

May 8, 2020

[ICE Supervisor]
ICE Supervisor and Deportation Officer
Email: [Email of ICE Supervisor]

URGENT REQUEST FOR RELEASE: Mr. D.O., A# 203-578-911

Dear Officer:

You and I spoke on the phone today about my client Mr. D.O.'s parole request. You stated that I should update the parole request package and send it to your attention so that the request could be expedited.

As I mentioned on the phone, our client has no criminal record, he does not pose a danger to the community, nor is he a flight risk. Our office submitted a parole request to ICE over a month ago and we have yet to receive a decision regarding why our client continues to remain in detention. We ask that you exercise your discretion to ensure the safety of our client - a Cuban art and music teacher who was persecuted and victimized on account of his sexual orientation - and release him immediately. He is married to an asylee who has work authorization, and if released, he would reunite with husband and live with his sister in law, who is a US citizen, and his brother in law, who is a legal permanent resident. Our client and his husband came to this country to get married and live free of prosecution as a gay couple.

As I stated on our call, our client is currently in ICE Custody at Folkston Processing Center. He arrived at Folkston on or around April 23, 2020, from Alamance County Detention Center in North Carolina. He was transferred to Folkston from North Carolina in violation of the Centers for Disease Control and Prevention (CDC) Guidelines entitled *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, which applies to ICE Detention facilities.¹ Further, the conditions of detention are not suitable or safe to protect him from the COVID-19 pandemic. Our client reports that there is one confirmed COVID-19 case in the dormitory next to his, that there are 63 other individuals with him in his dormitory, making social distancing impossible, that some of these individuals are exhibiting symptoms similar to those of COVID-19, that officers come in and out of his dormitory without masks and have stated that they are not required to wear masks. The unsafe and unhealthy conditions at Folkston increase the likelihood that Mr. D.O. could become infected with COVID-19. For these reasons, we respectfully request that you release Mr. D.O on his own recognizance for the remainder of his appeal.

¹ Available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> The guidance states, "Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding." *Id.* The decision to transfer Mr. D.O. did not fall into any of the above referenced exceptions and thus violates the CDC guidance.

Timeline of Parole Request for Mr. D.O.

- Our client was originally at Stewart Detention Center and had his individual hearing on March 2, 2020. He was pro se at this hearing; he did not have an attorney to represent him.
- Soon after his hearing, he was transferred to Alamance County Detention Center in North Carolina in early March.
- On March 11, 2020, the World Health Organization announced COVID-19 as a global pandemic.
- Our office agreed to represent Mr. D.O. on his appeal and submitted his Notice of Appeal on March 23, 2020 to the Board of Immigration Appeals (BIA). **Exhibit A.**
- ***Our office submitted a written parole request to ICE Officer John Mackie in North Carolina on March 30, 2020. Exhibit B.***
- On April 1, 2020, ICE Supervisor Beth Limrick in Atlanta emailed me and requested that I submit the parole request and supporting documents to her attention, which I did. **Exhibit C.**
- On April 2, 2020, ICE Officer Mackie called me and informed me that the adjudication of the parole request would be completed by ICE officials here in Atlanta. I informed him about email from Ms. Limrick.
- On April 7, 2020, I spoke to Ms. Limrick who stated she no longer works on parole requests and that she forwarded my request to ICE Supervisor Omar Perez. That same day I submitted our parole request and accompanying documents to Mr. Perez. *Id.*
- On April 8, 2020, I left a message for Mr. Perez and spoke with Ms. Limrick. She stated that I could expect an adjudication later that week or at the beginning of the following week.
- On April 14th and 15th, 2020, I emailed both Mr. Perez and Ms. Limrick, requesting a status update on our parole request. I also advised that other detainees from North Carolina had been transferred to Stewart Detention Center, in violation of CDC guidelines, and that they had arrived at Stewart with flu like symptoms. I further advised them that these detainees from North Carolina were placed in quarantine along with an individual who tested positive for COVID19. *Id.*
- On April 16, 2020, I spoke with Ms. Limrick who stated that final adjudication was to be made by ICE in North Carolina and that Officer John Mackie, whom I originally submitted the request to, would be working on the parole request. I therefore resubmitted our parole request to Officer Mackie informing him of what Ms. Limrick had told me.
- On April 20, 2020, I received a call from ICE Supervisor Sam Martin in North Carolina, who informed me that Ms. Limrick was mistaken and that no one in North Carolina would be adjudicating our parole request. I then emailed Ms. Limrick and Mr. Perez asking for the contact information of the ICE officer and/or supervisor making the adjudication as my client was set to be transferred to Georgia that very week. *Id.* Ms. Limrick responded to my email that same day, stating that she had “completed the first part of the parole and forwarded it for further consideration” and that she would “check on the status.” *Id.*

- On April 23, 2020, I spoke with Ms. Limrick and she stated that there is a two-step adjudication process for parole requests. She stated that she had made an adjudication and then had forwarded her recommendation to her supervisor, who made the final determination. She stated that our client had not been transferred yet. However, almost immediately after this phone call, I received an email from ICE Officer Mackie in North Carolina informing me that our client was in route to Folkston from North Carolina. *Id. I therefore submitted an elevated parole request to Acting Director of Atlanta Field Office, Thomas P. Giles. Exhibit P.*
- On April 27, 2020, I emailed Ms. Limrick and Mr. Perez asking for a status update on our parole request. **Exhibit C.**
- On April 29, 2020, I emailed Thomas Giles to follow up on the parole request I sent to his attention. **Exhibit Q.**
- On May 4, 2020, I left Ms. Limrick a voice message and emailed her and Mr. Perez asking for a status update on our parole request. I also informed them that there was a detainee who tested positive for COVID19 near our client. **Exhibit C.** I submitted a similar email to Mr. Giles, who responded stating that I should submit my parole request to the general Atlanta Outreach inbox. **Exhibit Q.**
- On Wednesday May 6, 2020, I sent another email to Ms. Limrick asking for a status update. **Exhibit C.**
- Yesterday May 7, 2020, my co-counsel Lynn Pearson emailed Officer Musante asking if he knew anything about our parole request.
- Today May 8, 2020, we received a voicemail from you stating that you have not received any information regarding our parole request. I spoke with Ms. Limrick today and she stated that the parole request has been with her supervisor Mr. Bretz for the last several weeks.

As you can see from this detailed timeline, we have been waiting for over a month on an adjudication for our request and have been sent back and forth to various individuals in different offices and states within your agency. Each day that our client remains in detention, he is at greater risk of getting sick. We appreciate you accepting this parole request and expediting this request. Our client is a strong candidate for parole for the reasons set forth below.

1. Mr. D.O. is Not a Danger to the Community or a Threat to National Security.

Mr. D.O. poses no danger to the community. He has no criminal history. To the contrary, he was a well-respected teacher in Cuba and was wrongfully terminated because of nothing other than his sexual orientation and opposition to the Communist government. **Exhibit D.** Mr. D.O. fled to the United States, along with his partner of two years, Jorge Luis Garcia Curbelo, to seek asylum because of the harassment, threats, and sexual assault by government actors that they suffered in Cuba based on their sexual orientation and political views.² Thus, Mr. D.O. poses no threat to national security because his entrance and subsequent detention is exclusively for civil purposes.

² A person must physically be present in the U.S. in order to apply for asylum. *See* INA § 208(a)(1) (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...) irrespective of such alien’s status, may apply for asylum...” (emphasis added); 1951 Convention Relating to the Status of Refugees, Article 33: (“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened...”; 189 UNTS 137/ [1954] ATS 5; Universal Declaration of Human Rights, Article 14 (“Everyone has the right to seek and to enjoy in other countries asylum from

Upon their arrival and detention in the United States, Mr. D.O. and his partner Mr. Garcia Curbelo were separated and both timely applied for asylum. Mr. Garcia Curbelo was granted asylum in August 2019 in York, Pennsylvania. **Exhibit E.** Upon his release, Mr. Garcia Curbelo came to see Mr. D.O. in Folkston, Georgia where they were married. **Exhibit F.** Mr. Garcia Curbelo that he has been living with his sister and brother-in-law since he was released and “[t]here is room for Danilo, and they will provide for him the same as they have been providing for me.” *Id.*

Mr. D.O. ’s father in law, Jorge Garcia Montero, a Lawful Permanent Resident in the United States, praises him as “a person of integrity, of good heart, responsible, and without vices and would never be a public burden, works hard, and carries themselves in a polite, respectable manner.” **Exhibit G.** Mr. D.O. ’s cousin, Arlet Perez., a Lawful Permanent Resident in the United States, writes that he “has always shown values like honesty, diligence, sincerity, humility, respect, perseverance, and grit. He has always worked very hard to get ahead in life and to help those around him live a little better. . . .” **Exhibit H.**

Based on the foregoing, Mr. D.O. is not a threat to the community or national security. He is a gay man who lawfully sought refuge in the United States and who simply wants to be reunited with his husband and family as he awaits his asylum appeal.

2. Mr. D.O. Is Not a Flight Risk, Has A Fixed Address, and Strong Family Ties in St. Joseph, Missouri.

Mr. D.O. is not a flight risk. If released, Mr. D.O. would reunite with his husband, Mr. Garcia Curbelo, who won asylum in York, Pennsylvania in August 2019. Mr. Garcia Curbelo will be eligible to become a Lawful Permanent Resident in August 2020, a year from his asylum grant). As an asylee, Mr. Garcia Curbelo has work authorization and is currently working at Triumph Foods. **Exhibit I.** He and his family are therefore able to financially support Mr. D.O.

If released, Mr. D.O. would join his husband and reside with his husband’s sister, Grisel Yohamna Garcia Curbelo, a U.S. citizen, and her husband, Mr. Luis Enrique Brito Gonzalez, a U.S. Lawful Permanent Resident at **1522 Poplar Street, Saint Joseph, Missouri 64503.** **Exhibit J.** Mr. D.O.- was good friends with Mr. Brito Gonzalez even before he met Jorge Luis. Mrs. Garcia Curbelo and Mr. Brito Gonzalez are thrilled her brother won his asylum case and was released to them and they would welcome Mr. D.O. to stay with them for as long as necessary. *Id.* They are committed to assisting Mr. D.O. as awaits his asylum appeal decision, including offering him a home, covering his expenses, and ensuring his presence at all ICE appointments and any future court proceedings. *Id.*

Mr. D.O. also has the support of his husband’s father, Jorge Garcia Montero, and mother, Grisel Curbelo Bruzon, in Saint Joseph, Missouri. Both are Lawful Permanent Residents in the United States, they considered Mr. D.O. to be their son-in-law even before the couple was officially married. His partner’s mother wrote:

He is kind-hearted and a devoted partner to my son. We would be happy to have him join us and our daughter in St. Joseph, and we would make sure that he does everything

persecution”) UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III); American Declaration on the Rights and Duties of Man, Article XXCII (“Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.”); *see also* Inter-American Commission on Human Rights (IACHR), *American Declaration of the Rights and Duties of Man*, 2 May 1948. Although the American Declaration on the Rights and Duties of Man is not technically a legally binding agreement, the Inter-American Commission on Human Rights considers the obligations set forth to be binding on OAS member states.

necessary to pursue relief from removal in the United States, including help connecting with legal assistance, transportation, and moral support. He is family to us, and we want nothing more than to have him and my son Jorge released from detention and allowed to build a stable life here with us.

Exhibit K.

Mr. D.O. also has additional family in the United States who are willing to support him while he prepares for his asylum appeal, including an LPR cousin, Yahirys., who writes:

[N]o matter what happens, Danilo would never be alone in this country. We are a very close family and we love Danilo. He is a wonderful person and has always worked very hard to help his family. My family and me would be more than happy to take care of him under any circumstances.

Exhibit L.

Another cousin, Arlet Perez D.O., an LPR living in Kentucky, writes:

If Danilo is released on bond, I will help support him any way I can. As an immigrant myself, I will help advise him on the process and make sure he does what is required. He and his partner will have all the support they need to pursue their asylum claims and start a stable life here.

Exhibit H.

This strong family support confirms that Mr. D.O. would not be a flight risk.

3. Mr. D.O. has strong community ties near his family in Missouri

In addition to his family members, Mr. D.O. and his husband have also been in contact with PFLAG, a non-profit organization in St. Joseph that supports, educates, and advocates for LGBTQ people in their community, provided a letter in support of Mr. D.O. They write that they are “aware that Mr. Danilo D.O. , a gay Cuban man is trying to escape persecution and severe discrimination in Cuba” and that they will meet with him if he is released and “introduce him to our many members” and “offer support in every way possible.” **Exhibit M.** They add that they can share a Resource List with him with referrals to “LGBTQ+ friendly businesses, therapists and counselors, medical care professionals and much more.”

4. Mr. D.O.- is eligible for relief from removal.

Numerous errors at Mr. D.O.-’s asylum hearing present a strong case on appeal and a likelihood that his case will be remanded for further proceedings. Thus, his eligibility for asylum and withholding of removal weigh against a finding of flight risk. He filed an asylum application *pro se* within the one-year deadline and represented himself *pro se* at his individual hearing. There were several due process and procedural errors that occurred at the hearing including the fact that that evidence he sent to the judge was not entered into the record and the fact that the interpreter failed to adequately interpret all that was said by the judge and continually interrupted Mr. D.O.-’s testimony.

Like his husband who was already granted asylum, Mr. D.O.- has suffered past persecution and risks future harm on account of being homosexual and refusing to support Cuba's communist government. The Board of Immigration Appeals established that homosexuality is an "immutable" characteristic and established that Cuban homosexuals constitute a "particular social group" for asylum consideration in *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822-23 (BIA 1990). Following the *Toboso-Alfonso* opinion, the Attorney General designated the decision to be "precedent in all proceedings involving the same issue or issues." Attorney General Order No. 1895 (June 19, 1994).

Both the Inter-American Commission on Human Rights (IACHR) and the U.S. State Department recognize the human rights abuses against members of the LGBTQ community in Cuba and have written extensively about the persecution LGBTQ individuals like Mr. D.O.- face in Cuba.³ Mr. D.O.-'s eligibility for asylum and his likelihood of success in asylum appeal weighs against any argument that he is a flight risk.

5. COVID-19 and Unsanitary Conditions in Immigration Detention

The COVID-19 pandemic places Mr. D.O. at a grave health risk while detained.

A number of detainees and employees at the detention centers here in Georgia have tested positive for COVID-19 and it is only a matter of time before other detainees get infected.⁴ On March 11, 2020, the World Health Organization declared the spread of the novel COVID-19 virus (aka "coronavirus") to be a global pandemic. As of March 22, at least 316,692 people worldwide have confirmed diagnoses, including over 27,004 people in the United States.⁵ Over 13,598 people have died as a result of COVID-19 worldwide, including at least 201 people in the United States.⁶ According to Dr. Homer Venters, former chief medical officer of the New York City jail system, "[i]t's just a matter of time before we see cases [of coronavirus] inside jails and prison."⁷ Once COVID-19 is introduced to a jail or detention center, these environments "provide prime breeding ground for the spread of infectious diseases." *Id.* It is impossible for detained persons to follow CDC recommendations to avoid crowds, especially in poorly ventilated spaces. Dr. Anne Spaulding, an expert on jail health systems, explains, "[i]ncarcerated persons sleep in close quarters, eat together, recreate in small spaces. Staff are close by. Both those incarcerated and those who watch over them are at risk for airborne infections."⁸

³ Inter-American Commission on Human Rights, *Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015)*, available at <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>.

⁴ See <https://www.ajc.com/news/breaking-news/breaking-ice-detainees-georgia-test-positive-for-novel-coronavirus/hRLNKgGvtTWjKHkOvk8gRP/>.

⁵ See Johns Hopkins University & Medicine, *Coronavirus COVID-19 Global Cases*, <https://coronavirus.jhu.edu/map.html> (last accessed Mar. 22, 2020) (Johns Hopkins); Center for Disease Control, *Coronavirus Disease 2019 (COVID-19), Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last accessed Mar. 22, 2020) (CDC).

⁶ See Johns Hopkins; CDC. The transmission of COVID-19 is expected to grow exponentially.

⁷ NBC News, *Coronavirus could 'wreak havoc' on U.S. jails, experts warn*. <https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586>

⁸ See Dr. Anne C. Spaulding, *Coronavirus COVID-19 and the Correctional Facility*.

In addition to the congregant environment inherent to jails and detention centers, Dr. Venters also recently noted that “[j]ails and prisons are often dirty and have really very little in the way of infection control.”⁹ In many jails, prison, and detention centers there are a small number of bathrooms for many detained people, broken sinks, and no access to soap. *Id.* Indeed, advocates across the country have documented the inability of detained noncitizens to regularly access free sanitation products such as soap.

Immigration detention facilities and jails lack adequate medical infrastructure to prevent the spread of COVID-19 and treat those who are most vulnerable to illness. These concerns led over 3,000 medical professionals to call for the release of people from detention. Exhibit E. Further, several courts have issued decisions finding that immigrant detention during this pandemic is an undue health risk. *Xochihua-James v. Barr*, No. 18-71460 (9th Cir. Mar. 23, 2020) (unpublished) (*sua sponte* releasing detainee from immigration detention “[I]n light of the rapidly escalating public health crisis”); *Coronel v. Decker*, 20-cv-2472-AJN, Dkt. No. 26 (Mar. 27, 2020) (granting TRO and releasing from immigration detention facility in light of COVID-19); *Basank v. Decker*, 20-cv-2518 (S.D.N.Y. Mar. 26, 2020) (same).

a. Conditions at Folkston Processing Center

Mr. D.O. has been quite concerned for his health during this pandemic. As you know, already one detainee at Folkston has tested positive for COVID-19. Our client is in the dormitory next to this detainee and he is co-habiting with 63 other individuals, many of whom are experiencing COVID-19 like symptoms. Because of the close proximity to other individuals, our client is not able to maintain 6 feet of distance between himself and the other detainees. He does not have a mask, hand sanitizer, gloves, wipes, or other items to keep the surrounding area clean and sanitary. He reports officers coming in and out of his dormitory without masks. When detainees inquire as to why these officers are not wearing masks, my client states that the officers inform them that wearing masks is optional and not required.

b. Transit between Alamance County and Folkston Processing Center

Our client reports that he travelled along with others from North Carolina to Georgia for 8 to 10 hours on April 23, 2020. They were provided food but did not have hand sanitizer or an opportunity to wash their hands before eating. He was in a van with immigrants who had come from the outside and had not been in detention with him. He was concerned about their potential exposure to COVID19.

c. Conditions at Alamance County Detention Center

While at Alamance County Detention Center, our client slept in a room with 8 other individuals, thus making social distancing impossible. He shares a bathroom with 15 other individuals, and they are not provided with hand sanitizer, gloves, face masks, or wipes. I have also been informed by Alamance personnel that at least one immigrant detainee was released from Alamance County Detention Center and that more non-immigrant detainees have been released due to health concerns during this pandemic. Last week Mr. D.O. ’s husband received a call from three detainees who were

⁹ See Keri Blakinger and Beth Schwartzapfel, *When Purell Is Contraband, How Do You Contain Coronavirus?* Available at <https://www.nccdglobal.org/newsroom/news-of-interest/when-purell-contraband-how-do-you-contain-coronavirus>.

with Mr. D.O. in North Carolina and were transferred to Stewart and arrived with flu like symptoms. They were placed in quarantine along with a detainee who has already tested positive for COVID19.

d. Conditions at Georgia Detention Facilities

Immigrants at immigration detention centers in Georgia are routinely subjected to unsanitary living conditions such as overcrowding, moldy shower heads and urinals, lack of access to clean drinking water, and poor food quality.¹⁰ In addition, immigrants have reported lack of medical care. They reportedly have to wait weeks before seeing a medical professional, and once they do, they are often just prescribed over the counter painkillers.¹¹ The combination of unhygienic conditions and lack of access to sufficient medical facilities places unique risks of widespread exposure that will further exacerbate already inhumane conditions.

In addition, detention centers in Georgia like Stewart and Folkston are located far from appropriate healthcare facilities that could treat patients with COVID-19. According to Dr. Amy Zeidan of Emory University, the public health crisis is exacerbated because “Detention centers in Georgia are geographically isolated from healthcare facilities that can safely care for a large number of critically ill patients. For example, Stewart Detention facility is at least one hour away from a healthcare facility with an ICU and necessary resources. While there are high quality critical access and regional hospitals located within 30 miles from Stewart and Irwin detention facilities in GA, these hospitals likely do not have the capacity to care for a large influx of patients requiring intensive care for sick COVID-19 patients.” This means that it will be even harder for immigrants detained in immigration detention centers in Georgia to receive proper care in response to a global pandemic.

e. As a Gay Detainee, Mr. D.O. is at Risk of Sexual Assault in Detention

While at Stewart, another detainee woke up our client at night by touching his shoulder and tried to touch his private area. This same detainee masturbated in front of him and would stare at Mr. D.O. in the showers. While in Folkston and Stewart, my client heard homophobic threats such as all gay people should be killed. Verbal harassment “function[s] to condone and encourage physical and sexual abuse” from others.¹² According to a recent Center for American Progress (“CAP”) study based on information obtained from ICE, “LGBT people in ICE custody are 97 times more likely to be sexually victimized than non-LGBT people in detention.”¹³

He was so terrified about being abused that he did not talk about his sexual orientation to anyone at Alamance County Detention Center. Since returning to Folkston, our client has not shared his sexual orientation and fears others finding out.

¹⁰ https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf.

¹¹ Id.

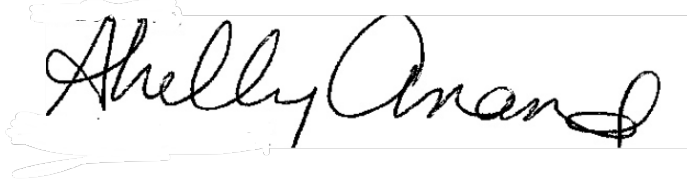
¹² International Detention Coalition, *LGBTI Persons in Immigration Detention*, Working Paper, 11 (June 2016), <https://www.refworld.org/pdfid/57d021d84.pdf>.

¹³ Sharita Gruberg, *Ice’s Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse*, Center for American Progress (May 30, 2018), <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse>.

Based on the foregoing, we respectfully request that you release Mr. D.O. from detention so that he can be reunited with his husband and family and await his appeal. His family and the undersigned counsel will ensure he attends all ICE appointments and other matters.

I am happy to discuss this letter and its attachments with you. You can reach me at 770-335-9922 or by email at ShellyA@tahirih.org.

Sincerely,

A handwritten signature in black ink, reading "Shelly C. Anand", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "S".

Shelly C. Anand
Supervising Staff Attorney

Enclosures