

**EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF COLFAX
STATE OF NEW MEXICO**

KANDYCE JARAMILLO,

Petitioner,

v.

No.

**STATE OF NEW MEXICO and
WARDEN MARIANNA VIGIL,**

Respondents.

**PETITIONER’S EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER, APPLICATION FOR PRELIMINARY INJUNCTION, REQUEST FOR
EXPEDITED HEARING, AND MEMORANDUM IN SUPPORT**

COMES NOW Petitioner Kandyce Jaramillo, by and through her undersigned counsel, the American Civil Liberties Union of New Mexico, and pursuant to Rule 1-066 NMRA, respectfully requests that this Court issue a temporary restraining order, preliminary injunction, and permanent injunction granting the relief sought in her Petition for Writ of Habeas Corpus.

STATEMENT OF FACTS¹

COVID-19 is a novel coronavirus that has reached pandemic status. The disease is particularly contagious and transmission is expected to grow exponentially. There is currently no vaccine for COVID-19 and no one is immune. Certain underlying medical conditions increase the risk of serious COVID-19 infection for people of any age – including the severe asthma from which Ms. Jaramillo suffers.

¹ Additional details regarding the relevant facts of this case are included in Ms. Jaramillo’s Petition for Writ of Habeas Corpus.

COVID-19 can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage tissues in other vital organs including the heart and liver. Patients with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity. Complications from COVID-19 can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.

Ms. Jaramillo has severe asthma which causes her to be hospitalized as recently as February 2020. Ms. Jaramillo is currently serving a sentence of incarceration for the nonviolent charge of possession of a controlled substance. This sentence reflects Ms. Jaramillo's longtime struggle with substance abuse, for which she has been receiving treatment while incarcerated. She poses no danger to the community. Ms. Jaramillo is seeking relief from this Court that could save her life and ensure that she is able to return home to her five children.

Public officials and courts across the country have already recognized that COVID-19 presents an unprecedented circumstance and threat to incarcerated people. They have also recognized that the only way to prevent devastation and senseless deaths is to reduce the population behind bars and to release as many people as possible, including those individuals most vulnerable to the virus. *See* Emergency Petition for Writ of Habeas Corpus, Appendix B. Ms. Jaramillo asks this Court to do the same.

ARGUMENT

I. Temporary Restraining Order

Rule 1-066(B)(1) NMRA states that the Court may issue a temporary restraining order if “it clearly appears from the specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition.”² COVID-19 spreads quickly, especially in enclosed environments such as SCC. Every day that Ms. Jaramillo remains behind bars puts her life at risk. The relief she seeks simply cannot wait for the full course of litigation, and she will suffer immediate and irreparable injury if it is not granted.

II. Preliminary Injunction

In addition to a temporary restraining order, this Court should also issue a preliminary injunction of the same nature. To obtain a preliminary injunction, Ms. Jaramillo must, and can, show that “(1) [she] will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public’s interest; and (4) there is a substantial likelihood [she] will prevail on the merits.” *Labaldo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314 (citing *Tri-State v. Shoshone River Power, Inc.*, 805 F.2d 351 (10th Cir.1986)). When the injury involved is a violation of the plaintiff’s constitutional rights, “no further showing of irreparable injury is necessary.” *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001). Ms. Jaramillo satisfies all four factors for granting a preliminary injunction in this case.

A. Ms. Jaramillo Will Suffer Irreparable Harm Unless the Injunction is Granted

Ms. Jaramillo will suffer irreparable harm unless she is immediately released from the SCC. In New Mexico prisons, prison design and operations make it impossible for inmates and detainees to engage in the necessary social distancing required to mitigate the risk of

² As required by Rule 1-066, an affidavit supporting this Motion is attached as Exhibit 1.

transmission. As explained in more detail in Ms. Jaramillo's Petition, women in SCC live in dormitory-like sleeping arrangements with bunks only three (3) feet apart. They are unable to maintain anything close to the recommended distance of 6 feet from others. While movement of inmates housed at SCC has been limited somewhat, staff still enter from the outside world and move throughout the facility during a shift.

Absent injunctive relief, Ms. Jaramillo will remain incarcerated under conditions that make it virtually impossible to take the only known steps to prevent transmission of COVID-19. Every day she is at risk of contracting the disease that could very likely be deadly to her. If decisive action is not taken to immediately release Ms. Jaramillo, it will be too late.

B. Ms. Jaramillo Has A Substantial Likelihood of Prevailing on the Merits

Ms. Jaramillo is likely to succeed on the merits of both her claim under Article II, Section 13 and Article II, Section 18 of the New Mexico Constitution.

i. *Ms. Jaramillo Has a Substantial Likelihood of Prevailing on the Merits of Her Claim Under Article II, Section 13 of the New Mexico Constitution*

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment and requires prisons and jails to protect those in their custody from the substantial risk of serious harm. *See generally Farmer v. Brennan*, 511 U.S. 825 (1994); *see also Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982) (“[I]t is cruel and unusual punishment to hold convicted criminals in unsafe conditions.”). The analysis of Ms. Jaramillo's rights under Article II, Section 13 of the New Mexico Constitution parallels her rights under the Eighth Amendment. *See Bevan v. Santa Fe County*, 2017 WL 4119615, at *9 (D.N.M. Sept. 15, 2017) (“[T]he analysis of [plaintiffs'] rights under the New Mexico Constitution does not differ from the analysis under the Eighth and Fourteenth Amendments.”). Therefore, prison or jail officials violate Article II,

Section 13 when they are “deliberately indifferent to a substantial risk of serious harm to an inmate.” *Farmer*, 511 U.S. at 828.

Deliberate indifference “does not require a finding of express intent to harm.” *Mitchell v. Maynard*, 80 F.3d 1433, 1442 (10th Cir. 1996). Rather, deliberate indifference is shown when a prison or jail official “knew of and disregarded an excessive risk to inmate health or safety.” *Id.* (internal citations and quotation marks omitted). The U.S. Supreme Court has recognized that “exposure of inmates to a serious, communicable disease” constitutes an “unsafe, life-threatening condition” that threatens “reasonable safety.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

Ms. Jaramillo is at extremely heightened risk for contracting COVID-19 while she remains confined in SCC. COVID-19 poses a serious risk to any individual who contracts it. However, because of her severe asthma, contracting COVID-19 poses an even greater excessive risk to Ms. Jaramillo’s life and safety. Defendants are aware of this significant risk of harm to Ms. Jaramillo, but have not taken the only action that would adequately alleviate the risk: releasing her to her family. Continued confinement of Ms. Jaramillo clearly violates her right to be free from cruel and unusual punishment, including her right to be protected from excessive risk to her safety.

*ii. Ms. Jaramillo Has a Substantial Likelihood of Success on the Merits of Her Claim Under the Due Process Clause of the Fourteenth Amendment and Article II, Section 18 of the New Mexico Constitution*³

Incarcerated people have a constitutionally-protected liberty interest in avoiding “atypical and significant hardship... in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see also id.* (a hardship may “exceed[] the sentence in such an

³ Violations of Article II, Section 18 of the New Mexico Constitution are analyzed using the same standard as federal due process claims. *See Montoya ex rel. S.M. v. Espanola Pub. Sch. Dist. Bd. of Educ.*, 968 F. Supp. 2d 1117, 1120 (D.N.M. 2013).

unexpected manner as to give rise to protection by the Due Process Clause of its own force”); *Cordova v. LeMaster*, 2004-NMSC-026, ¶ 20, 136 N.M. 217, 223 (adopting the “atypical and significant hardship” standard). “Whether a particular restraint imposes an ‘atypical and significant hardship’ depends, in turn, on its ‘duration and degree.’” *Torres v. Comm’r of Corr.*, 427 Mass. 611, 618 (1998), *cert denied*, 525 U.S. 1017 (quoting *Sandin*, 515 U.S. at 486).

This situation is far from typical. A serious threat of contracting a severe, life-threatening illness is “a dramatic departure from the basic conditions” of prison life. *Sandin*, 515 U.S. at 485. Contraction of COVID-19 was not “within the sentence imposed upon” Ms. Jaramillo by the trial court prior to the pandemic. *See Montanye v. Haymes*, 427 U.S. 236, 242 (1976). If she remains confined in SCC, Ms. Jaramillo faces permanent injury or loss of life that was not imposed pursuant to due process of law.

Continuing to incarcerate Ms. Jaramillo, who has been deemed by the CDC to be especially vulnerable to a deadly pandemic, in conditions where taking the only known steps to prevent transmission are virtually impossible, represents a dramatic departure from the sentence imposed upon her by a court of law. Indeed, such circumstances could ultimately become a death sentence.

Therefore, Ms. Jaramillo is likely to succeed on her claim under Article II, Section 18 of the New Mexico Constitution.

C. The Balance of Harms Strongly Favors Granting Immediate Injunctive Relief

The irreparable and potentially life-threatening harm Ms. Jaramillo will suffer absent relief greatly outweighs any potential harm that could be claimed by Respondents. Indeed, release of as many people as possible from New Mexico jails and prisons is a benefit to the staff of those facilities and to the community at large.

Ms. Jaramillo is currently serving a sentence of incarceration for the non-serious offense of possession. She has a stable home and family in Albuquerque to go home to. All Ms. Jaramillo is asking Respondents to do, in light of the extremely unusual circumstances presented by COVID-19, is to convert her sentence to one of home confinement or community corrections. The requested relief poses minimal, if any, burden on Respondents.

D. The Public Interest Favors Immediate Relief

The public interest also favors Ms. Jaramillo's requested relief. As outlined further in her Petition for Writ of Habeas Corpus, reduction of the prison population benefits other incarcerated individuals, prison staff, and the community at large. Reduction of the population is the only meaningful way to guard against a serious outbreak of COVID-19 in the prison. Preventing a serious outbreak of COVID-19 in SCC will help to reduce the spread of the disease and the burden on local hospitals. Indeed, many courts across the country have already recognized the urgent need to reduce prison, jail, and detention center populations in response to COVID-19. *See* Emergency Petition for Writ of Habeas Corpus, Appendix B.

Ms. Jaramillo is not a danger to the community. She is being treated for the substance abuse disorder that resulted in her incarceration. The public interest is always in favor of compliance with the mandates of our constitution and protecting members of our community from serious harm and risk of death.

REQUEST FOR RELIEF

WHEREFORE, Petitioner Kandyce Jaramillo respectfully requests that this Court grant a temporary restraining order and preliminary injunction granting her Petition for a Writ of Habeas Corpus and enjoining Respondents from continuing to confine Ms. Jaramillo at great risk to her health and safety.

Respectfully Submitted,

/s/ Lalita Moskowitz

Lalita Moskowitz

Leon Howard

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Certificate of Service

I hereby certify that on the 15th day of May, 2020, I filed the foregoing electronically and caused the following parties to be served via email:

Hector Balderas, New Mexico Attorney General

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/s/ Lalita Moskowitz

Lalita Moskowitz

Exhibit 1

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AFFIDAVIT OF LEON HOWARD

I, Leon Howard, J.D., under my obligation as an officer of the Court and in accordance with the Rules of Professional Conduct, state as follows:

1. I am an attorney representing Kandyce Jaramillo. Ms. Jaramillo is presently incarcerated at the Springer Correctional Center (“SCC”).

2. Although I have been able to discuss Ms. Jaramillo’s experiences with her, I have not been able to obtain her signature in order to verify Petitioner’s Emergency Motion for Temporary Restraining Order, Application For Preliminary Injunction, Request For Expedited Hearing, And Memorandum In Support or her Emergency Petition for Writ of Habeas Corpus. This is because SCC has suspended in-person visits in light of the COVID-19 pandemic. Consequently, and given the emergency nature of the present Motion, I have not been able to arrange such a visit and obtain Ms. Jaramillo’s signature in the presence of a notary.

3. However, after talking with Ms. Jaramillo, I represent to the Court that the facts and allegations in the Motion are a true and correct representation of Ms. Jaramillo’s statements and representations during our conversation.

Exhibit 1

4. It is presently unknown when I might be able to obtain Ms. Jaramillo's signature in the presence of a notary.



Leon Howard
May 14, 2020