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ALFREDO ESPARZA SR.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
(HONORABLE B. LYNN WINMILL)

UNITED STATES OF AMERICA,)	1:07-cr-294-BLW
)	
Plaintiff,)	TIME-SENSITIVE SUPPLEMENTAL
)	BRIEF IN SUPPORT OF
vs.)	COMPASSIONATE RELEASE
)	
ALFREDO ESPARZA, SR.,)	
)	
Defendant.)	
_____)	

*“It is . . . an **urgent priority** in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.” ~ Dr. Chris Beyrer, epidemiologist & infectious disease specialist, Johns Hopkins University (Mar. 16, 2020).*

*“We need to take the unprecedented step **TODAY** of providing urgent release to everyone in the jails who is at risk of serious morbidity and mortality from **COVID**.” ~ Rachael Bedard, Rikers Island Geriatrician (Mar. 18, 2020).*

Introduction

Alfred Esparza submits this supplemental brief to describe the grave risks posed to him by the COVID-19 pandemic that is now gripping the world, and in further support of a time-served sentence.

Acting pro se, Mr. Esparza first sought compassionate release in March and May of 2019—approximately 1 year ago (ECF No. 99, 101). In July 2019, after counsel appeared on Mr. Esparza’s behalf, the Court stayed briefing to enable counsel to obtain necessary BOP records to evaluate Mr. Esparza’s condition and supplement his request for compassionate release (ECF No. 108 (counsel’s motion to stay), 109 (order re stay), 110 (motion to extend briefing)).

On November 25, 2019, counsel filed a supplemental brief in support of compassionate release (ECF No. 111). The government responded on January 14, 2020 (ECF No. 114). Mr. Esparza then replied on January 23, 2020 (ECF No. 116). Mr. Esparza’s motion for compassionate release has been fully briefed and pending since that time. Mr. Esparza now submits this time-sensitive brief in further support of his request for compassionate release.

Discussion

This Court is aware—from previous filings—of Mr. Esparza’s serious medical conditions. Mr. Esparza is a 70 year old man with heart failure, type II diabetes, and stage 4 kidney disease—among other serious medical conditions (ECF No. 111 at 1). He has had serious medical crises while in prison—including a massive heart attack in 2014 and sepsis and difficulty breathing in 2018 (ECF No. 111 at 6). He cannot

move without aid of a walker. And his condition is such that he is designated as “unstable” requiring “complex, chronic care.”

Even in the best of times, these severe problems—coupled with the length of time he has already served and his positive disciplinary record in prison—would support compassionate release.

But these are not the best of times. Instead, the current global and U.S. health emergency make it ***absolutely critical*** to rapidly reduce our prison populations, both for the health of our inmates and the health of the community as a whole. The public health community is insistent on this point. “Releasing as many inmates as possible is important to protect the health of inmates, the health of correctional facility staff, the health of health care workers at jails and other detention facilities, and the health of the community as a whole.” Beyrer Dec. ¶ 19.¹

¹ See also Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases* 1047-155 (2007), <https://doi.org/10.1086/521910>; Gregg S. Gonsalves, et al., *Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States* (March 2, 2020), <https://bit.ly/2W9V6oS> (open letter signed by 815 experts in public health, law, and human rights); see also, Danielle Ivory, ‘We Are Not a Hospital’: A Prison Braces for the Coronavirus, *N.Y. Times* (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/us/coronavirusprisons-jails.html>; Martin Kaste, *Prisons and Jails Worry About Becoming Coronavirus ‘Incubators’*, NPR (March 13, 2020), <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirusincubators>; Keri Blakinger & Beth Schwarzapfel, *How Can Prisons Contain Coronavirus When Purell is a Contraband?*, ABA JOURNAL (March 13, 2020), <https://www.abajournal.com/news/article/when-purell-iscontraband-how-can-prisons-contain-coronavirus>; Jennifer Hansler & Kylie Atwood, *Pompeo Calls for Humanitarian Release of Wrongfully Detained Americans in Iran Amid Coronavirus Outbreak*, CNN (Mar. 10, 2020), <https://cnn.it/2W4OpV7>.

Policymakers agree. *See* Letter from U.S. Reps. Jerrold Nadler & Karen Bass to Attorney General William P Barr (Mar. 19, 2020) (Ex. A) (“With large numbers of people living in close proximity to one another, many of them elderly or living with chronic diseases, DOJ must act now to save lives. Accordingly, we urge you to put in place measures to ensure that both the flow of prisoners into federal facilities is slowed significantly and that prisoners who can and should be released are released forthwith. We cannot wait any longer to take action.”); *see also* Letter from Senator Kathleen Harris to BOP Director Michael Carvajal (Mar. 19, 2020) [hereafter Sen. Harris Letter] (Ex. B) (in light of “how dangerous coronavirus is for the elderly and those with underlying conditions and compromised immune systems BOP should be taking reasonable steps to reduce the incarcerated population and guard against potential exposure to coronavirus”).

And courts are following suit as quickly as they can. *See, e.g., United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628, at *2-3 (D. Nev. Mar. 17, 2020) (suspending intermittent confinement order because “we must take every necessary action to protect vulnerable populations and the community at large”); *United States v. Stephens*, 2020 WL 1295155, __F. Supp. 3d __ (S.D.N.Y. Mar. 19, 2020) (granting release based on the “unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic” which places inmates, in particular, at “heightened risk”).

Against this backdrop, Mr. Esparza submits this brief to explain why he should be granted a sentence of time served as quickly as possible.

A. COVID-19 is an uncontained pandemic.

Even outside the prison walls, COVID-19 is a major health crisis. It is so significant that the vast majority of federal and state courts, including the District of Idaho, have taken extreme measures to limit in-person court proceedings COVID-19—closing the courthouse doors, continuing trials *en masse*, and moving to telephonic hearings wherever possible. *See, e.g., In re Court Operations in Response to Coronavirus (COVID-19)* (Idaho 2020).

These precautionary steps are wise. “Only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity.” Beyrer Dec. ¶ 10.² The world is experiencing exponential growth in this disease. On March 17, 2020, counsel filed a brief with the following chart from the WHO describing total cases in the world:

Date	Total Cases	Cases Since Yesterday
03.16.2020	167,511	13,903
03.15.2020	153,517	10,982
03.14.2020	142,534	9,764
03.13.020	132,758	7,499
03.12.2020	125,048	6,729

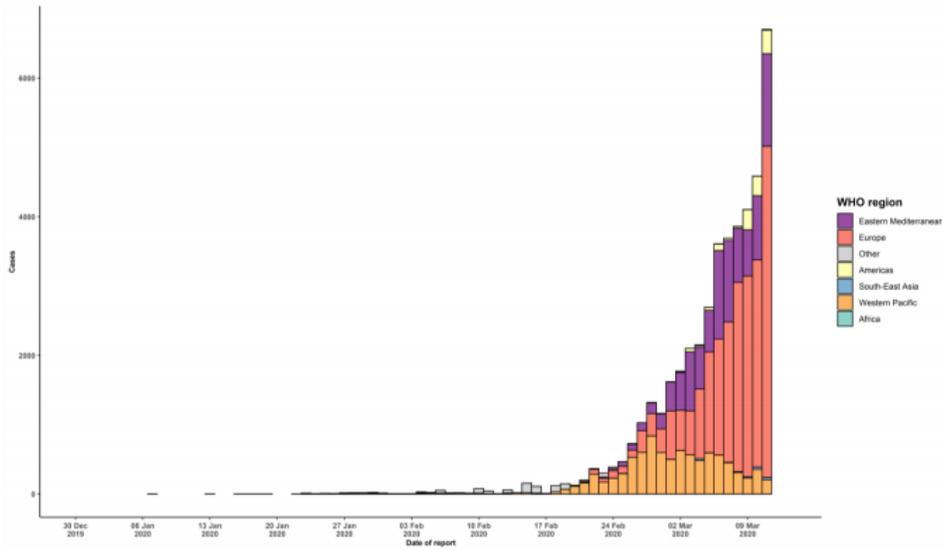
² Professor Chris Beyrer is an infectious disease specialist at Johns Hopkins University, where he teaches course on topics including the transmission of infectious diseases among at-risk populations and emerging infectious disease. Beyrer Dec. ¶¶ 1-2.

Here's what's happened since then:

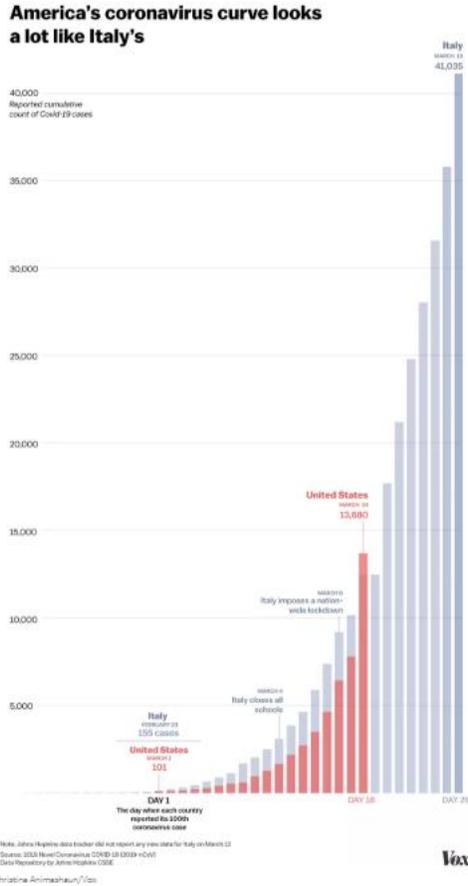
Date	Total Cases	Cases Since Yesterday
03.19.2020	209,839	16,566
03.18.2020	191,127	15,123
03.17.2020	179,111	11,525

This is exponential world growth.

Figure 2. Epidemic curve of confirmed COVID-19 cases reported outside of China (n= 44 067), by date of report and WHO region through 12 March 2020



And the chart on the next page shows the same thing happening in the United States:



The warnings about the rate of spread from the epidemiological and medical community are extremely dire:

“We’re looking at something that’s catastrophic on a level that we have not seen for an infectious disease since 1918,” said Dr. Jeffrey Shaman, a professor of environmental health sciences at Columbia and the leader of the research team, referring to the Spanish flu. “And it’s requiring sacrifices we haven’t seen since World War II. There are going to be enormous disruptions. There’s no easy way out.”

~ James Glanz et al., *Without Urgent Action, Coronavirus Could Overwhelm U.S., Estimates Say*, NYTimes (Mar. 20, 2020), available at <https://www.nytimes.com/interactive/2020/03/20/us/coronavirus-model-us-outbreak.html>.

B. COVID-19 is a dangerous disease—far more deadly than influenza.

“COVID-19 is a serious disease,” which “makes certain populations of people severely ill.” Beyrer Dec. ¶ 5. The case fatality rate for COVID-19 is extreme. The best estimate for its overall fatality rate—i.e., its fatality rate among all demographics—is 0.3-3.5%, “which is 5-35 times the fatality associated with influenza infection.” Beyrer Dec. ¶ 5; *see also* Nick Wilson et al., *Case-Fatality Risk Estimates for COVID-19 Calculated by Using a Lag Time for Fatality*, 26(6) EID Journal (prepublication June 2020), available at https://wwwnc.cdc.gov/eid/article/26/6/20-0320_article. Consequently, “without effective public health interventions, CDC projections indicate about 200 million people in the United States could be infected over the course of the epidemic, with as many as 1.5 million deaths in the most severe projections.” Golob Dec. ¶ 10.

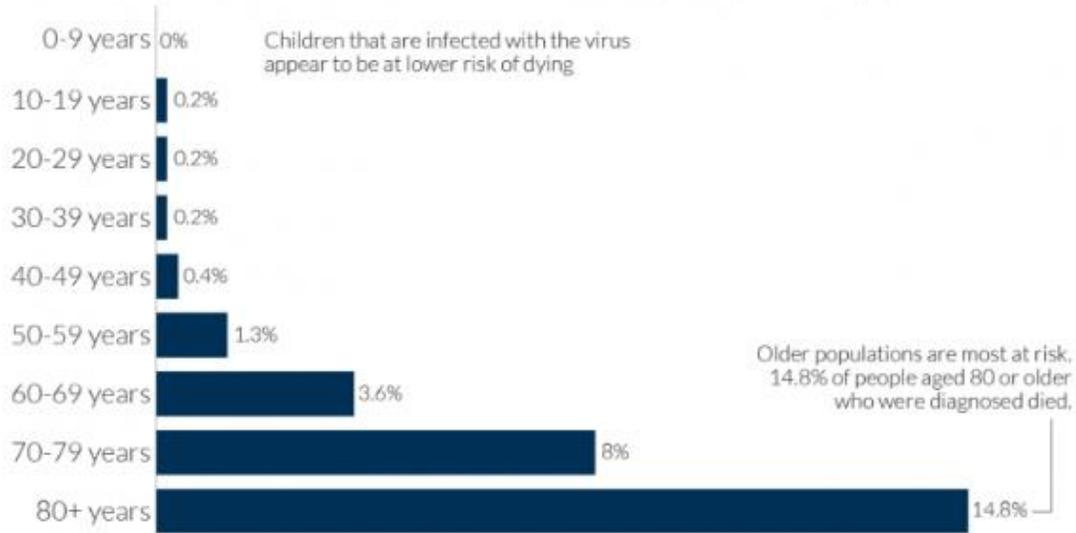
C. Given his age and health issues, COVID-19 places Mr. Esparza at extreme risk.

Mr. Esparza is a man in his 70s with heart failure, stage 4 kidney disease, and diabetes—among other conditions. He is at grave risk of death. “People over the age of fifty are at heightened risk.” Golob Decl. ¶ 3. So too are those with certain medical conditions including diabetes, chronic kidney disease, and heart failure. The fatality rate in Hubei Province, China—where COVID-19 first appeared—was 8% among all people ages 70-79:

Coronavirus: early-stage case fatality rates by age-group in China



Case fatality rate (CFR) is calculated by dividing the total number of deaths from a disease by the number of confirmed cases. Data is based on early-stage analysis of the COVID-19 outbreak in China in the period up to February 11, 2020.



Data source: Novel Coronavirus Pneumonia Emergency Response Epidemiology Team, Vital surveillances: the epidemiological characteristics of an outbreak of 2019 novel coronavirus diseases (COVID-19)—China, 2020. China CDC Weekly. OurWorldinData.org - Research and data to make progress against the world's largest problems. Licensed under CC-BY by the authors.

And it kills those with Mr. Esparza’s medical conditions at alarming rates.

Condition	Case Fatality Rate
Cardiovascular disease	13.2%
Diabetes	9.2%
Hypertension	8.4%
Chronic respiratory disease	8%
Cancer	7.6% ³

³ See World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* at 12 (Feb. 28, 2020), available at <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>; see also Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with COVID-19 in China: A Nationwide Analysis*, medRxiv at 5 (Feb. 27, 2020).

In Wuhan, of the hospitalized population who ended up dying from COVID-19, 48% of them had hypertension, 31% had diabetes, and 24% had coronary heart disease. See Fei Zhou et al., *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*, *Lancet* (Mar. 11, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext).

For these reasons, the best epidemiological advice to deal with this national health emergency is that “[o]lder inmates and those with chronic conditions predisposing to severe COVID-19 disease . . . should be considered for release.” Beyrer Dec. ¶ 18.

D. COVID-19 poses acute risks to inmates and BOP correctional staff.

Incarceration poses a *grave public health threat* during this crisis. “COVID-19 poses a serious risk to inmates and workers in detention facilities.” Beyrer Dec. ¶ 11. It is well-known in the epidemiological community that such facilities are “associated with high transmission probabilities for infectious diseases.” Beyrer Dec. ¶ 11.⁴ When outbreaks occur in prisons, this leads directly to increased spread beyond

, <https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf> (finding that even after adjusting for age and smoking status, patients with COVID-19 and comorbidities of chronic obstructive pulmonary disease, diabetes, hypertension, and malignancy were 1.79 times more likely to be admitted to an ICU, require invasive ventilation, or die, and the number for two comorbidities was 2.59).

⁴ See also Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>; Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail

the confines of jail. *See* Beyrer Dec. ¶ 12. “It is therefore an *urgent priority* in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.” Beyrer Dec. ¶ 17 (emphasis added).

COVID-19 is coming to our prisons. It’s not a question of if, but when. COVID-19 has already appeared in multiple prisons in China. *See* Beyrer Dec. ¶ 15. It is already appearing in jails all over the United States.⁵ And the Bureau of Prisons—despite attempting to put a good public face on its level of preparedness—is as unprepared to handle this medical emergency as it is to handle the day-to-day medical needs of the incarcerated population in the United States.⁶ As CBS News

Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>. Outbreaks of the flu regularly occur in prisons, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases. *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at <https://bit.ly/2TNcNZY>.

⁵ *See, e.g.*, Professor Douglas Berman, *Growing reports of growing numbers of prisoners and staffers testing positive for COVID-19* (Mar. 19, 2020), available at <https://sentencing.typepad.com/sentencing-law-and-policy/2020/03/growing-reports-of-growing-numbers-of-prisoners-and-staffers-testing-positive-for-covid-19-1.html>; Professor Douglas Berman, *Still more reports of growing numbers of prisoners and staffers testing positive for COVID-19* (Mar. 20, 2020), available at <https://sentencing.typepad.com/sentencing-law-and-policy/2020/03/still-more-reports-of-growing-numbers-of-prisoners-and-staffers-testing-positive-for-covid-19.html>

⁶ *See* U.S. Dep’t of Justice Office of the Inspector General, *Review of the Federal Bureau of Prisons’ Medical Staffing Challenges* (Mar. 2016), <https://oig.justice.gov/reports/2016/e1602.pdf> (finding that the BOP experienced chronic medical staff shortages and failed to take adequate measures to address them, leading to problems meeting the medical needs of prisoners, requiring the use of outside hospitals, and endangering the safety and security of institutions); U.S. Dep’t of Justice Office of the Inspector General, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* (Rev. Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf> (finding that BOP facilities and

reported yesterday, “[f]ederal prison employees say their lives are in danger after a series of bungled instructions and widespread supply shortages amid the coronavirus outbreak.” Cassidy McDonald, *Federal prison workers say conflicting orders on coronavirus response is putting lives at risk*, CBS News (Mar. 19, 2020) (*available at* <https://www.cbsnews.com/news/coronavirus-prison-federal-employees-say-conflicting-orders-putting-lives-at-risk-2020-03-19/>).

Nor is the BOP taking necessary precautions to prevent transmission of this disease in its facilities. *See* Sen. Harris Letter (“BOP is responding to the threat of coronavirus with extreme measures that both maintain current levels of incarceration and penalize the incarcerated community—including by suspending social and legal visitation, suspending inmate facility transfers, and potentially locking down institutions.”); *see also* BOP, *BOP Implementing Modified Operations* (Mar. 20, 2020), *available at* https://www.bop.gov/coronavirus/covid19_status.jsp (noting that BOP has not “ceased all inmate movements because the federal judicial system as well as state courts continue to process criminal cases” and BOP will be moving inmates regularly in connection with matters “includ[ing], but . . . not limited to, transfers related to forensic studies, writs, interstate Agreements on Detainers

services, including medical services, were inadequate to meet the needs of an aging prison population leading to delays in medical treatment for prisoners with acute and chronic heart and neurological conditions, who wait an average of 114 days to see medical specialists.); David Patton, *Statement from Federal Defenders of New York*, Federal Defenders of New York (Mar. 8, 2020), <https://federaldefendersny.org/about-us/news/statement-from-federal-defenders-of-new-york.html>.

(IAD), medical or mental health reasons (including local medical trips), and RRC placements.”).

When COVID-19 arrives in our federal prisons, as it will soon, the ramifications for both the incarcerated population and correctional staff will be dire. “Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities.” Beyrer Dec. ¶ 13. Social distancing and decontaminating surfaces is “virtually impossible.” *Id.* Furthermore, “[t]he high rate of turnover and population mixing of staff and detainees increases likelihoods of exposure.” *Id.* At this moment in our national history there can be no doubt: “[r]eleasing as many inmates as possible is important to protect the health of inmates, the health of correctional facility staff, the health of health care workers at jails and other detention facilities, and the health of the community as a whole.” Beyrer Dec. ¶ 19.

E. The time to act is now.

Localities around the United States are already taking steps to reduce jail populations in light of the pandemic. Brooklyn District Attorney Eric Gonzalez, joined by public health experts, has asked the Governor of New York to grant emergency clemencies to elderly and sick prisoners.⁷ In Cuyahoga County, Ohio the “judges, sheriff and prosecutor have agreed to hold mass plea and bond reduction hearings to get as many people as possible out of the county’s jail to lessen the impact of a

⁷ Sarah Lustbader, *Coronavirus: Sentenced to COVID-19*, The Daily Appeal (Mar. 12, 2020) at <https://theappeal.org/sentenced-to-covid-19/>.

potential outbreak of the novel coronavirus.”⁸ The Sheriff of Collin County, Texas, has asked police to consider issuing citations, rather than arresting, low-level, non-violent offenders.⁹ And, after a prisoner and an employee of Rikers Island prison tested positive for coronavirus, the Mayor of New York has announced plans to identify and release high-risk inmates from the City’s prisons.¹⁰

The federal government should do the same. On March 9, 2020, fifteen United States Senators sent a letter to the Director of the Bureau of Prisons, recognizing that “the uncontained the spread of coronavirus in federal prison and jails endangers the federal prison staff, the inmate population, *and the general public.*”¹¹ Federal prisons are not closed societies; even with efforts to curtail visitation, prison guards, doctors, and staff must travel in and out. “Releasing as many inmates as possible is important to protect the health of inmates, the health of correctional facility staff, the

⁸ Cory Shaffer, *Cuyahoga County officials will hold mass plea, bond hearings to reduce jail population over coronavirus concerns* www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html (accessed March 18, 2020).

⁹ Charles Scudder, *Facing coronavirus concerns, Sheriff of Collin County asks police not to bring petty criminals to jail*, available at www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/.

¹⁰ Julia Marsh and Ben Feuerhard, *NCY to begin releasing inmates amid coronavirus outbreak*, <https://nypost.com/2020/03/18/nyc-to-begin-releasing-inmates-amid-coronavirus-outbreak/>.

¹¹March 9, 2020 Letter from Elizabeth Warren *et. al.* to Michael Carvajal (emphasis added), available at http://www.fd.org/sites/default/files/covid19/2020-03-09_senator_warren_letter_to_bop_re_coronavirus.pdf

health of health care workers at jails and other detention facilities, and the health of *the community as a whole.*” Beyrer Decl. ¶ 19 (emphasis added).

Alfredo Esparza, Sr. Requests Immediate Release

Mr. Esparza is over 70 years old with severe medical issues. He has heart disease, kidney disease, and diabetes. He needs a walker to move and his medical conditions are ongoing—requiring complex chronic medical care from a team of specialists. His prior briefing has explained why he poses little danger to the community if he is released. Ironically, because he falls within multiple high-risk populations with respect to COVID-19, his continued incarceration now presents a greater danger to the public than his release would.

In light of the foregoing and what has previously been briefed, Mr. Esparza requests immediate release to a lifetime of supervision.

Dated: March 20, 2020

Respectfully submitted,
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By:

/s/ Miles Pope
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Federal Defender Services of Idaho
Attorneys for Defendant
Alfredo Esparza Sr.

CERTIFICATE OF SERVICE

I CERTIFY that I am an employee of the Federal Defender Services of Idaho, and that a copy of the foregoing document was served on all parties named below on this 20th day of March 2020.

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_____ Hand Delivery
_____ United States Mail
 X CM/ECF Filing
_____ Email Transmission

Dated: March 20, 2020

/s/ Joy Fish
Joy Fish