoing COVID-19 pandemic. According to the U.S. Embassy in Honduras, the Honduran government has closed its land, air and sea borders until further notice.<sup>11</sup> While the U.S. and Honduran governments have made arrangement for four flights, the dates of these flights all but eliminate any possibility that the government will be able to order Mr. Chinchilla-Rivas removed, obtain travel documents for him, and transport him to the place of departure for any of the flights, given that the final scheduled flight departs on July 10, 2020. *Id.*

Respondents attack Mr. Chinchilla-Rivas and suggest he is a flight risk by describing him as a fugitive attempting to avoid removal between 2006 and 2013. Gov't Br. at 51. But what the government fails to explain is that Mr. Chinchilla-Rivas was *four years old* when he and his mother entered the United States, and *five years old* when he failed to appear at their immigration proceedings. *Id.* Because these events took place when Mr. Chinchilla-Rivas was a *child*, they do not support a finding that he will fail to appear in immigration court or for his deportation. Moreover, both Mr. Chinchilla-Rivas and his mother were ultimately granted U non-immigrant visas by USCIC in 2014, despite an initial order of removal. *Id.* 52.

Finally, the government fails to address, much less dispute, that Mr. Chinchilla-Rivas has strong community ties. Mr. Chinchilla-Rivas's mother and younger siblings, all of whom are

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<sup>11</sup> U.S. Embassy in Honduras, *COVID-19 Information*, available at <https://hn.usembassy.gov/covid-19-information/> (last visited July 10, 2020), attached as Ex. 78 to the Third Supp. Choudhury Decl.

lawful permanent residents or U.S. citizens, reside in Indianapolis, Indiana, where Mr. Chinchilla-Rivas will also reside if released. Chinchilla-Rivas Decl., Dkt. 58 ¶¶ 3–4. Moreover, any concerns about flight risk or danger to the public can be addressed through release conditions imposed by this Court and ICE. *See Herrera-Herrera*, No. 20-cv-2120, Dkt. 36 at 39 (C.D. Ill., May 19, 2020) (noting the “plethora” of alternatives to detention ICE may use to ensure present at deportation).

### **III. Juan Rositas-Martinez**

#### **a. Mr. Rositas-Martinez is at risk of serious illness and death from COVID-19.**

Juan Rositas-Martinez is a 56-year-old man with hypertension who is also obese and has a history of smoking. All of these factors place him at a heightened risk of serious illness or death from COVID-19. The government nonetheless brushes off these medical facts, suggesting that the only thing really wrong with him is an ongoing ophthalmology issue, Gov’t Br., Dkt. 76 at 77–78, and concluding that Mr. Rositas-Martinez “has no medical reason requiring his release.” *Id.* at 79.

First, the government dismisses the risk associated with Mr. Rositas-Martinez’s hypertension because his condition is “controlled by medication.” Gov’t Br., Dkt. 76 at 77–78. In fact the CDC guidance recognizing hypertension as a risk factor does not suggest that medication diminishes that risk. *See* Dkt. 64, Supp. Choudhury Decl. Ex. 62. As Dr. Venters has explained, “having a chronic health problem such as diabetes [or] hypertension . . . represents a high-risk status per CDC guidelines *even if the condition is under control.*” Venters Decl. ¶ 10 (emphasis in original). The government presents no evidence to the contrary.

Similarly, although the government acknowledges that Mr. Rositas-Martinez has an “elevated BMI” (38) and is therefore obese, it suggests that the Court disregard this established risk factor because he “has been counseled on at least two different appointments regarding

nutrition, exercise, and weight loss, with the JCDC monitoring his condition through lab work.” Gov’t Br., Dkt. 76 at 78. This is simply beside the point. The CDC has recognized that BMI over 30 increases the risk of severe outcomes from COVID-19, Dkt. 64, Supp. Choudhury Decl. Ex. 62. *See also* Supp. Venters Decl. ¶ 11 (discussing recent revisions to the CDC guidance concerning BMI). Counseling and monitoring does nothing to mitigate the risk Mr. Rositas-Martinez faces *right now*. Even if Mr. Rositas-Martinez were to take up the government’s suggestion that he diet his way to safety, he would have to lose at least 50 pounds to lower his BMI to below 30. Finally, Mr. Rositas-Martinez has a history of smoking, Rositas-Martinez’s Decl. ¶ 15, which also contributes to his medical vulnerability. As explained above, *see Section II, supra*, the articles submitted by petitioner do not show otherwise. Even without that factor, however, there can be no serious doubt that Mr. Rositas-Martinez’s hypertension and obesity place him at an elevated risk of serious injury or death from COVID-19.<sup>12</sup>

**b. Mr. Rositas-Martinez's release will not endanger the community or undermine his appearance in immigration proceedings or deportation.**

Without identifying any inaccuracies in his declaration, the government next suggests that Mr. Rositas-Martinez is misleading the Court about his criminal record. Gov’t Br., Dkt. 76 at 74–75. Mr. Rositas-Martinez explicitly addressed his 2015 arrest and 2017 conviction in his declaration, Rositas-Martinez Decl. ¶¶ 25–26, and his disinclination to recount every detail of this painful time in his life is not evidence of deception.<sup>13</sup> The government also baselessly

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<sup>12</sup> Since these factors firmly establish Mr. Rositas-Martinez’s medical vulnerability, the government deflects from them by attacking Mr. Rositas-Martinez having described a number of symptoms for which he has not sought treatment. Gov’t Br., Dkt. 76 at 78. These arguments require no response.

<sup>13</sup> Nor is the government’s lurid recitation of the allegations in the charging documents in Mr. Martinez’s case evidence of anything. Mr. Martinez pled guilty and these allegations were never tested at trial. Likewise, the government’s litany of prior arrests—based on incomplete entries on Mr. Rositas-Martinez’s rap sheet—is not evidence that he actually committed all of the charged



suggests that Mr. Rositas-Martinez has not sufficiently taken responsibility or “reflected” on his conduct. Gov’t Br., Dkt. 76 at 76. In fact, Mr. Rositas-Martinez turned himself in when he learned of the arrest warrant, plead guilty, and worked hard at his rehabilitation while he was incarcerated, accumulating 34 certificates for completing various educational, religious, and recovery programs. Rositas-Martinez’s Decl. ¶¶ 25–28. Rather than deeming him “dangerous,” the State of Illinois was prepared to release him on parole when he was detained by ICE. Rositas-Martinez’s Decl. ¶¶ 29–30.

Finally, the government has not explained why any legitimate concerns about Mr. Rositas-Martinez’s dangerousness cannot be mitigated with appropriate conditions of release, which he is prepared to accept. Rositas-Martinez Decl. ¶ 79. Whatever his past conduct, it does not merit detention in a facility where he is at serious risk of death or great bodily harm for an indefinite period while his immigration case is adjudicated. Accordingly, other courts have repeatedly ordered the release of medically vulnerable ICE detainees with substantial criminal records. *See, Tsoukaris*, 2020 WL 2744586, at \*1; *Robenson*, 2020 WL 2611544, at \*2; *Medeiros*, 2020 WL 2104897, at \*5; *Pimentel-Estrada*, 2020 WL 2092430, at \*17; *Bent v.*, 2020 WL 1812850, at \*7; *Castillo*, 2020 WL 1502864, at \*5. Mr. Rositas-Martinez’s extensive family ties, evidence of rehabilitation, and willingness to accept court imposed conditions, along with his clear vulnerability to serious illness or death from COVID-19, all weigh in favor of his release.

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conduct. The rap sheet reveals only one conviction prior to 2017 – for a 1989 misdemeanor in which the judge withheld final judgment, imposing a fine of \$65 and supervision. Salazar Decl., Dkt. 80, Ex. 3 at ¶ 144 (ICE-USA820).

#### IV. Florian Crainic

##### a. Mr. Crainic is at risk of serious illness and death from COVID-19.

In its ruling denying Mr. Crainic’s motion for a temporary restraining order, this Court concluded that it “[could not] determine his medical condition” based on the record at that stage of the case. TRO Order, Dkt. 52, at 27. The record at this stage of the case, however, establishes that Mr. Crainic is nearly 50 years old, suffers from diabetes mellitus type 2 and has a history of hypertension and current elevated blood pressure readings. Crainic Decl., Dkt. 2, ¶¶ 7, 10–12; Choudhury Decl. Ex. 40, Dkt. 7-4 at 126–27, 130–31, 137–41 (Crainic JCDC Medical Records); Second Supp. Glenberg Decl. Ex. L at JCDC-USA0795 (elevated blood pressure), 0812–13 (Type 2 diabetes mellitus), 1594 (elevated blood pressure), 1647 (identifying blood sugar levels as high as 217); Second Supp. Glenberg Decl. Ex. Q at P0031-32, P0034, P0038 (identifying blood pressure levels as high as 155/95).

As discussed earlier in this brief, the CDC recognizes both diabetes mellitus type 2 and hypertension to be risk factors for serious illness and death from COVID-19.<sup>14</sup> The CDC’s most recent discussion of diabetes mellitus type 2 is unambiguous: “Having type 2 diabetes increases your risk of severe illness from COVID-19.”<sup>15</sup> As noted in this Court’s earlier decisions, moreover, hypertension is a serious risk factor for COVID-19. *Herrera-Herrera v. Kolutwenzew*, No. 20-cv-2120-SEM-TSH, Dkt. 36, at 32–33, 40 (C.D. Ill. May 19, 2020). Moreover, Mr. Crainic has age-related risk, which is “an independent risk factor for severe illness” from

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<sup>14</sup> Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People of Any Age With Underlying Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited July 10, 2020), Dkt. 64, Supp. Choudhury Decl., at Ex. 62.

<sup>15</sup> *Id.*

COVID-19 that impacts even those younger than 65 years old.<sup>16</sup> He is nearly 50, which serves as a useful bench mark for the correctional population. Supp. Venters Decl., Dkt. 63, ¶ 25; Second Supp. Glenberg Decl. Ex. Q at P0001 (date of birth).

In its TRO Order, this Court mistakenly reasoned that Mr. Crainic’s “diabetes appears to be mild and capable of being controlled—which would make his risk of serious illness of [death] from COVID-19 complications significantly lower.” TRO Order at 27. Dr. Venters explains:

Notably, having a chronic health problem such as diabetes, hypertension, or [sic] represents a high-risk status per CDC guidelines even if the condition is under control. Consequently, excluding people from the high-risk category, simply because their conditions are not out of control or poorly controlled is inconsistent with CDC guidelines, represents a gross deviation from clinical standards of care, and increases the likelihood that vulnerable patients will become seriously ill and die from COVID-19.

Supp. Venters Decl. ¶ 25. Dr. Venters further clarifies that “[p]oorly controlled chronic health problems create *additional* risk for serious illness or death from COVID-19 in excess of the increased risk that *already* exists from simply having a chronic health problem.” *Id.* ¶ 25 n.4

The record further supports a finding that Mr. Crainic suffers from hypertension. Since his detention in the JCDC, his blood pressure has been elevated. His blood pressure was 137/88 on February 6, 2020 and 130/88 on June 11, 2020. Second Supp. Glenberg Decl. Ex. L at JCDC-USA0795 (February 6, 2020), 1594 (June 11, 2020). Both of these readings correspond with hypertension stage 1, which is indicated by a systolic measurement of between 130 and 139 or a diastolic measurement of 80 to 89, according to the American Heart Association.<sup>17</sup> Even though

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<sup>16</sup> Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): CDC Updates, Expands List of People at Risk for Severe COVID-19 Illness*, <https://www.cdc.gov/media/releases/2020/p0625-update-expands-covid-19.html> (last visited June 26, 2020), Dkt. 64, Supp. Choudhury Decl., at Ex. 63.

<sup>17</sup> Am. Heart Ass’n, *Understanding Blood Pressure Readings*, <https://www.heart.org/en/health-topics/high-blood-pressure/understanding-blood-pressure-readings> (last visited July 10, 2020), attached as Ex. 71 to the Third Supp. Choudhury Decl.

Mr. Crainic entered JCDC with a blood pressure reading corresponding to hypertension stage 1, he was not prescribed medication by JCDC medical staff and there is no indication that JCDC is currently monitoring his blood pressure or taking steps to regulate it. Fourth Supplemental Declaration of Florian Crainic (“Fourth Supp. Cranic Decl.”) ¶ 3.

This lack of treatment for hypertension is of particular concern because Mr. Crainic has a history of hypertension from 2012 to 2015. Fourth Supp. Cranic Decl. ¶¶ 1–3. During this time period, Mr. Crainic’s blood pressure ran as high as 155/95:

- 140/90 on September 16, 2012
- 145/90 on April 3, 2013
- 142/72 on September 12, 2014
- 155/95 on January 24, 2014

Supp. Glenberg Decl., at Ex. Q, at P0031–32, P0034, P0038.

Contrary to the government’s assertions, the record shows that Mr. Crainic did not intentionally “fail[] to monitor his own diabetes.” TRO Order at 32. JCDC staff only informed Mr. Crainic on or around June 6, 2020—*after* the commencement of this litigation and submission of his prior declarations in this case—that he is required to test his own blood sugar on a daily basis. Fourth Supp. Cranic Decl. ¶¶ 4–5. This comports with Mr. Owolabi’s experience. He too was not instructed by JCDC staff to monitor his own blood sugar levels until after he joined this litigation. Supp. Owolabi Decl., Dkt. 91 ¶ 5. Mr. Crainic made truthful statements to the Court when he explained that in April 2020, a corrections officer would call him to the desk to either draw his blood or to ask him to draw his own blood for the purpose of a blood sugar test. Third Supp. Cranic Decl., Dkt. 50-1 ¶ 2; Fourth Supp. Cranic Dec. ¶ 4. Contrary to Mr. Haggard’s assertion, Mr. Crainic did not know prior to June 6, 2020 that “[a] detainee . . . may ask at any time to test his blood sugar” using equipment available in the pod. Haggard Decl., Dkt. 51-1 ¶¶ 6, 10.

Regardless of who should have been monitoring Mr. Crainic's blood sugar, Mr. Crainic is a patient at high risk of severe COVID-19. It is "inconsistent with CDC guidelines, represents a gross deviation from clinical standards of care, and increases the likelihood that vulnerable patients will become seriously ill and die from COVID-19" to exclude him from the high-risk category. Supp Venters Decl. ¶ 10.

Finally, Mr. Crainic accurately reported his reduced right lung capacity. While the government argues that chest x-rays of Mr. Crainic taken in April 2020 purportedly shows that he does not have reduced right lung capacity, an x-ray would not necessarily pick up on this condition. JCDC has never performed any kind of pulmonary function test that would accurately diagnose a chronic reduction in lung capacity, such as spirometry, a lung volume test, a gas diffusion test, or an exercise stress test.<sup>18</sup>

**b. Mr. Crainic's release will not endanger the community or undermine his appearance in immigration proceedings or deportation.**

In denying Mr. Crainic's motion for a temporary restraining order, the Court found that Petitioner would be a "significant flight risk and a potential danger to the public." TRO Order at 36. The record contradicts both of these findings, and any concerns about flight risk or danger to the public can be addressed through release conditions imposed by this Court and ICE. *See Herrera-Herrera*, No. 20-cv-2120, Dkt. 36 at 39 (C.D. Ill. May 19, 2020) (noting the "plethora" of alternatives to detention ICE may use to ensure present at deportation).

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<sup>18</sup> *See* MedlinePlus, U.S. National Library of Medicine, *Lung Function Tests*, <https://medlineplus.gov/lab-tests/lung-function-tests/> (last visited July 10, 2020), as Ex. 72 to the Third Supp. Choudhury Decl.; Pulmonary function tests "measure lung volume, capacity, rates of flow, and gas exchange." Johns Hopkins Medicine, *Pulmonary Function Tests*, <https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/pulmonary-function-tests> (last visited July 10, 2020), attached as Ex. 73 to the Third Supp. Choudhury Decl.

First, Mr. Crainic’s continued detention is not rationally related to any government interest in keeping the public safe. There is no dispute that Mr. Crainic does not have a history of violence and that he has strong ties to his daughter and his church. Crainic Decl. ¶¶ 1–4. Mr. Crainic’s sole criminal offense—conspiracy to commit bank fraud—was serious, but the federal judge who sentenced him determined that supervised release was the appropriate. Crainic Decl. ¶ 25. Second, Mr. Crainic’s continued detention is not rationally related to any government interest in ensuring that he appears in immigration court and, if a final order of removal is issued, for his deportation flight. Mr. Crainic does not present a flight risk. The government relies heavily on a notice of a request to extradite Mr. Crainic due to an arrest warrant relating to a fraud conviction in Romania—a document filed just a few hours before the June 4, 2020 hearing on Mr. Crainic’s TRO motion. Dkt. 45–46. The government asserts Mr. Crainic has a “history of feeling” based on insinuation—not proof—that Mr. Crainic intentionally fled Romania for the United States in 2005 to evade the Romanian arrest warrant. Gov’t Br. at 34. But the government entirely fails to explain why release on conditions, such as electronic monitoring, would not ensure the protection of Mr. Crainic’s health and life while assuaging any concerns about Mr. Crainic’s appearance for court proceedings and deportation. *See id.*; *see also* Schriro Decl. ¶¶ 47–49 (detailing the extensive alternatives to detention that ICE has at its disposal).

Moreover, Mr. Crainic’s continued detention is of a potentially long duration. He recently appealed the denial of his asylum application to the Board of Immigration Appeals. It is not clear when a ruling on that appeal will be reached. Nor is it clear when, if a final order of removal is entered against him, he would be on a deportation flight to Romania due to the COVID-19 pandemic.

Finally, if granted release, Mr. Crainic will abide by all release conditions. Crainic Decl. ¶ 59. He also has a release plan that follows public health protocols. Mr. Crainic's daughter will pick him up in a Dodge Ram 1500, which allows for social distancing, and both he and his daughter will wear personal protective equipment. Supp. Crainic Decl. ¶ 12.

In light of the totality of the circumstances, including his significant and heightened risk of serious illness and death from COVID-19 due to advanced age, diabetes mellitus type 2, hypertension, and reduced right lung capacity, his lack of violence, and the availability of numerous alternatives to detention that would mitigate any risk of flight found by the Court, Mr. Crainic's continued detention in the JCDC is objectively unreasonable. *See Hardeman v. Curran*, 933 F.3d 816, 822–24 (7th Cir. 2019).

For the foregoing reasons, the petition for habeas corpus should be granted.

Dated: July 10, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that on July 10, 2020, she caused the foregoing REMAINING PETITIONERS' REPLY MEMORANDUM IN SUPPORT OF AMENDED EMERGENCY JOINT PETITION FOR A WRIT OF HABEAS CORPUS to be filed via the ECF system, which serves all counsel of record.

/s/ Nusrat J. Choudhury