

copy by filed 5/22/20

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA  
FELONY DIVISION

STATE OF FLORIDA,

CASE NO: F11-13903  
F11-13905, F11-14194,  
F11-14195, F11-15697,  
F11-14197, F11-18356,  
F11-17050, F11-18356,  
F11-17051, F15-23475

THE HONORABLE JUDGE  
JOSE FERNANDEZ

vs.

ENRIQUE DOBARGANES,  
Dept of Corrections No.: 833118  
Location: South Bay Correctional Facility  
*Defendant*

2020 CA 006991

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS REQUESTING RELIEF  
DUE TO GLOBAL PANDEMIC**

COMES NOW, Defendant, Enrique Dobarganes, respectfully moves this Court for a writ of habeas corpus ordering his release from the Department of Corrections to home detention based on the extraordinary and compelling reasons discussed below, pursuant to Florida Statute 2.01, which directs the court when there is no statutory remedy to look to the common law, as well as the Eighth and Fourteenth Amendments of the Constitution of the United States of America, and Article I Section 17 of the Florida Constitution. In light of the coronavirus pandemic—which in part prompts his requested relief—Mr. Dobarganes’ motion can and should be handled on an expedited basis so as to save his life.

**INTRODUCTION**

In *Griswold v. Gome*s, 111 Ariz. 59, 62, 523 P.2d 490, 493 (1974), the Court noted that the

vacated  
MAY 16 2020

Denied  
MAY 27 2020

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purpose "of habeas corpus is to test the legality and correctness of a prisoner's judgment and confinement." Exposure to a pandemic in high-risk conditions is not part of Petitioner's sentence. Petitioner seeks release from penal confinement during the COVID-19 global pandemic because he is an older non-violent inmate at high risk of serious illness and death from a contagious respiratory disease.

This motion call attention to an extraordinary issue of public safety: the urgent need to protect the health of all Florida residents and save lives by limiting the spread of COVID-19 among incarcerated people and staff in Florida's correctional facilities. While there has been some progress to reduce jail populations, these steps simply have not been large enough or fast enough to reduce the looming threat of exponential spread of COVID-19 in the state's jails, prisons, and surrounding communities. Leading public health officials have warned that without swift and large judicial intervention, the "epicenter of the pandemic will be jails and prisons."<sup>1</sup> Lacking infrastructure for physical distancing and without vigilant hygiene, Florida's jails and prison facilities are at grave risk of becoming petri dishes for rampant spread of the virus. Inmates and Corrections staff alike are exposed in a way that the rest of the population simply is not.

Enrique Dobarganes, 65, is currently incarcerated at the South Bay Correctional Facility, in South Bay, Florida. He has served approximately over six (6) years of a seventeen (17) year prison term. Mr. Dobarganes is an inmate in poor health. He suffers from asthma, sleep apnea, high blood pressure, and a history of heart attacks and stroke. Mr. Dobarganes' increased exposure to coronavirus in prison—a petri dish of viral contagion—could easily cause his death given his

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<sup>1</sup> Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

age and significant preexisting conditions. Mr. Dobarganes was not given a death sentence for his crimes, nor does he deserve one.

Following the lead of courts and boards of corrections around the country, this Court can and should reduce Mr. Dobarganes' sentence to time served and convert the remainder to home detention in order to save his life from a pandemic to which he is acutely susceptible.

**FACTUAL BACKGROUND**

*COVID-19 in Facilities*

The coronavirus outbreak has led many experts to note the increased exposure of high-risk populations to disease within prisons<sup>2</sup>, which are like petri dishes of contagion:

**Prevalence of health condition by population**

Health condition	Jails	State prisons	Federal prisons	United States
Ever tested positive for Tuberculosis	2.5%		6.0%	0.5%
Asthma	20.1%		14.9%	10.2%
Cigarette smoking	n/a	64.7%	45.2%	21.2%
HIV positive	1.3%		1.3%	0.4%
High blood pressure/hypertension	30.2%		26.3%	18.1%
Diabetes/high blood sugar	7.2%		9.0%	6.5%
Heart-related problems	10.4%		9.8%	2.9%
Pregnancy	5.0%	4.0%	3.0%	3.9%

Moreover, Dobarganes, who is 65 and living with many preexisting conditions, falls within the demographic of those most highly exposed to COVID-19 disease and fatality according to guidance provided by the Centers for Disease Control and Prevention (CDC).<sup>3</sup> The CDC has

<sup>2</sup> See Prison Policy Initiative, *No Need to Wait for Pandemics*, available at: <http://www.prisonpolicy.org/blog/2020/03/06/pandemic/>.

<sup>3</sup> See, e.g., The Justice Collaborative, *Guidance on COVID-19 in Release Advocacy*, available at [http://thejusticecollaborative.com/wpcontent/uploads/2020/03/TJC\\_CoronavirusDefenseCourts\\_Onesheet\\_02.pdf](http://thejusticecollaborative.com/wpcontent/uploads/2020/03/TJC_CoronavirusDefenseCourts_Onesheet_02.pdf).

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issued guidance that individuals at higher risk of contracting COVID-19—adults over 60 years old and people with chronic medical conditions such as heart disease, diabetes, and other conditions that weaken the immune system—take immediate preventive actions, including staying at home, social distancing, and maintaining strict cleanliness protocols.

Already jurisdictions around the country have begun releasing prison populations that are susceptible to COVID-19 exposure.<sup>4</sup> The state's response has been inadequate to meet this emergency. Officials have taken sweeping measures to reduce infections within the general public. Stay-at-home orders have fundamentally altered life for millions. Conditions inside correctional facilities remain ripe for viral outbreak. Incarcerated people continue to reside in close, communal settings where social distancing is impossible. Soap, disinfectant, and protective gear are in short supply. Correctional facilities lack the resources necessary to screen for infection, isolate the sick, or provide necessary medical treatment. Conditions are ripe for massive COVID-19 outbreaks, as has happened in states across the nation.

Continued confinement under these conditions violates the constitutional rights of thousands of incarcerated people across the state. The Eighth and Fourteenth Amendment of the United States Constitutions, and the Florida Constitution require reasonable protections against disease, which the state is not providing. But the harm is not confined to incarcerated people. Those who work in county jails and juvenile facilities, their families, and outlying communities are also at risk. As of filing South Bay Correctional Facility has 883 inmates in medical quarantine with

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<sup>4</sup> See, e.g., *L.A. County Releasing Some Inmates from Jail to Combat Coronavirus*, L.A. Times, Mar. 16, 2020, available at: <http://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>; *NYC Board of Correction Calls on City to Begin Process of Releasing Certain Prisoners in Response to COVID-19*, Sentencing Law and Policy blog, available at: [http://sentencing.typepad.com/sentencing\\_law\\_and\\_policy/2020/03/nyc-board-of-correction-calls-on-city-to-begin-the-process-of-releasing-certain-prisoners-asap-in-re.html](http://sentencing.typepad.com/sentencing_law_and_policy/2020/03/nyc-board-of-correction-calls-on-city-to-begin-the-process-of-releasing-certain-prisoners-asap-in-re.html).

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68 confirmed cases of COVID-19, and an additional 637 outstanding tests. It was recently reported that 41% of all inmates tested in Miami have tested positive for the virus.<sup>5</sup> The regular movement of people through those facilities will spread the disease far beyond their outer perimeters. Thus, the state's failure to protect incarcerated people undermines its own COVID-19 containment measures and threatens the health of everyone in the state. It is not a matter of if, but when Mr. Dobarganes contracts COVID-19. Once that happens it's a question of how severe the permanent damage he will suffer will be and whether it will result in his death.

*Enrique Dobarganes*

Mr. Dobarganes is currently serving a seventeen (17) year sentence of which he has completed over six (6) years.<sup>6</sup> All of his cases, except two, that he is serving this sentence on are for charges of grand theft in the third degree. His other case, F15-23475, on its face appears to be a "crime of violence" with a cursory reading of the charges, but a deeper look reveals it is not. Mr. Dobarganes was in his vehicle when he struck a police vehicle and continued on without stopping. The contact between the vehicles resulted in minor damage and did not result in any injuries. This resulted in the charges of Aggregated Battery on a Police Officer, Fleeing and Eluding, and Driving with a Suspended License. Mr. Dobarganes is not accused of any violent crimes.

Mr. Dobarganes is a man who is in extremely poor health. He takes six (6) different medications. Three medications alone are related to his severe asthma and chronic breathing issues. He also suffers from sleep apnea. In addition, he takes medication for high blood pressure,

<sup>5</sup> *Nearly 500 Miami jail inmates, a staggering 41 percent tested, have caught the coronavirus*, The Miami Herald, May 19, 2020. Accessable at: <https://www.miamiherald.com/news/local/crime/article242842156.html>

<sup>6</sup> Mr. Dobarganes originally entered a plea to 30 years State Prison, but with an evidentiary hearing on a Rule 3.850 pending the State and the Defendant stipulated to a vacature and sentence of 17 years with all credit for time served. This court executed that order on June 7, 2019.

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hypertension, and blood thinners following his two heart attacks. He also takes a medication due to his enlarged prostate. <sup>7</sup>

When the CDC describes a person, who is "at risk" they are describing Enrique Dobarganes. He suffers not only from poor cardiac health but from multiple lung issues, which are directly related to how severely COVID-19 damages a person's health.

**MEMORANDUM OF LAW**

***Failure to Protect People Serving Sentences in County Jails Violates the Eighth and Fourteenth Amendments and Florida Constitution Article I Section 17***

For Mr. Dobarganes, the State's response to the COVID-19 pandemic violates the federal and state constitutional prohibitions on cruel and unusual punishment. Both the Eighth Amendment of the U.S. Constitution, Article I Section 17 of the Florida Constitution, and Florida Statutes Sections 945.025(2), and 945.6034 protect the right of people who are incarcerated to have their medical needs met while in government custody. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). "A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 828 (1994).

To establish "deliberate indifference", an incarcerated person must prove that (1) the challenged deprivation was "sufficiently serious," and (2) officials "know[] that inmates face a substantial risk of serious harm and disregard[] that risk by failing to take reasonable measures to abate it." *Farmer*, 511 U.S. at 834, 847. Both showings are easily made here. COVID-19 is a highly contagious, potentially deadly disease, which is many times deadlier than a severe seasonal influenza. There is no vaccine or cure. The disease spreads from infected persons through respiratory droplets, close personal contact, and from contact with contaminated surfaces. Among

<sup>7</sup> Attached herein as Exhibit "A" are prescription labels from some of Mr. Dobarganes's many medications. His full medical records have been ordered from South Bay Correctional Facility and are pending. Counsel will supplement this pleading with full medical records upon receipt should the court require. 450 Brickell Avenue, Suite 2600, Miami, FL 33131-2342  
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high-risk populations, COVID-19 kills about one in every seven people it infects, and it can scar survivors with loss of digits, neurologic damage, and loss of respiratory capacity, according to the CDC<sup>8</sup>. Mr. Dobarganes is one of those at high risk of permanent damage or death.

The Eighth Amendment mandates that the State protect incarcerated people from the risk of serious illness and death by contagion. And courts routinely find Eighth Amendment violations when—as here—officials fail to protect incarcerated people from the risk of infection. *See Brown v. Plata*, 563 U.S. 493, 545 (2011) (affirming order to reduce prison overcrowding in order to, *inter alia*, remedy unsanitary living conditions and failure to protect incarcerated people from infectious disease); *Hutto v. Finney*, 437 U.S. 678, 682–83 (1978) (finding constitutional violation where incarcerated people were placed in conditions where infectious diseases could spread easily).

Importantly, the state’s duty to protect applies regardless of whether COVID-19 has yet entered a given correctional facility. “[A] remedy for unsafe conditions need not await a tragic event.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Failure to take reasonable steps to abate a substantial risk of harm from infectious disease violates the Eighth Amendment even if the disease has not yet sickened the incarcerated population. *Farmer*, 511 U.S. at 847. As the U.S. Supreme Court has explained, authorities may not ignore jail conditions that are “sure or very likely to cause serious illness and needless suffering the next week or month or year.” *Helling*, 509 U.S. at 33.

The CDC has warned that, because of these structural issues, jails “present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and

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<sup>8</sup> See *Preliminary Estimates of the Prevalence of Selected Underlying Health Conditions Among Patients with Coronavirus Disease 2019- United States, February 12- March 28, 2020*, available at: <https://www.cdc.gov/mmwr/volumes/69/wr/mm6913e2.html>.

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visitors.”<sup>9</sup>. Courts have found that “avoiding exposure to COVID-19 is impossible for most detainees and inmates.” *Cristian A.R., et al. v. Decker*, No. 20-3600, (D. N.J. April 12, 2020); *see also Basank v. Decker*, No. 20-cv-2518 (AT), at 7, 10 (S.D.N.Y. Mar. 26, 2020) (“The risk of contracting COVID-19 in tightly-confined spaces, especially jails, is now exceedingly obvious.”)). The disease has already overwhelmed jails in other states, leading to some of the largest COVID-19 outbreaks in the nation.

The statistics already coming from the Department of Corrections (hereinafter, “DOC”) facilities demonstrate that widespread infection is only increasing. The jails are set up to be a hotbed of infection, there is no way for jails house the number of people they do in the manner they do and also prevent the spread of COVID-19. Basic measures such as wearing a clean mask, using hand sanitizer, and social distancing, are all impossible in the DOC facilities.

#### CONCLUSION

“We send people to prison as punishment, not for punishment” *Rachel Bloom, ACLU*. Simply put, there is no way to prevent the spread of COVID-19 in enclosed facilities like State Prisons. Once it is in, it will spread- and it is in South Bay Correctional Facility. It is a matter of time before it infects Enrique Dobarganes and once it does, due to his age and underlying health conditions, and according to all medical experts testimony, and guidance from the CDC, he will likely succumb to it. While the relief requested herein is not appropriate for all inmates, even all inmates with underlying conditions, Mr. Dobarganes is an elderly, non-violent offender, and should not die in prison. While the court has legal recourse to grant his release to home confinement this is as much a humanitarian issue as a legal one. This is an unprecedented and

<sup>9</sup> CDC Interim Guidance on Management of Coronavirus 2019 (COVID-19) in Correctional and Detention Facilities, available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

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unexpected shift in the paradigm and was not contemplated at the time of Mr. Dobarganes' sentence. He was not convicted of a capital offense and therefore should not die in custody from a preventable end. "Where the court finds that a manifest injustice has occurred, it has the responsibility to correct the injustice if it can with a habeas corpus proceeding." *Adams v. State*, 957 So.2d 1183 (3<sup>rd</sup> DCA 2006).

**WHEREFORE**, the Defendant, Enrique Dobarganes, in the interest of expediency and to avoid incarceration in closer quarters at county jail, expressly waives the right under to be transported to Court for any hearing on this matter. Mr. Dobarganes requests that the writ be delivered to the sheriff with directions to serve the writ upon such officer or person by delivering the writ to him without delay. Mr. Dobarganes requests immediate release from the prison where he is currently serving his sentence to serve out the remainder of his sentence on home confinement. Alternatively, Mr. Dobarganes requests this matter be set for Zoom hearing so the court may hear additional argument on Mr. Dobarganes' behalf. Per current 11<sup>th</sup> Judicial Circuit protocol undersigned has conferred with the Miami Dade State Attorney's Office who advise they object to the relief requested herein.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFY that a true and correct copy of the foregoing was tendered via e-filing to the STATE ATTORNEY'S OFFICE, this 22<sup>nd</sup> day of May, 2020.

Respectfully submitted,

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# **EXHIBIT A**

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DOBARGANES, ENRIQUE 326

833118  
TEVA USA  
QTY 0.45

FLUTICASONE-SALMET (AIRDUO) 113/14  
1 PUFF TWICE DAILY KOP

*Alma*

↓ SCAN ↓

RX 23936841-10 833118  
DOBARGANES, ENI 326 QTY 0.45  
FLUTICASONE-SALMET (AIRDUO) 113/14 MCG LI

RX 23936841-10

START  
06/28/2019



FILL  
04/13/2020

AMEDE, MARIE  
DAS / KAK 1 of 1

E

TECH: 3 DAS  
PH: 121

STOP  
08/26/2020

DOBARGANES, ENRIQUE 326

833118  
ZYDUS PHAR  
QTY 30

TAMSULOSIN (FLOMAX) 0.4MG CAP  
BY MOUTH EVERY NIGHT AT BEDTIME KOP

*Prostate*

↓ SCAN ↓

RX 25503689-4

START  
12/18/2019

Caution: Referenced law prohibits the transfer of any drug to any person other than the person for whom it was prescribed.



FILL  
03/30/2020

BALMIR, CARL  
YEM / KAK 1 of 1

E

TECH: 1 YEM  
PH: 121

STOP  
12/16/2020

DOBARGANES, ENRIQUE 326

833118  
ASCENLABS  
QTY 30

AMLODIPINE (NORVASC) 5MG TAB  
TAKE 1 TABLET BY MOUTH DAILY \*MAY CAUSE  
DIZZINESS\* KOP

*Blood Pressure*

↓ SCAN ↓

RX 25502885-4

START  
12/18/2019

Caution: Referenced law prohibits the transfer of any drug to any person other than the person for whom it was prescribed.



FILL  
03/30/2020

BALMIR, CARL  
YEM / KAK 1 of 1

E

TECH: 1 YEM  
PH: 121

STOP  
12/16/2020

NOT A CLAIM

DOBARGANES, ENRIQUE 326 833118

HCTZ (HYDROCHLOROTHIAZIDE) 25MG TAB ACCORD HEA QTY 30

TAKE 1 TABLET BY MOUTH ONCE DAILY \*MAY CAUSE DIZZINESS\* KOP

↓ SCAN ↓

RX 24357775-8

08/16/2019

FILL

03/30/2020

STOP

08/14/2020

Customer Information law prohibits the transfer of any drug to any person other than the person for whom it was prescribed.

AMEDE, MARIE

YEM / KAK

1 of 1

E

E

In Place Of ESICRUX  
TECH YEM

*Water pill*  
*Blood Pressure*

DOBARGANES, ENRIQUE 326 833118

ASPIRIN EC (ECOTRIN) 81MG TAB

1 DAILY \*SWALLOW WHOLE\* KOP

↓ SCAN ↓

RX 25748513-3

01/15/2020

FILL

03/30/2020

STOP

Customer Information law prohibits the transfer of any drug to any person other than the person for whom it was prescribed.

In Place Of ASPIRIN EC  
TECH

*Blood thinner*

DOBARGANES, ENRIQUE 326 833118

CALCIUM CARB [ANTACID CHEW] 500MG

BY MOUTH 3 TIMES DAILY AS NEEDED

↓ SCAN ↓

RX 25503067-5

START

12/18/2019

FILL

05/01/2020

STOP

Customer Information law prohibits the transfer of any drug to any person other than the person for whom it was prescribed.

In Place Of TUMS  
TECH

*Heart Burn*

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DOBARGANES, ENRIQUE 326

833118

ALVESCO 60 INHALATIONS 80MCG 6.1 GM

QTY 6.1

1 PUFF TWICE DAILY

↓ SCAN ↓

*Alma*

RX 25502882-5 833118  
DOBARGANES, ENI 326 QTY 6.1  
ALVESCO 60 INHALATIONS 80MCG 6.1 GM INH

RX 25502882-5

START

12/18/2018

FILL

05/01/2020

STOP

12/16/2020

Caution: Federal/State law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed.

BALMIR, CARL  
SSB / KAK 1 of 1

TECH: SSB  
RPH: [Signature]

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