

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

WOBURN SUPERIOR COURT
DOCKET NO. [REDACTED]

COMMONWEALTH)
)
 v.)
)
 [REDACTED])
 Defendant)

COMBINED MOTION TO REVISE AND REVOKE
AND MEMORANDUM OF LAW
(Honorable Laurence D. Pierce)

THE DEFENDANT'S REQUEST

The Defendant respectfully requests that this Honorable Court revise and revoke his sentence pursuant to Mass. R. Crim. P. 29(a)(2), in the interests of justice. Superior Court Standing Order 5-20 (April 6, 2020); CPCS v. Chief Justice of the Trial Court, __ Mass. __, SJC-12926 (April 3, 2020).

The Defendant respectfully requests that this Honorable Court revise his sentence to time served. The Defendant is serving a short sentence for a non-violent drug offense. He is an ideal candidate for release. His release is consistent with the medical and legal communities' call to immediately and substantially reduce the population of incarcerated individuals during the Covid-19 pandemic.

PROCEDURAL HISTORY

This case arises from a December 31, 2017 arrest. On that day, after seeing him sell one twist of cocaine to one [REDACTED] in a convenience store parking lot, Lowell police arrested Mr. [REDACTED] and found 12 twists of fentanyl in his car. Police also found \$96 cash.

A Middlesex County grand jury handed down two indictments, which charged possession with intent to distribute and distribution of narcotics. Because he previously pleaded guilty on July 6, 2010 to two cases which charged possession with intent to distribute marijuana in 2009, the grand jury charged Mr. [REDACTED] as a subsequent offender. G.L. 94C, § 32A(d); 94C, § 32A(a).

Mr. [REDACTED] remained free on bail during the pendency of his case. On February 21, 2020, Mr. [REDACTED] appeared in court to change his plea to guilty. The Commonwealth recommended a sentence of three years to three years and one day in the State's prison. The Court, the Honorable Justice Laurence D. Pierce sentenced Mr. [REDACTED] to serve 18 months to 18 months and one day in the State's prison.

THE DEFENDANT'S PERSONAL HISTORY¹

Mr. [REDACTED] is a 31-year-old Hispanic male. He was born in the Holy Family hospital in Methuen. He grew up the eldest of three siblings in a single parent household in Lawrence. His mother is originally from Puerto Rico. She does not speak fluent English.

Mr. [REDACTED] grew up in Lawrence - an economically depressed city. Mr. [REDACTED] was not immune to the negative influences which tend to thrive in the absence of legitimate work opportunities and social / academic infrastructure. Beginning as a juvenile, he was charged with several minor crimes. A decade ago, he was convicted of two marijuana offenses which formed the predicate for his subsequent offender indictments. He was convicted of carrying an unlicensed, large capacity firearm in 2014, for which he was sentenced to serve 27 months in the county jail. He has no violent offenses on his record.

Mr. [REDACTED] attended the Lawrence public school system, which, during his academic tenure, earned several dubious distinctions: in 2011, it became the first school system in the state to fall under public receivership, it ranked in the lowest 1 percentile for math and English test scores, and it carried a

¹ See Affidavit of Defendant, attachment A.

drop-out rate of nearly 50 percent.² Nevertheless, Mr. [REDACTED] was able to graduate from high school. While at school, Mr. [REDACTED] was active in baseball and basketball. Following high school, he took classes at Northern Essex Community College and Middlesex Community College. He is nine credits short of an associate's degree in business.

Mr. [REDACTED] maintains a particularly strong relationship with his siblings. Mr. [REDACTED]'s younger brother is sixteen years old. He hopes his younger brother will have a better start at life than he did. For that reason, Mr. [REDACTED] financed his little brother's tuition (\$2,900 annually) at the prestigious Central Catholic High School in Lawrence. In many ways, Mr. [REDACTED] serves as the father his siblings never had. When his little brother turned sixteen, Mr. [REDACTED] was the one who gave him driving lessons and helped him get his permit. When his sister wanted to learn to swim, Mr. [REDACTED] was the one who signed her up for lessons.

As a byproduct of his family's weak economic standing, Mr. [REDACTED] joined the workforce at age 13. Throughout his youth, he worked at minimum wage jobs. He worked at Market Basket, Sears, and the Christmas Tree Shop. Mr. [REDACTED] suffered a hernia while working at the Market Basket warehouse in February 2017. His

² https://www.nytimes.com/2015/06/17/opinion/massachusetts-takes-on-a-failing-school-district.html?_r=0 (last visited April 13, 2020).

injury was such that he could no longer work at the warehouse, given the physical demands of that position. He found work at a collection agency but, in October 2017, the company substantially reduced its pay structure. Left without a living wage, he resigned that position in October 2017. He was arrested on the instant case two months later.

POST-ARREST EVENTS

This arrest marked a turning point in Mr. [REDACTED]'s maturity.

While his case was pending, Mr. [REDACTED] realized it was time for him to grow up and invest in his own future. He put his barber's license to use and rented a chair at a barbershop. Mr. [REDACTED] soon realized that he had substantial talent in that vocation. He developed a broad, loyal client base. He developed true ambition, coming up with a business plan which would lead to his eventual purchase of the entire barber shop - but he stopped short of finalizing the purchase given his pending charges. He did not wish to conclude such a major investment knowing his business would fail upon his eventual incarceration on this case.

Beyond working at the barbershop, Mr. [REDACTED] focused on other ways to improve his employment prospects. He entered and completed a CDL course at the New England Tractor Trailer

Training School of North Andover. He graduated from that school and will receive his CDL following a road test.

In the two years, two months and twenty-one days between his arrest and sentencing, Mr. [REDACTED] complied with all release conditions imposed by the court and engaged in no criminal activity at all.

Rather than continuing on a path of youthful indiscretion or wallowing in self-pity as his sentence drew near, Mr. [REDACTED] focused on the task of building a sturdy foundation for his future. He did so knowing that he would not reap an immediate reward for his effort, because he knew that his crime would result in the loss of his freedom. But he followed through with his vision nonetheless, building his future brick by brick, so that when his debt to society was paid, he would be positioned to enter society as a contributing adult.

Mr. [REDACTED] remains at MCI-Cedar Junction pending transfer to MCI-Shirley Minimum. His transfer date is undetermined given the Covid-19 pandemic. Once at Shirley, he will receive an immediate 80-day good time credit and earn fifteen days of good time per month. He receives these benefits by virtue of his low risk classification assessment. With these reductions, Mr. [REDACTED] is eligible for release in approximately eight months.

Upon learning of his minimum classification, Mr. [REDACTED] became energized and even more focused on self-improvement.

Though he has been in jail for less than 60 days, Mr. [REDACTED] has been proactive in seeking out opportunities to improve himself. He has already completed the Critical Thinking and Deterrence Program at MCI-Cedar Junction. He has already signed up for the Correctional Recovery Academy ("CRA") program, which he will commence as soon as he arrives at MCI-Shirley. However, his transfer to that facility is suspended indefinitely as a consequence of the public health crisis caused by the coronavirus pandemic.

The virus is terrifying in equal parts due to its stealthy transmission, communicability, and lethality. The only methods known to reduce the risk of infection are to practice rigorous hygiene and avoid human contact. Yet, these practices are impossible in places of incarceration. As a consequence, both the legal and medical community have raised an urgent call to substantially reduce the population of incarcerated individuals. Stated simply, "the situation is urgent and unprecedented, and ... a reduction in the number of people who are held in custody is necessary." CPCS v. Chief Justice of the Trial Court, __ Mass. __, SJC-12926, at *26 (April 3, 2020). Immediate decarceration is necessary because prisons are the ideal setting for the virus to incubate, spread, and overwhelm.

Yet, in Mr. [REDACTED]'s case, the spread of the virus, and the social distancing protocols employed to control it, have

effectively increased his term of incarceration and, consequently, his exposure to the virus. Inter-facility transportation in general has ground to a halt. Unfortunately, MCI-Shirley is one of the facilities that has experienced a substantial covid-19 outbreak. According to data which the Department of Corrections recently released to media outlets, there are nine inmates, one staff member, and three vendors who have tested positive at that facility. Attachment B, Massachusetts DOC COVID-19 statistics.³ These grim numbers reveal that the expedited release to which Mr. [REDACTED] is entitled by virtue of his minimum-security classification will likely never come to pass.

Mr. [REDACTED] remains locked down indefinitely at MCI-Cedar Junction. For every month he remains locked down at MCI-Cedar Junction, he loses the fifteen day per month reduction to which he would be entitled while at minimum security. He loses the eighty-day credit associated with his classification, and he loses the substantial good time reduction he is otherwise eligible to receive in the CRA program. In other words, the very life-saving social-distancing practices which create the urgent need for decarceration have increased Mr. [REDACTED]'s period of incarceration and potential exposure to the virus.

³ <https://twitter.com/jbmckim/status/1249814890279247872/photo/1>

As the courts continue to triage which individuals can be released safely, this Court should consider that Mr. [REDACTED] is among the most appropriate candidates for release. He is a non-violent, low-level drug offender with a short sentence, which would otherwise be served in a minimum-security setting. He has developed the talents, experience, and credentials necessary to compete in the workforce. He has learned from his mistakes. He has a plan to build off them, not repeat them. Mr. [REDACTED]'s circumstances reveal him to be at extremely low risk to recidivate.

Stated simply, the true risk of harm to lives and safety comes from Mr. [REDACTED]'s continued incarceration, not from his release.

ARGUMENT

Following the Court's consideration of the issue of Mr. [REDACTED]'s sentence, the world became inflicted with the COVID-19 pandemic. The virus constitutes a potential threat to his life. The true scope of that threat remains unknown because, although more is learned every day, current medical science has not yet developed a full understanding of how the virus spreads, who may become sick, and who may die.

Recently, for instance, CNN covered a White House medical briefing which indicated that the virus may spread simply by

talking or breathing, rather than just by sneezing and coughing.⁴ CNN has also reported on the deaths of young, healthy persons caused by coronavirus.⁵ AS Dr. Sanjay Gupta has stated, "It has become clear that the young and healthy are by no means immune to this infection and could become sick enough to require hospitalization." Id. The Guardian reported that "Nearly 40% of patients who were hospitalized in the US were under 55 and 20% were between 20 and 44."⁶

The Court did not consider the implications of the COVID-19 pandemic when determining the appropriate sentence in this case, because the public health crisis had not yet emerged.⁷ But because his detention during the pandemic carries the risk of serious and potentially lethal consequences, the Court must re-evaluate whether his continued incarceration remains justifiable.⁸

⁴ <https://www.cnn.com/2020/04/02/health/aerosol-coronavirus-spread-white-house-letter/index.html>.

⁵ <https://www.cnn.com/2020/04/05/health/young-people-dying-coronavirus-sanjay-gupta/index.html>.

⁶ <https://www.theguardian.com/us-news/2020/apr/01/coronavirus-young-americans-covid-19>.

⁷ In CPCS v. Chief Justice of the Trial Court, ___ Mass. ___, SJC-12926, at *6 (April 3, 2020), The SJC confirmed that "Those who have been serving sentences for less than sixty days may move to have their sentences revised or revoked under Mass. R. Crim. P. 29, as appearing in 474 Mass. 1503 (2016) (Rule 29)."

⁸ See Christie v. Commonwealth, ___ Mass. ___, SJC-12927, at *8 (April 1, 2020) ("because of the arrival of the COVID-19 pandemic in Massachusetts, the exponential spread of the virus, and the particular danger of transmission of the virus to persons in custody who cannot realistically engage in social

Incarceration necessarily curtails an individual's fundamental rights. The outbreak of the Covid-19 pandemic now brings with it an intolerable threat to Mr. [REDACTED]'s health and safety. Detention conditions which exacerbate the risk that an inmate will become sick or die raise Eighth Amendment concerns. See Helling v. McKinney, 509 U.S. 25, 33 (1993) (second-hand smoke in prison); Carroll v. DeTella, 255 F.3d 470, 472 (7th Cir. 2001) (contaminated water); Masonoff v. DuBois, 899 F. Supp. 782, 797 (D. Mass. 1995) (use of chemical toilets).

distancing, a fundamental change in circumstances had occurred[.]"); United States v. Mclean, No. 19-cr-380, Dkt. No. (D.D.C. Mar. 28, 2020) ("As counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to the community have not changed - with one exception. That one exception - COVID-19 - however, not only rebuts the statutory presumption of dangerousness, see 18 U.S.C. § 3142(e), but tilts the balance in favor of release."); United States v. Michaels, 8:16-cr-76-JVS, Minute Order, dkt. 1061 (C.D. Cal. Mar. 26, 2020) ("Michaels has demonstrated that the Covid-19 virus and its effects in California constitute 'another compelling reason'" justifying temporary release under § 3142(i).); United States v. Jaffee, No. 19-cr-88 (D.D.C. Mar. 26, 2020) (releasing defendant with criminal history in gun & drug case, citing "palpable" risk of spread in jail and "real" risk of "overburdening the jail's healthcare resources"; "the Court is . . . convinced that incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant's release to home confinement"); United States v. Perez, No. 19 CR. 297 (PAE), 2020 WL 1329225, at *1 (S.D.N.Y. Mar. 19, 2020) (releasing defendant due to the "heightened risk of dangerous complications should he contract COVID-19"); United States v. Stephens, 2020 WL 1295155, __F. Supp. 3d__ (S.D.N.Y. Mar. 19, 2020) (releasing defendant in light of "the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic"); In re Manrique, 2020 WL 1307109 (N.D. Cal. Mar. 19, 2020) ("The risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail."); see also United States v. Avenatti, No. 8:19-cr-61 (C.D. Cal. Mar. 25, 2020) (sua sponte inviting defendant to move for reconsideration of a just-denied motion for release "[i]n light of the evolving nature of the Covid-19 pandemic").

Mr. [REDACTED], who has been convicted of only a low-level, non-violent drug offense, is now exposed to the risk of illness and death created by COVID-19. The state and federal governments have underscored the importance of social isolation and rigorous hygiene in response to the pandemic. However, social distancing and rigorous hygiene are impossible in correctional facilities. These environments present ideal situations for this deadly disease to spread. CPCS, supra at *8 ("All parties agree that, for several reasons, correctional institutions face unique difficulties in keeping their populations safe during this pandemic. First, confined, enclosed environments increase transmissibility. Maintaining adequate physical distance, i.e., maintaining six feet of distance between oneself and others, may be nearly impossible in prisons and jails. Second, proper sanitation is also a challenge[.]")

Where the state and federal governments have underscored the importance of social isolation and rigorous hygiene in response to the pandemic, an outbreak within a jail would be catastrophic. One research group, the Justice Collaborative, has stated:

"It is not a matter of if but when the coronavirus will enter prisons and jails, according to health experts. The consequences of that eventuality could be devastating. COVID-19 outbreaks in prisons and jails will spread 'like wildfire' due to close quarters, unsanitary conditions, a population that is more vulnerable to COVID-19, and the large number of people

that cycle through the criminal justice system. The risk extends far beyond those who are incarcerated. COVID-19 outbreaks in jails and prisons threaten the larger public, as hundreds of thousands of individuals churn through jails on a daily basis and correctional, medical and other staff interact with the incarcerated population and circulate back into communities. With 2.3 million people in the United States in prison or jail on any given day, an outbreak in these facilities poses a threat to the entire country."⁹

As Suffolk County District Attorney Rachel Rollins bluntly stated, failure to act is "no different than throwing a match and pouring lighting fluid onto a massive pile of dry kindling."¹⁰

The Department of Corrections reports that MCI-Shirley - the facility to which Mr. [REDACTED] is classified - has experienced a COVID-19 outbreak. See Attachment B. Due to the virus' unique transmission qualities, there is no telling how many individuals within the Massachusetts state prison system carry the virus. However, whatever that number is, it is almost certainly growing.¹¹ By way of example, on March 24, 2020 the Bridgewater

⁹ Citing The Justice Collaborative, Explainer: Prisons and Jails are Particularly Vulnerable to COVID-19 Outbreaks, (emphasis removed) <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf>.

¹⁰ Suffolk County District Attorney Rachel Rollins, Response Regarding the COVID-19 Crisis, re: CPCS, supra, SJC-12926, at 9.

¹¹ The Federal Defenders of New York has compiled data published by the Federal Bureau of Prisons and the CDC, regarding confirmed coronavirus cases in the federal prison system compared to cases nationwide. <https://federaldefendersny.org/>. The data reveals, for example, that between March 20 and April 13, the number of confirmed cases increased nationwide by 2,954%. In the Bureau of Prisons, the number of confirmed cases increased by

Treatment Center had four confirmed cases of Covid-19. Christie, supra at *6. Just two days later, the number had increased to eleven. Id. By March 31, the number had increased to 17. Id.; see also CPCS, supra at *4 ("In the week between the filing of this petition and oral argument, confirmed cases in the Commonwealth increased more than eight-fold, from 777 cases to 6,620.")

State and federal court systems throughout the country, including the Commonwealth's courts, have recognized the danger caused by this virus, cancelling all but emergency court events and limiting access to courthouses. The courts are closed for everyone - not just for those who are over 60 years old or have medical conditions elevating their risk of death from the virus. It is not just the courts that are closed; almost every brick and mortar space in the state is closed, because the Government has determined distance is necessary to prevent serious illness and death.

Yet, because he is incarcerated, Mr. [REDACTED] is denied the ability to practice any of the minimal precautions deemed necessary to protect him from the virus. As a result, Mr. [REDACTED] remains among the approximately 16,500 people incarcerated in the Commonwealth's DOC facilities, county jails

29,350% in that same time period. Attachment C, Federal Defenders of New York - statistics re: coronavirus in prisons.

and houses of correction, an unknown number of whom are infected with the deadly virus. See Mass. Dep't of Corr., Weekly Count Sheet (March 16, 2020).¹²

The risk associated with keeping human beings in confinement during this pandemic is high. Though that risk should alone be sufficient to prompt widespread relief to inmates, the danger is not just to prisoners and correctional staff. It is to members of their families, to the communities in which the virus will spread, and to the hospitals which are already strained beyond their breaking point in dealing with a health crisis the likes of which the modern world has never seen. See also CPCS, supra at *17 ("All parties agree that a significant COVID-19 outbreak in Massachusetts correctional institutions would pose considerable risks to those who are incarcerated, correctional staff, and the broader community.")

Stated simply, Mr. [REDACTED]'s detention during the current pandemic introduces a risk that he will fall seriously ill or die, which risk would be mitigated upon his release to an environment where he can engage in the social distancing and hygiene practices which medical experts deem necessary.

Given these factors, Mr. [REDACTED] respectfully requests that this Honorable Court consider revising his sentence to time

¹² <http://www.mass.gov/doc/weekly-inmate-count-3162020/download>.

served so that his continued detention does not further endanger him or the community.

Should this Honorable Court grant relief, Mr. [REDACTED] will reside with his mother and sister in their home in Methuen.

CONCLUSION

For the reasons stated above, Mr. [REDACTED] respectfully requests that this Honorable Court allow his motion.

Respectfully submitted,
[REDACTED]
By and through his Attorney,
/s/ Murat Erkan
Murat Erkan, BBO# 637507
Erkan & Associates, LLC
300 High Street
Andover, MA 01810
(978) 474-0054

Date: April 15, 2020

ATTACHMENT A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

WOBURN SUPERIOR COURT
DOCKET NO. [REDACTED]

COMMONWEALTH)
)
 v.)
)
 [REDACTED])
 Defendant)

Affidavit of [REDACTED]

I, [REDACTED], under oath, depose and say the following is true.

1. My name is [REDACTED] Defendant in this case.
2. I am 31 years old. I was born at the Holy Family hospital in Methuen. I am the oldest of three siblings. My mother raised us alone in Lawrence. My mother is originally from Puerto Rico. She does not speak fluent English.
3. I have a criminal record, which began when I was a juvenile. In 2010, I pleaded guilty to two marijuana offenses. I was sentenced to 27 months at Middleton jail for a gun case in 2014.
4. I graduated from Lawrence high school. While at school, I enjoyed baseball and basketball. Following high school, I took classes at Northern Essex Community College and Middlesex Community College. I need nine credits to get my associate's degree in business.
5. I am very close to my siblings. I want them to have a good life. I try to be a father figure for them. I pay about \$2,900 per year for my little brother's tuition at the Central Catholic High School in Lawrence. When my little brother turned sixteen, I gave him driving lessons and helped him get his permit. When my sister wanted to learn to swim, I signed her up for lessons.
6. We were poor growing up. I had to start working when I was 13. I had a lot of minimum wage jobs. I worked at Market Basket, Sears, and the Christmas Tree Shop. I got hurt

with a hernia while working at the Market Basket warehouse in February 2017. I couldn't continue there with my injury because of all the heavy lifting. I found a job at a collection agency but, in October 2017, the company took away our bonuses. I could not make ends meet on the base pay. I resigned in October 2017, and got arrested in this case a couple months later.

7. After I got arrested on this case, I realized it was time to grow up and be a man.
8. I have a barber's license, so I rented a chair at a barbershop. It turns out I'm pretty good at it. I have a lot of loyal clients. I came up with a plan to buy the barber shop, but I put that on hold because I knew I was going to have to do some time for this case, and would have to start over when I got out.
9. I also worked on improving my skills. I graduated from the New England Tractor Trailer Training School of North Andover. When I finish the road test, I will get my CDL to drive trucks.
10. I have avoided all trouble since I got arrested.
11. Right now, I am at MCI-Cedar Junction. I am classified for MCI-Shirley Minimum. No transfers are going through right now because of the health emergency.
12. Once at Shirley, I will get an 80-day good time credit and earn fifteen days of good time per month because of my low risk level. I am eligible to get out in about eight months.
13. I have really focused on making the most of my time in jail. I enrolled in the Critical Thinking and Deterrence Program, which is the only program available while I am at MCI-Cedar Junction. I also signed up for the Correctional Recovery Academy which I start when I get to MCI-Shirley.
14. We are all locked down because of the crisis right now. There is nobody cleaning our cells; we do that ourselves. I was recently transferred to a single cell, but we still are put in the cafeteria to eat together for meals, and we spend what little rec time we have in close proximity to each other.

15. If the Court releases me, I will go and live with my mom and little sister in our family home in Methuen. They are already practicing social distancing procedures so I know I will be safe there.

16. I went over all this information with my lawyer Murat. After he put it together in this affidavit, he read it to me. I swear it is all true, under the pains and penalties of perjury, and I have asked him to electronically sign it on my behalf.

Signed under the pains and penalties of perjury on this the 14th day of April, 2020.

/s/ [REDACTED]
[REDACTED]

ATTACHMENT B

Location	Confirmed Inmate Cases	Confirmed Inmate Deaths Due To Complications From COVID-19*	DOC Staff Self-Reported Positive Cases	Vendor Staff Self-Reported Positive Cases
Boston Pre-Release Center	0	0	0	1
Bridgewater State Hospital	12	0	0	2
MASAC at Plymouth	0	0	0	0
Massachusetts Treatment Center	37	4	10	4
MCI-Cedar Junction	0	0	1	1
MCI-Concord	0	0	2	0
MCI-Framingham	22	0	5	2
MCI-Norfolk	0	0	1	0
MCI-Shirley	9	0	1	3
North Central Correctional Institution	0	0	1	0
Northeastern Correctional Center	0	0	0	0
Old Colony Correctional Center	0	0	0	0
Pondville Correctional Center	0	0	0	0
Shattuck Hospital Correctional Unit	0	0	2	0
South Middlesex Correctional Center	0	0	0	0
Souza Baranowski Correctional Center	0	0	3	0
Central Office	N/A	N/A	2	0
Total	80	4	28	13

*These numbers are not counted in the confirmed cases column

◊ As you may be aware, all day-to-day operations at Bridgewater State Hospital have since 2017 been managed by Wellpath rather than DOC. While confirmed cases of COVID-19 at BSH have at all times been relayed to DOC administrators, the Department of Public Health, and local officials, they were inadvertently not relayed to the DOC communications office for a period of one week. Today's numbers include cases that were not updated during that period and the issue has been corrected.

ATTACHMENT C

Federal Defenders of New York

Southern & Eastern Districts

HOME

ABOUT US

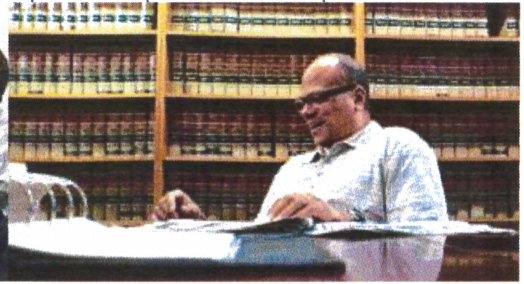
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CJA RESOURCES

EMPLOYMENT

BLOG

EN ESPAÑOL



Information for Clients & Families

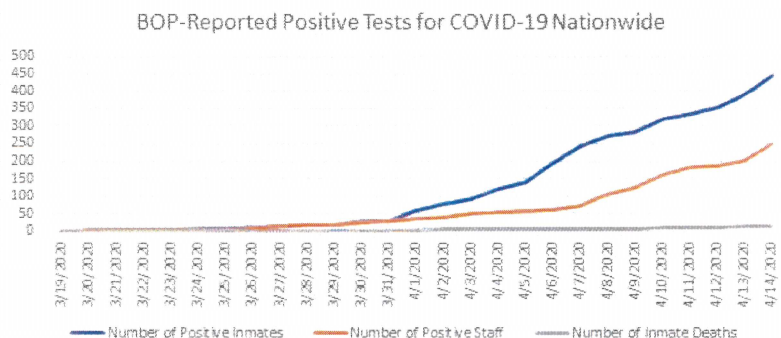
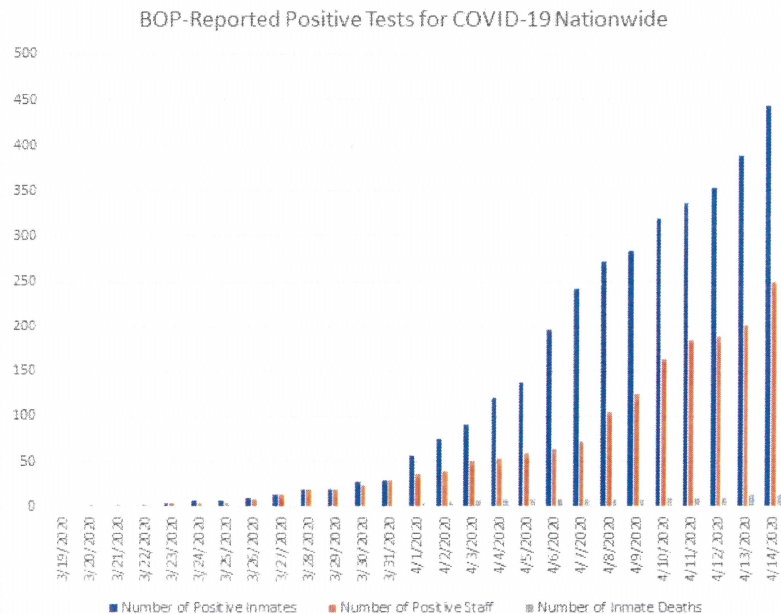
- Pre-arrest and Arrest Warrant FAQs
- Bail and Pretrial Detention
- Overview of a Criminal Case
- Federal Sentencing
- Supervised Release
- Federal Appeals
- Sentence Reductions in Crack Cocaine Cases
- Voting Rights
- For Family Members

News and Events

- New protocol for requesting legal calls -- beginning April 20, 2020 [Read More](#) ([about-us/news/new-protocol-for-requesting-legal-calls-beginning-april-20,-2020.html](#))
- Washington Post Op-Ed: We'll see many more covid-19 deaths in prisons if Barr and Congress don't act now on April 6, 2020 [Read More](#) ([about-us/news/washington-post-op-ed-we'll-see-many-more-covid-19-deaths-in-prisons-if-barr-and-congress-don't-act-now-on-april-6,-2020.html](#))
- SDNY - Video Teleconferencing and Telephone Conferencing for Criminal Proceedings on March 30, 2020 [Read More](#) ([about-us/news/sdny-video-teleconferencing-and-telephone-conferencing-for-criminal-proceedings-on-march-30,-2020.html](#))
- EDNY - Use of Videoconferencing or Telephone Conferencing in Criminal Matters on March 30, 2020 [Read More](#)

Home

BOP-Reported Positive Tests for COVID-19 Nationwide^[1]



[1] Numbers obtained from www.bop.gov/coronavirus

(<http://www.bop.gov/coronavirus>) on a daily basis. There is good reason to believe that the numbers reported by the BOP understate the actual number of tested-positive cases. Compare M. Licon-Vitale, MCC Ward, and D. Edge, MDC Warden, *Response to EDNY Administrative Order 2020-14* (Apr. 7, 2020) at https://www.nyed.uscourts.gov/pub/bop/MDC_20200407_042057.pdf

([about-us/news/edny-use-of-videoconferencing-or-telephone-conferencing-in-criminal-matters-on-march-30,-2020.html](#))

- Press Conference at MDC Calling for Release on March 22, 2020 [Read More \(about-us/news/press-conference-at-mdc-calling-for-release.html\)](#)
- Federal Defenders Letter to the Courts on March 15, 2020 [Read More \(about-us/news/federal-defenders-letter-to-the-courts.html\)](#)
- Statement from Federal Defenders of New York on March 8, 2020 [Read More \(about-us/news/statement-from-federal-defenders-of-new-york.html\)](#)
- Attorney Sarah Baumgartel argued Gundy v. United States before the Supreme Court on October 2, 2018 [Read More \(about-us/news/attorney-sarah-baumgartel-to-argue-gundy-v.-united-states-before-the-supreme-court-on-october-2,-2018.html\)](#)

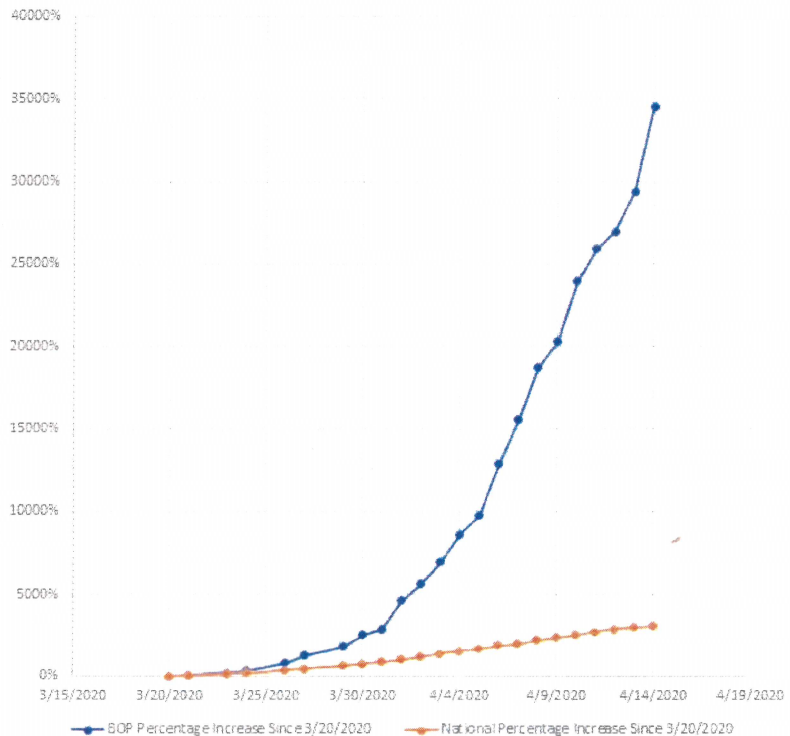
(https://www.nyed.uscourts.gov/pub/bop/MDC_20200407_042057.pdf) (3 positive inmates at MDC Brooklyn) *with COVID-19 Cases* Federal Bureau of Prisons (Apr. 7, 2020) at www.bop.gov/coronavirus (<http://www.bop.gov/coronavirus>) (2 positive inmates at MDC Brooklyn).

Percentage of Increase of Infected BOP People (Inmates and Staff)

Since 3/20/2020²

Date	Number of BOP Cases ¹	BOP Percentage Increase Since 3/20/2020	National Percentage Increase Since 3/20/2020	Number of National Cases
3/20/2020	2	0%	0%	18,747
3/21/2020	3	50%	31%	24,583
3/23/2020	6	200%	135%	44,183
3/24/2020	9	350%	190%	54,453
3/26/2020	18	800%	355%	85,356
3/27/2020	27	1250%	451%	103,321
3/29/2020	38	1800%	651%	140,904
3/30/2020	52	2500%	772%	163,539
3/31/2020	59	2850%	892%	186,101
4/1/2020	94	4600%	1036%	213,144
4/2/2020	114	5600%	1176%	239,279
4/3/2020	141	6950%	1379%	277,205
4/4/2020	174	8600%	1526%	304,826
4/5/2020	197	9750%	1665%	330,891
4/6/2020	259	12850%	1897%	374,329
4/7/2020	313	15550%	1963%	386,800
4/8/2020	377	18750%	2140%	419,975
4/9/2020	408	20300%	2349%	459,165
4/10/2020	481	23950%	2527%	492,416
4/11/2020	520	25900%	2704%	525,704
4/12/2020	541	26950%	2860%	554,849
4/13/2020	589	29350%	2989%	579,005
4/14/2020	692	34500%	3042%	489,048

Percentage of Increase of Infected People Since 3/20/2020



[2] National numbers obtained from www.cdc.gov (<http://www.cdc.gov/>) and <https://coronavirus.jhu.edu/map.html> (<https://coronavirus.jhu.edu/map.html>) (<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd4029942346>)

[3] Includes the number of both BOP inmates and staff who have tested positive for COVID-19

Federal Defenders of New York – COVID-19 RESPONSE

In order to prevent the spread of COVID-19, all offices of the Federal Defenders of New York, Inc. (Brooklyn, Central Islip, Manhattan and White Plains) will be closed until further notice; our staff will work remotely during this time. The Federal Defenders of New York remains committed to providing the highest quality representation to our clients and serving as a resource to the bar and the community throughout this crisis.

While our physical offices are closed, our attorneys, paralegals, social workers, investigators and support staff will work remotely to ensure that our clients are zealously represented without interruption. Staff will be accessible by telephone and email. Please call our individual telephone extensions listed in our staff directory or email us at the email addresses listed in the directory.

<https://federaldefendersny.org/directory/>
(<https://federaldefendersny.org/directory/>)

As of March 15, 2020, we have been advised by the Chief Judges for the Southern and Eastern Districts of New York that the District Courts will remain open. Decisions about whether to adjourn cases will be left to the individual judges. Attorneys will continue to represent their clients at all scheduled court appearances. For new arrests, attorneys will be on call to ensure that those arrested promptly appear before the court without delay.

On Friday March 13, 2020, the Bureau of Prisons announced a nationwide suspension of social and legal visiting at all BOP facilities. In an effort to facilitate the ability to communicate with the outside world, the Bureau of Prisons has announced it will increase the monthly telephone allowance to 500 minutes from 300 minutes.

We understand that the suspension of social visiting is devastating not only for our incarcerated clients, but for their families as well. While we try to negotiate alternatives to the blanket cancellation of social visiting, we remain committed to providing family members of incarcerated clients with updates on their loved ones and conditions at BOP facilities.

The interruption of legal visitation is untenable. It directly impacts our ability to effectively represent our clients. We also recognize that during times when social visiting is suspended, those of you on the outside count on us to be your eyes and ears in the BOP facilities and to make sure that your loved ones remain safe. Thus, we are fighting to ensure that we can continue to communicate with our clients during this time.

Given the declaration of the national emergency and how rapidly the response continues to change, we will continue to provide you with updated information as it becomes available.

Our Mission

The Federal Defenders of New York vigorously defends persons charged with federal crimes who cannot afford to hire an attorney. We are an independent, non-profit organization with lawyers practicing in the federal courts for the Southern and Eastern Districts of New York, with offices located in Manhattan, Brooklyn, White Plains, and Central Islip. Our mission is straightforward: Although we provide our services free of cost, our clients should receive the finest legal representation available at any price.

We subscribe to a client-centered approach to legal representation. We listen to our clients, pay close attention to their individual needs, and work closely with paralegals, investigators and social workers to address all aspects of a client's circumstances. We use that knowledge together with our legal experience, skill and judgment to fight for our clients and obtain the best result possible.

I grew to like to defend men and women charged with crime... I was dealing with life, with its hopes and fears, its aspirations and despairs. With me it was going to the foundation of motive and conduct and adjustments for human beings, instead of blindly talking of hatred and vengeance, and that subtle, indefinable quality that men call 'justice' and of which nothing really is known. - Clarence Darrow

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