

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANET MALAM

Petitioner- Plaintiff

v.

REBECCA ADDUCCI, in her official capacity
as Detroit District Director of U.S. Immigration
& Customs Enforcement; MATTHEW T.
ALBENCE, in his official capacity as Deputy
Director and Senior Official Performing the
Duties of the Director of the U.S. Immigration
& Customs Enforcement; CHAD WOLF, in his
official capacity as Acting Secretary, U.S.
Department of Homeland Security; WILLIAM
P. BARR, in his official capacity as Attorney
General, U.S. Department of Justice; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; HEIDI E. WASHINGTON,
in her capacity of Director of Michigan
Department of Corrections Calhoun
Correctional Facility

Respondents-Defendants.

CIVIL ACTION N. _____

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. INTRODUCTION

The novel coronavirus that causes COVID-19 has led to a global pandemic. In only a few months, 153,517 people worldwide have received confirmed diagnoses of COVID-19, and over 5,735 of those people have died. There is no vaccine against COVID-19, and there is no known cure. No one is immune. COVID-19 is most likely to cause serious illness and elevated risk of death for older adults and those with certain medical conditions or underlying disease. The COVID-19 virus can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage tissues in other vital organs including the heart and liver. Patients with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care.

Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity. The only known effective measures to reduce the risk for vulnerable people of serious illness or death caused by COVID-19 are social distancing and improved hygiene, which have led to unprecedented public health measures around the world. According to preliminary data from China, 20 percent of people in high risk categories who contracted COVID-19 there died.

People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships and nursing homes. People who are confined in prisons, jails, and detention centers will find it virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, even with the best-laid plans. For this reason, correctional public health experts have recommended the release from custody of people most vulnerable to COVID-19. Release protects the people with the greatest

vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation for all people held or working in a prison, jail, or detention center. Release of the most vulnerable people from custody also reduces the burden on the region's limited health care infrastructure, as it lessens the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.

Petitioner-Plaintiff (Plaintiff), Janet Malam, is particularly vulnerable to serious illness or death if infected by COVID-19 and is in civil detention by U.S. Immigration and Customs Enforcement (ICE) at the Calhoun County MI Correctional Center, in Michigan.

As detailed below, the danger posed by Plaintiff's detention during the current outbreak of COVID-19 is "so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk" and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

II. PARTIES

1. Plaintiff-Petitioner, Janet Mary Malam, was born in 1963, in Liverpool, United Kingdom. She is 56 years old. She was legally admitted to the United States around 1967 as a lawful permanent resident. She lives in Monroe, Michigan, but has been detained by Respondents since March 4, 2020 in conjunction with removal proceedings at the Detroit Immigration Court. She is current detained at the Calhoun County MI Correctional Center – 185 E Michigan Avenue, Battle Creek, MI, 49014.

2. Respondent-Defendant Rebecca Adducci (Adducci) is the Detroit District Director of ICE. The Director of the Detroit Field Office is responsible for carrying out ICE's immigration detention operations at Calhoun Correctional Facility. Ms. Adducci is a legal custodian of Plaintiff and is being sued in her official capacity.

3. Respondent-Defendant Matthew T. Albence (Albence) is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Defendant Albence is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of immigrants. Defendant Albence is a legal custodian of Plaintiff. He is sued in his official capacity.

4. Respondent-Defendant Chad Wolf (Wolf) is named in his official capacity as Acting Secretary of the U.S. Department of Homeland Security; He is responsible for the enforcement of the immigration laws and supervises Ms. Adduci at ICE Detroit Field Operations. Defendant Wolf is a legal custodian of Plaintiff.

5. Respondent-Defendant William P. Barr (Barr) is named in his official capacity as Attorney General of the United States and chief officer of the U.S. Department of Justice (“DOJ”). He is responsible for the administration of the immigration laws pursuant for 8 U.S.C. §1103, routinely does and transacts business the Eastern District of Michigan and is a legal custodian of Plaintiff.

6. Respondent-Defendant U.S. Immigration and Customs Enforcement (ICE) is a federal law enforcement agency within the Department of Homeland Security. ICE is responsible for the criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. Enforcement and Removal Operations (ERO), a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiff.

7. Respondent-Defendant Heidi E. Washington (Washington) is the Director of the Michigan Department of Corrections, which oversees the Calhoun County MI Correctional Center, where Plaintiff is detained. She responsible for overseeing the administration and

management of the Jail in MI Defendant Washington is a legal custodian of Plaintiff. She is sued in her official capacity.

III. JURISDICTION

8. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.

9. The Court has subject matter jurisdiction over this matter pursuant to Article I, §9, cl. 2 of the U.S. Constitution (Suspension Clause); the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution; 28 U.S.C. § 1331 (federal question); 28 U.S.C. §1651 (All Writs Act); and 28 U.S.C. §2241 (habeas corpus). In addition, the Court has jurisdiction to grant injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

10. The district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

IV. VENUE

11. Venue for Janet's claims properly lie in the United States District Court Eastern District of Michigan, pursuant to 28 U.S.C. § 2241(d) and 28 U.S.C. § 1391(a)(b)(c).

12. Venue lies in the United States District Court Eastern District of Michigan, the judicial district in which Plaintiff is domiciled. Venue is proper in the United States District Court Eastern District of Michigan under 28 U.S.C. § 1391, as venue is proper in any district in which a defendant resides or in which a substantial part of the events and omission giving rise to these claims occurred. The removal proceedings, arrest, detention results from Defendant's action in this District.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. Janet has no administrative remedies to exhaust through ICE or the Michigan Department of Corrections because no process exists to challenge the unconstitutional conditions of her detention or the inadequate medical care she is provided. The only process available to Janet is to pursue defenses to removal—a process governed by separate laws, see 8 U.S.C. § 1229a, controlled by the Department of Justice rather than DHS, see *id.*, and one that will take months, if not years, to complete – particularly in light of the current pandemic that is the basis of this action – while Janet continues to suffer severe and irreparable harm exacerbated by that pandemic while waiting for her pending removal proceedings.

14. Even if meaningful administrative remedies were promptly available, Janet, as a noncitizen challenging the lawfulness of her ongoing mandatory immigration detention, is not required to exhaust them under 8 U.S.C. § 2241. See *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009).

VI. STATEMENT OF FACTS

15. Janet was born in 1963, in Liverpool, United Kingdom. She entered the United States when she was 5 years old, in 1967, as a Lawful Permanent Resident. She is currently 56 years old. After she migrated to the United States with her parents and siblings, she built her life in the United States. (Exhibit 1).

16. Janet finished high school and worked for several years in a veterinary clinic until she was diagnosed [REDACTED]

17. The disease progressed quickly and in a matter of months she could not work. To a point that, on 2008, Janet was found totally disabled by the Social Security Administration. (Exhibit 2).

18. Janet also developed several other complications with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Plaintiff's medical records clearly show that she is currently under over [REDACTED]

19. ICE has been subjecting Janet to immigration detention in connection to removal proceedings pending in Detroit Immigration Court. The charge of removability relies in the allegations that Janet's has committed two or more crimes of moral turpitude. However, Janet has a strong claim for cancellation of removal under INA §240A(a), since she has been a Lawful Permanent Resident of the U.S. since 1967 and not committed an aggravated felony. Nonetheless, ICE and the Immigration Court has denied bond on the ground of mandatory detention. (Exhibit 4).

20. On Monday morning, March 23, 2020, State of Michigan Governor Whitmer issued an executive Order 2020-21, known as Shelter in Place, in response to the COVID-19 outbreak, urging all residents to stay home except for essential services, effective midnight of March 24, 2020. The President Trump just approved Michigan major disaster declaration to help the state fight the coronavirus pandemic.

21. Janet is an older adult with 56 years old who suffers from [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Consequently, she is at high risk for severe illness or death if he contracts COVID-19.

A. COVID-19 Poses Grave Risk of Harm, Including Serious Illness or Death, to Persons Over Age 50 and Those with Certain Medical Conditions

22. On March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 a “global pandemic.” The virus is highly contagious, and there is no vaccine or effective treatment at this time. On March 13, 2020, President Trump found and proclaimed that the COVID-19 outbreak in the United States constituted a national emergency, beginning March 1, 2020.¹ At the time, there were more than 118,000 cases in 114 countries, and 4,291 people had died.² Only fifteen days later, on March 24, there have been at least 372,757 cases identified in 160 countries and at least 16,231 people have died.³ The transmission of COVID-19 is expected to grow exponentially.

23. Center for Disease Control (CDC) guidance provides that people over the age of fifty and those with certain medical conditions face greater chances of serious illness or death from COVID-19. Certain underlying medical conditions increase the risk of serious COVID-19 disease for people of any age, including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including

¹ Proclamation 9994 of March 13, 2020, <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak> last checked on March 24, 2020

² <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> last checked March 24, 2020

³ Coronavirus disease 2019 (COVID-19) Situation Report- 64, March 24, 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200324-sitrep-64-covid-19.pdf?sfvrsn=703b2c40_2

sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and pregnancy. For people over the age of fifty, COVID-19 infection can have severe shortness of breath leading to death. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner. Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation for profound reconditioning, loss of digits, neurologic damage, and the loss of respiratory capacity.⁴

24. The only known effective measures to reduce the risk for vulnerable people from injury or death from COVID-19 are to prevent them from being infected in the first place, by social distancing, or remaining physically separated from known or potentially infected individuals, and by vigilant hygiene, including washing hands with soap and water.

25. Nationally, projections by the CDC indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the epidemic without effective public health intervention, with as many as 1.5 million deaths in the most severe projections.

B. Plaintiff is Particularly Vulnerable to Serious Illness or Death If Infected by COVID-19 and Should Be Released from Custody

26. On March 23, 2020, the CDC acknowledged that prison confinement conditions create a serious risk for the spread of COVID-19, even among a healthy population.⁵

⁴ CDC, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (Last checked March 24, 2020)

⁵ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, CENTER FOR DISEASE CONTROL (March 23, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/>

27. Michigan is one of the states with the largest COVID-19 outbreak in the United States and one of the largest outbreaks in the world with a more than 2,294 reported cases and at least 43 deaths reported.⁶

28. The COVID-19 outbreak in the state of Michigan resulted in unprecedented health measures to facilitate and enforce social distancing. On Monday morning, March 23, 2020, State of Michigan Governor Whitmer issued a Shelter in Place order in response to the COVID-19 outbreak, urging all residents to stay home except for essential services, suspending activities that are not necessary to sustain or protect life in the state, effective by midnight of March 24, 2020.⁷

29. Despite the Michigan Government efforts to contain the virus, prisoners and employees in the Michigan prison system are already testing positive to COVID-19.⁸ The Michigan Department of Corrections is currently trying to contain the virus in Michigan correctional facilities and with the employees that work in the correctional facilities, but several employees have tested positive for COVID-19 throughout several correctional facilities in the state, as well as at least 4 prisoners.⁹ ICE detainees are also testing positive for the virus nationwide.¹⁰ COVID-19 mass contagion inside the prisons, jails and detention centers is only a

⁶ See information updated daily : <https://www.michigan.gov/coronavirus/0,9753,7-406-98163-520743--,00.html> last checked on March 25, 2020.

⁷ MI Executive Order 2020-21 (COVID-19) Temporary Requirement https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html

⁸ See first prisoner to test positive in the state of Michigan was detained at the Kinross Correctional Facility <https://www.michiganradio.org/post/first-michigan-prisoner-tests-positive-covid-19>. See employee at Lapeer County prison tests positive for coronavirus <https://www.abc12.com/content/news/Officer-at-Lapeer-prison-tests-positive-for-coronavirus-569027481.html>

⁹ See two employee of MI correctional facilities tested positive to coronavirus: <https://www.uppermichiganssource.com/content/news/Michigan-Department-of-Corrections-addresses-prison-rumors-569064221.html>; See Michigan Correctional Center press release on March 17, 2020. https://www.michigan.gov/corrections/0,4551,7-119-1441_26969-522018--,00.html ; <https://www.clickondetroit.com/news/local/2020/03/25/michigan-officials-say-4-prisoners-1-parolee-have-tested-positive-for-coronavirus/>

¹⁰ See ICE detainee tests positive for COVID-19 at Bergen County Jail <https://www.ice.gov/news/releases/ice-detainee-tests-positive-covid-19-bergen-county-jail>

matter of time, not to say days, as experts has already warned the Government that prisons and jails are a self-contained environment for both the incarcerated and those who watch over then to get airborne infections- something that has already happened in China. ¹¹

30. More than 3,000 medical health professionals have urgently requested that Immigration and Customs Enforcement (“ICE”) immediately release immigration detainees in their custody, and two doctors who are medical experts for the Department of Homeland Security have sent a warning to Congress that keeping immigration detainees detained poses “an imminent risk to the health and safety of immigration detainees” and to the general public. ¹²

31. Despite the widespread warnings, shutdowns and community efforts to contain COVID-19, ICE and Calhoun County Jail, where Janet is detained, remain woefully unprepared and incapable of taking the necessary precautions to protect people in their custody, including Janet, against a life-threatening illness.

32. Once COVID-19 reaches Calhoun County Jail, if it has not already, it will be nearly impossible to contain the virus, because of the close proximity between people, rules and regulations that bar some basic disease prevention measures, and restrictions that prevent people from taking steps to protect themselves from infection, such as accessing hand sanitizer or gloves. Indeed, the primary recommended way to avoid the spread of the virus—social isolation—is effectively impossible in a detention setting.

¹¹ https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf; see also, Dr. Homer Venters, Four Ways to Protect Our Jails and Prisons from Coronavirus, The Hill, (Feb. 29, 2020), <https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus?rnd=158293279> (“When COVID-19 arrives in a community, it will show up in jails and prisons. This has already happened in China, which has a lower rate of incarceration than the U.S.”);

¹² Catherine E. Shoichet, *Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention*, CNN (Mar. 20, 2020), available at <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>. Last checked on March 25, 2020.

33. ICE’s failure to recognize this inevitability and take adequate precautions, including releasing people, demonstrates a total disregard for the constitutional rights, wellbeing, and humanity of immigrant detainees.

34. As a person of older age with several underlining medical conditions, Janet is particularly unsafe in the jail environment, and ICE’s inability to protect her and failure to release her amount to a life-threatening violation of her constitutional right to due process.

VII. LEGAL FRAMEWORK

A. Plaintiffs Have a Constitutional Right to Reasonable Safety in Custody

35. Whenever the government detains or incarcerates someone, it has an affirmative duty to provide conditions of reasonable health and safety. As the Supreme Court has explained, “when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As a result, the government must provide those in its custody with “food, clothing, shelter, medical care, and reasonable safety.” *Id.* at 200.

36. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment’s prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. The Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which is ‘reasonable safety.’” *Helling v. McKinney*, 509 U.S. at 33 (quoting *DeShaney*, 489 U.S. at 200). Accordingly, “[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.” *Id.* The Supreme Court has explicitly recognized that the risk

of contracting a communicable disease may constitute such an “unsafe, life-threatening condition” that threatens “reasonably safety.” *Id.*

37. These principles also apply in the context of immigration detention. Immigrant detainees, even those with prior criminal convictions, are civil detainees held pursuant to civil immigration laws. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

38. Because detained immigrants are civil detainees, their constitutional protections while in custody are derived from the Fifth Amendment, which provides protections even greater than the Eighth Amendment. The Eighth Amendment, which applies to persons convicted of criminal offenses, allows punishment as long as it is not cruel and unusual. But the Fifth Amendment’s due process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”).

39. The Ninth Circuit has applied this principle to make clear that that civil detainees, like Janet, is entitled to conditions of confinement that are superior to those of convicted prisoners and to those of criminal pretrial detainees. *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), cert. denied, 546 U.S. 820 (2005); see also *King v. Cnty. of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018) (finding presumption of punitive, and thus unconstitutional, treatment where conditions of confinement for civil detainees are similar to those faced by pre-trial criminal detainees).

40. Moreover, because civil detention is governed by the Fifth Amendment rather than the Eighth Amendment, the “deliberate indifference” standard required to establish a constitutional violation in the latter context does not apply to civil detainees like Plaintiffs. *Jones*, 393 F.3d at 934. Instead, a condition of confinement for a civil immigration detainee violates the Constitution “if it imposes some harm to the detainee that significantly exceeds or is

independent of the inherent discomforts of confinement and is not reasonably related to a legitimate governmental objective or is excessive in relation to the legitimate governmental objective.” *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016), *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017).

B. ICE Has the Authority to Release Detained Plaintiff

41. It is well within ICE’s authority to comply with these constitutional requirements by releasing people who are vulnerable to severe illness or death if they contract COVID-19. For example, the regulations governing ICE’s release authority state that serious medical conditions are a reason to parole an individual, as **“continued detention would not be appropriate”** in such cases. 8 C.F.R. § 212.5(b)(1).

42. ICE not only has the authority to exercise discretion to release individuals from custody but has routinely exercised this discretion to release particularly vulnerable detainees like Plaintiff. High level ICE officials corroborate this fact. As former Deputy Assistant Director for Custody Programs in ICE Enforcement and Removal Operations Andrew Lorenzen-Strait explains, “ICE has exercised and still exercises discretion for purposes of releasing individuals with serious medical conditions from detention.” In fact, “ICE exercises humanitarian parole authority all the time for serious medical reasons.”¹³

43. This exercise of discretion comes from a long line of agency directives explicitly instructing officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating against detention. ICE’s discretion applies regardless of the statutory basis for a noncitizen’s detention.

¹³ See Declaration at : https://www.aclu.org/sites/default/files/field_document/7_declaration_of_andrew_lorenzen-strait.pdf, last checked on March, 26, 2020

44. ICE press release shows its discretion to temporarily adjust its enforcement posture to ensure the welfare and safety of the general public as well as officers and agents in light of the ongoing COVID-19 pandemic responses.¹⁴

C. This Court Has Authority to Order Plaintiff’ Release to Vindicate her Fifth Amendment Rights, and Such Relief Is Appropriate Here

45. While the circumstances of this case are novel and emerging, the Court’s authority to order Janet’ release to ensure her constitutional rights are protected is not. “Federal courts possess whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights.” *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992). As a result, “[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011).

46. Courts have regularly exercised this authority to remedy constitutional violations caused by overcrowding. *Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), cert. denied, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

47. In fact, District Courts around the country are already exercising its authority to release immigrants from detention in this rapidly escalating public health crisis. (Exhibit 5).

48. The same principle applies here. As the constitutional principles and public health experts make clear, releasing Janet is the only viable remedy to ensure her safety from the threat to very debilitate health that COVID-19 poses. Janet is an older adult with very serious life

¹⁴ See Press Release at <https://www.ice.gov/news/releases/updated-ice-statement-covid-19> last checked on March, 26, 2020

threatening underlining medical conditions who is at particularly grave risk of severe illness or death if she contracts COVID-19.

49. In the face of this great threat, social distancing and hygiene measures is Janet's only defense against COVID-19. Those protective measures are exceedingly difficult, if not impossible, in the environment of an immigration detention center, where Janet shares toilets, sinks, phones, and showers, eats in communal spaces, and is in close contact with the many other detainees and officers. These conditions pose even greater risk of infectious spread, and as a result, Plaintiff faces unreasonable harm from continued detention.

VIII. CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Substantive and Procedural Due Process (Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement

50. Petitioner repeats and re-alleges paragraphs 1-49.

51. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it subjects civil detainee, like Janet to cruel treatment and conditions of confinement that amount to punishment or does not ensure Janet's safety and health.

52. Defendants' conditions of confinement subject Janet to heightened risk of contracting COVID-19, for which there is no vaccine, known treatment, or cure. Because of Janet's particular vulnerabilities, she risks serious illness and death if infected with COVID-19.

53. Defendants are subjecting Janet to a substantial risk of serious harm, in violation of Janet's rights under the Due Process Clause. Accordingly, Defendants are subjecting Janet to detention conditions that amount to punishment and that fail to ensure her safety and health.

64. Defendant's has been subjecting Janet to unreasonable and unjustifiable civil detention, requiring her mandatory detention without any possibility of being release on bond pending a final decision on her deportation or removal proceedings violating Janet's right to substantive and procedural due process.

For these reasons, Defendants' ongoing detention of Plaintiff violates the Due Process Clause.

IX. PRAYER FOR RELIEF

WHEREFORE Plaintiff requests that the Court grant the following relief:

a. Issue a Writ of Habeas Corpus and order Janet's immediate release, with appropriate precautionary public health measures, on the ground that her continued detention violates the Due Process Clause;

b. In the alternative, issue injunctive relief ordering Defendants to immediately release Janet, with appropriate precautionary public health measures, on the grounds that her continued detention violates the Due Process Clause;

c. Issue a declaration that Defendants' continued detention in civil immigration custody of individuals at increased risk for severe illness, including all people over fifty years old and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;

d. Award Plaintiff her costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Order Respondent's not to re-detain Janet pending the culmination of removal proceedings against him, including all administrative or judicial appeals;

f. Grant any other and further relief that this Court may deem fit and proper.

Dated: March 30, 2020

Respectfully submitted,

/s/ Andrew D. Stacer
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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2020 the foregoing Petition for Writ of Habeas Corpus and Complaint for Declarative and Injunctive Relief was served by certified mail with return receipt requested:

Rebecca Adducci, U.S. Immigration and Customs Enforcement, Detroit Field Office, Office of the General Counsel, U.S. Department of Homeland Security 2707 Martin Luther King Jr. Ave, Se, Mail Stop 0485, Washington, DC 20528-0485;

Matthew T. Albence, Deputy Director and Senior Officer Performing the Duties of the Director of ICE, Office of the General Counsel, U.S. Department of Homeland Security 2707 Martin Luther King Jr. Ave, Se, Mail Stop 0485, Washington, DC 20528-0485;

ICE, Office of the General Counsel, U.S. Department of Homeland Security 2707 Martin Luther King Jr. Ave, Se, Mail Stop 0485, Washington, DC 20528-0485;

ICE, Acting Secretary of ICE, Office of the General Counsel, U.S. Department of Homeland Security 2707 Martin Luther King Jr. Ave, Se, Mail Stop 0485, Washington, DC 20528-0485;

William P. Barr, Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001;

Heidi E. Washington, Director of Michigan Department of Corrections Calhoun Correctional Facility, Grandview Plaza, 206 E. Michigan Ave. P.O. Box 30003, Lansing, MI 48909;

Dated: March 31, 2020

Respectfully submitted,

/s/ Andrew D. Stacer

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/s/ Rosana M. Garbacik

Attorney for Plaintiff

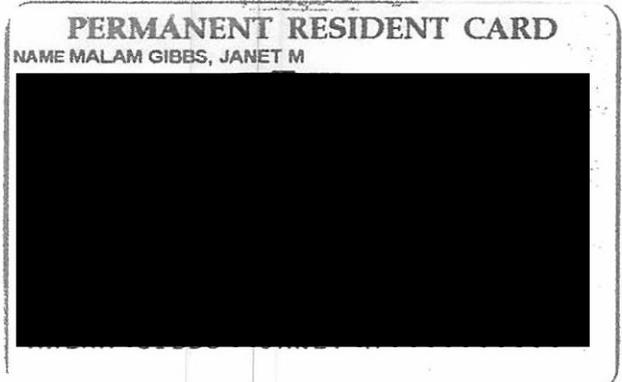
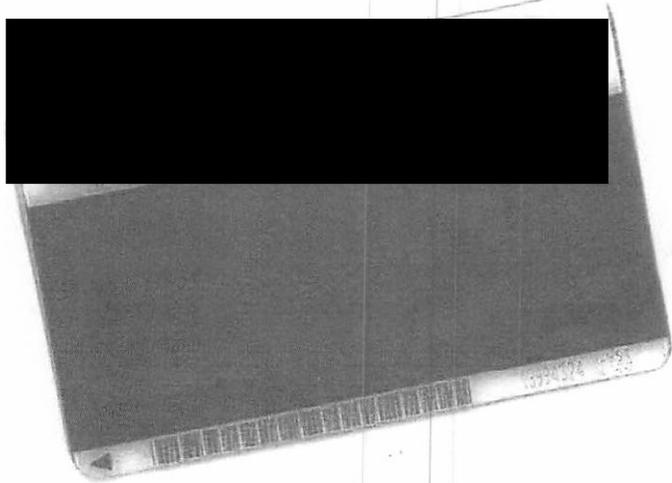
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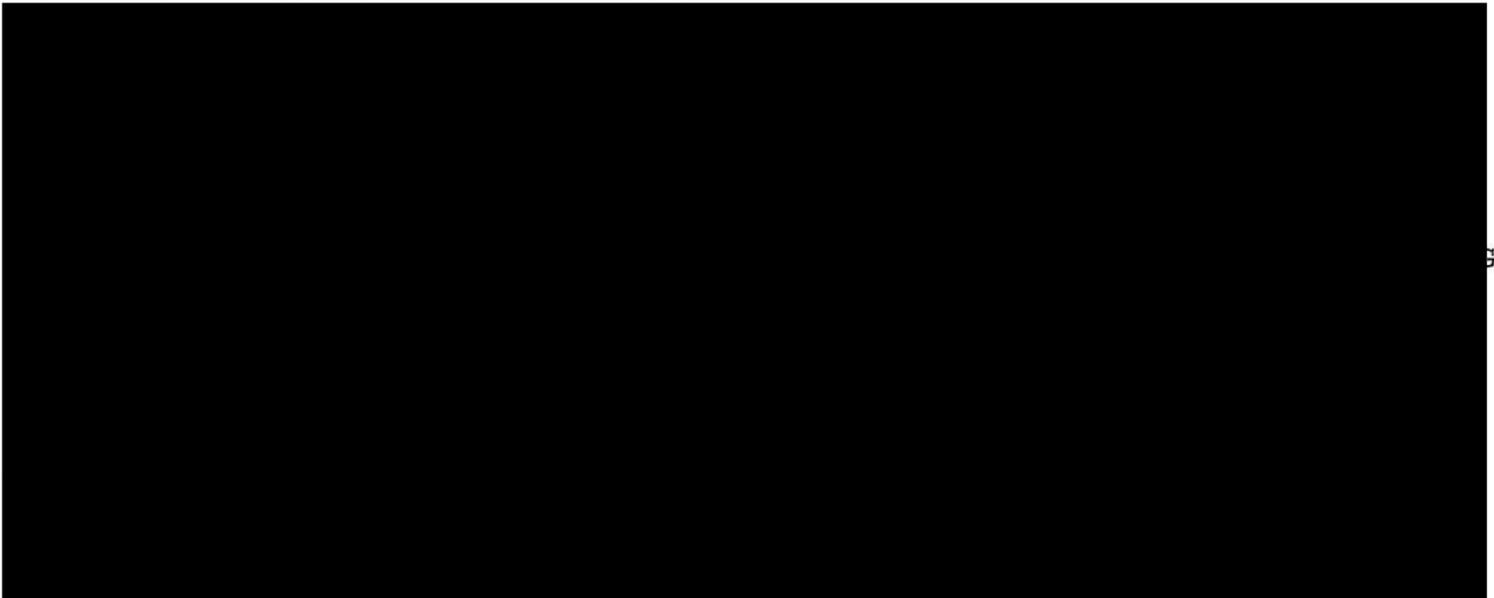
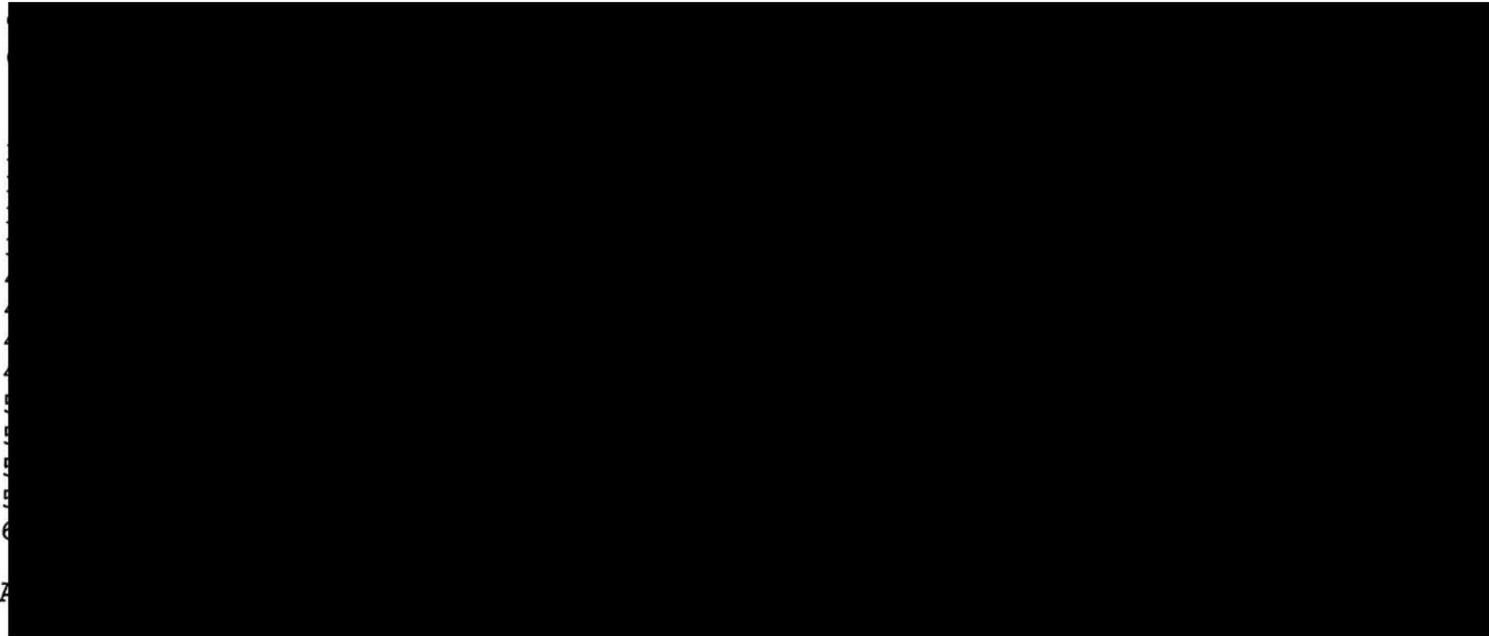
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ALERT CASE - SEE REMARKS

TRANSFER TO:

MCS TRANSFER TO: EARNINGS DATA DEIE
NH SSN: [REDACTED] NH NAME: [REDACTED]



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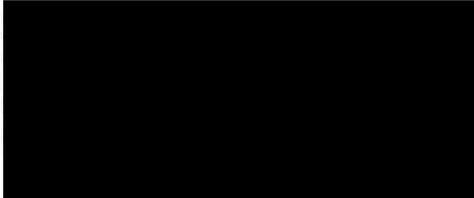
ALERT CASE - SEE REMARKS

MORE (Y/N): N

MCS TRANSFER TO: PRIMARY INSURANCE AMOUNT (PIA) CALCULATIONS DPIA



January 6, 2009



Dear Mrs. Gibbs:

Based on the information you provided a representative a few days ago as a result of your Social Security award, there are a variety of Social Security and disability related issues you need to be aware of:

- You will receive a retroactive lump sum payment of Social Security benefits that will require a tax planning decision from you.
- Your Social Security claim will be reviewed on a given date for continuing eligibility.
- Your Medicare entitlement date will be 5/2008. You will have to properly coordinate Medicare with any other health insurance you have and decide whether you wish to enroll in Medicare Part B with its monthly premium.
- If your Medicare entitlement date is retroactive and you have incurred medical expenses since that date, a retroactive Medicare claim may help you recoup out of pocket expenses you have paid.
- If you are enrolled in COBRA, you may be eligible for an extension of COBRA until your Medicare entitlement begins.
- If you have out of pocket prescription drug costs, you may be eligible for discount prescription drugs that will cost you less money.
- If you have life insurance with a waiver of premium provision, you may be able to exercise this provision and continue your life insurance premium-free.
- If you are currently receiving or may soon receive worker's compensation benefits, a properly structured settlement of your workers' compensation claim may be to your advantage.
- If you have a 401(k) and/or IRA plan, you may be eligible to make an early withdrawal from either of these plans and avoid the IRS 10% early withdrawal penalty. However, proper disability financial planning may make this unnecessary.

Hopefully, the above information will be helpful to you regarding the variety of issues that may arise due to your disability and Social Security award. Thank you for allowing us to help you.

Sincerely,


Jim Allsup
President/CEO of Allsup Inc.



January 6, 2009



Dear Mrs. Gibbs:

I am pleased we were able to obtain a favorable decision from Social Security on your claim for disability benefits. If you have not already, you should soon be receiving a notice from Social Security giving detailed information about your benefits. At the same time or even before you receive the written notice, your Social Security benefit should be direct deposited in your bank account.

As you may know, Social Security is not responsible for paying our fees, nor can they withhold our fees from the retroactive benefits. Social Security regulations require us to collect our fees directly from the claimants we represent. The fee agreement you signed with us indicates our fees will be 25% of the retroactive amount subject to the maximum established by the Social Security Administration. Our fees are based on all retroactive amounts received including any Supplemental Security Income, and spouse or dependent benefits if applicable. As soon as Social Security notifies us of the exact amount of the benefit, we will contact you regarding the fee.

Enclosed you will find an application for dependent benefits. Although we have already protected benefits on behalf of your child(ren) we ask that you take this application down to your local social security office, along with your child(ren)'s birth certificate(s). This will help to avoid any unnecessary delays in processing your claim.

We appreciate the opportunity to assist you with your Social Security claim. When you receive your retroactive benefit or if I can be of further assistance, please call our Customer Information Center at (866) 502-8372. Also, please be sure to read the other enclosed letter that contains additional information you need to be aware of.

Sincerely,

A handwritten signature in cursive script that reads 'Hal Paul'.

Hal Paul
Claimant Representative

HEP/smb

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
DETROIT, MICHIGAN

IN THE MATTER OF:

FILE: [REDACTED]

MALAM, Janet MARY

RESPONDENT

IN REMOVAL PROCEEDINGS

CUSTODY ORDER OF THE IMMIGRATION JUDGE

Request having been made for a change in the custody status of the respondent pursuant to 8 C.F.R. Part 236 and having considered the representations of the Department of Homeland Security and the respondent, it is HEREBY ORDERED that:

Respondent has withdrawn his/her request for a custody redetermination without prejudice.

ORDERED that the request for a change in custody status be denied as the Court has no jurisdiction:

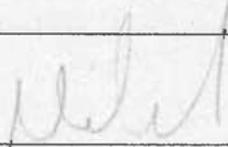
- Arriving Alien.
- Mandatory Detention under 236(c).
- Alien not in 240 removal proceedings
- Subject to a Final Order

ORDERED that the request for a change in custody status be denied:

- Danger
- Flight Risk

ORDERED that the request be granted and that respondent be released from custody under bond of \$ _____, and subject to the following conditions:

- No consumption of alcohol
- No driving without a valid driver's license
- Any conditions (including GPS monitoring) set by DHS at its discretion
- OTHER _____



 Mark J. Jebson
 Immigration Judge
 Date: 3/18/20

Appeal: APPEAL / WAIVED
Appeal Due By

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
 TO: ALIEN ALIEN c/o Custodial Officer Alien's ATT/REP DHS
 DATE: 3/18/2020 BY: COURT STAFF [Signature]
 Attachments: EOIR-33 EOIR-28 Legal Services List Other