

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BHARATKUMAR G. THAKKER;
ADEBODUN ADEBOMI IDOWU;
COURTNEY STUBBS; RIGOBERTO
GOMEZ HERNANDEZ; RODOLFO
AGUSTÍN JUAREZ JUAREZ;
MEILING LIN; HENRY PRATT; JEAN
HERDY CHRISTY AUGUSTIN;
MAYOWA ABAYOMI OYEDIRAN;
AGUS PRAJOGA; MANSYUR;
CATALINO DOMINGO GOMEZ
LOPEZ; DEXTER ANTHONY
HILLOCKS; FAZAL GHAFAR; JUAN
ANTONIO GUMBS NAVARRO
T.S.N.; ROBINSON AGUSTIN YOC;
ANDREW DAVIS; ABDUL
MOHAMMED; MIKHAIL
VIKTOROVICH GOLOVERYA; OLEG
ZHUIKO; STEPHEN BROWN; D.F.;
and AJARHI ROBERTS;

Plaintiffs-Plaintiffs, on
behalf of themselves and
others similarly situated,

vs.

CLAIR DOLL, in his official capacity as
Warden of York County Prison; CRAIG
A. LOWE, in his official capacity as
Warden of Pike County Correctional
Facility; ANGELA HOOVER, in her
official capacity as Warden of Clinton
County Correctional Facility; SIMONA
FLORES-LUND, in her official capacity
as Field Office Director, Enforcement and
Removal Operations; U.S. Immigration

Case No. 1:20-cv-00480-JEJ

**AMENDED VERIFIED
PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
EMERGENCY
INJUNCTIVE RELIEF**

CLASS ACTION

and Customs Enforcement; MATTHEW ALBENCE, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; and CHAD WOLF, in his official capacity as Acting Secretary, U.S. Department of Homeland Security;

Defendants-Defendants.

INTRODUCTION

Plaintiffs/Plaintiffs (hereafter “Plaintiffs”) are noncitizens held in civil detention by Immigration and Customs Enforcement (“ICE”) at York County Prison, Pike County Correctional Facility, and Clinton County Correctional Facility, while they await disposition of their immigration cases or deportation, or in some cases (“Original Plaintiffs”) they are in the community after this Court issued a temporary restraining order (“TRO”) ordering their release from the foregoing detention facilities, but they remain subject to ICE supervision. They are united by the fact that they are over age 45 and/or adults who have serious pre-existing medical conditions, which the United States Centers for Disease Control and Prevention (“CDC”) or other medical experts have determined put them at a grave risk of severe illness or death from COVID-19. On March 31, this Court ordered ICE to release the original plaintiffs, and on April 7 this Court issued a TRO in a companion case directing ICE to release similarly-situated immigration detainees from two of these facilities, because record evidence showed that

“adequate measures are not in place and cannot be taken to protect [such high-risk detainees] from COVID-19 in the [York, Clinton and Pike] detention facilities, and that [absent release] catastrophic results may ensue, both to Plaintiffs and to the communities surrounding the Facilities.” *See Thakker v. Doll*, No. 1:20-CV-480, 2020 WL 1671563, at *7 (M.D. Pa. Mar. 31, 2020); *see also* Memorandum and Order, *Hope v. Doll*, No. 20-cv-00562-JEJ (M.D. Pa. Apr. 7, 2020), ECF 11 at 9 (“We cannot allow the Plaintiffs before us, all at heightened risk for severe complications from COVID-19, to bear the consequences of ICE’s inaction.”).

As this Court has recognized, “[b]ased upon the nature of the virus, the allegations of current conditions in the prisons, and Plaintiffs’ specific medical concerns, detailed below, we therefore find that Plaintiffs face a very real risk of serious, lasting illness or death. There can be no injury more irreparable.”

Thakker, 2020 WL 1671563, at *4.

The precarious situation facing the medically vulnerable Plaintiffs in this case who are still in ICE detention is in all material respects indistinguishable from that of the original plaintiffs in this case and in *Hope*. Circumstances only continue to worsen at the three facilities at issue here—as of April 16, ICE has confirmed that seven detainees have tested positive for COVID-19 in Pike, with another

positive case at York.¹ Yet this information is incomplete. County employees are not included in the ICE statistics, but we know seven Pike employees tested positive for COVID-19. Furthermore, these facilities house county detainees and counties are not providing timely updates. Pike County Prison's last update about COVID-19 was 11 days ago. York announced on April 4, 2020 that one detainee tested positive but has not released any additional information. Clinton County Correctional Facility's Warden last public comment on COVID-19 not being at Clinton County Correctional Facility was nearly three weeks ago. In light of the explosive spread of COVID-19 throughout Pennsylvania and the deteriorating conditions at the detention facilities, Plaintiffs respectfully ask this Court to certify a class of noncitizens at elevated risk of suffering severe health consequences or dying if they contract COVID-19, and to issue expedited relief.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 2241 (habeas jurisdiction), and

¹ Confirmed Cases, ICE Guidance on COVID-19, <https://www.ice.gov/coronavirus> (last visited April 17, 2020). Additionally, on April 11, 2020, ICE transferred 25 or more people in ICE custody from Pike County Correctional Facility to facilities elsewhere, including Prairieland Detention Center in Alvarado, TX. After this transfer, Prairieland Detention Facility has 3 ICE detainees who tested positive for COVID-19.

Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

2. Venue lies in the United States District Court for the Middle District of Pennsylvania because Plaintiffs are detained by Defendants/Defendants (hereafter “Defendants”) at three county prisons—located in York, Pike, and Clinton counties—all of which are located within the District. 28 U.S.C. § 2242. Venue is proper in the Middle District of Pennsylvania because a substantial portion of the relevant events occurred in the District and because several Defendants reside in the District. 28 U.S.C. § 1391(e)(1).

PARTIES

Plaintiffs

3. Plaintiff **Bharatkumar G. Thakker** is a 65-year-old man from India who has lived in the United States for 47 years. He was detained by ICE at Pike County Correctional Facility for 27 months. He suffers from several serious health conditions, including respiratory problems, declining kidney function, high blood pressure, high cholesterol, and a history of seizures. His medical conditions and his age place him at high risk of severe illness or death if he contracts COVID-19. Mr. Thakker was released from Pike County Correctional Facility pursuant to a Temporary Restraining Order (“TRO”) granted by this Court on March 31, 2020.

4. Plaintiff **Adebodun Adebomi Idowu** is a 57-year-old man from Nigeria who has lived in the United States since 2012. He was detained by ICE at Clinton County Correctional Facility for 17 months. He suffers from Type II diabetes, high blood pressure, and high cholesterol. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Idowu was released from Clinton County Correctional Facility pursuant to a TRO granted by this Court on March 31, 2020. He has been hospitalized near his home for the past week with COVID-19.

5. Plaintiff **Courtney Stubbs** is a 52-year-old man from Jamaica who has lived in the United States for 28 years. He was detained by ICE at Pike County Correctional Facility for 9 months. Mr. Stubbs is a kidney-transplant patient, for which he takes medications that compromise his immune system, suffers from Type II diabetes, and has heart stents. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Stubbs was released from Pike County Correctional Facility pursuant to a TRO granted by this Court on March 31, 2020.

6. Plaintiff **Rigoberto Gomez Hernandez** is a 52-year-old man from Mexico who has lived in the United States for 16 years. He was detained by ICE at Pike County Correctional Facility for 6 months. He is diabetic and currently receiving treatment for an ulcer. His medical conditions place him at high risk of

severe illness or death if he contracts COVID-19. Mr. Gomez Hernandez was released from Pike County Correctional Facility pursuant to a TRO granted by this Court on March 31, 2020.

7. Plaintiff **Rodolfo Agustín Juarez Juarez** is a 21-year-old man from El Salvador and has lived in the U.S. for four years. He was detained by ICE at York County Prison for a month. He suffers from diabetes. In March, he had a fever, a persistent cough, and trouble breathing. He was not tested for COVID-19 while detained. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Juarez was released from York County Prison pursuant to a TRO granted by this Court on March 31, 2020.

8. Plaintiff **Meiling Lin** is a 45-year-old woman from China who was detained by ICE upon arrival in the United States. She was detained at York County Prison for a year. She suffers from chronic hepatitis B, severe chronic pain, liver disease and other medical complications as a result of her forced sterilization surgery in China. These medical conditions put Ms. Lin at a high risk of severe illness or death if she contracts COVID-19. After this lawsuit was filed, ICE released Ms. Lin from York County Prison on March 30, 2020.

9. Plaintiff **Henry Pratt** is 50-year-old man from Liberia who has lived in the United States for 30 years. He was in ICE detention for three years. He suffers from Type II diabetes and high blood pressure, for which he receives medication.

His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Pratt was released from Clinton County Correctional Facility pursuant to a TRO granted by this Court on March 31, 2020.

10. Plaintiff **Jean H.C. Augustin** is a 34-year-old man from Haiti who has lived in the United States for 18 years. He was detained by ICE at York County Prison for 21 months. He suffers from diabetes, high blood pressure, chronic anemia, and nerve issues. He also was the victim of a gunshot wound, which caused permanent partial disability, and he suffers myriad health issues stemming from that injury. He required multiple hospitalizations during his detention. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Augustin was released from York County Prison pursuant to a TRO granted by this Court on March 31, 2020.

11. Plaintiff **Mayowa Abayomi Oyediran** is a 40-year-old man from Nigeria. He was detained by ICE at York County Prison for more than four months. He has severe asthma and an infection in his lungs. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Oyediran was released from York County Prison pursuant to a TRO granted by this Court on March 31, 2020.

12. Plaintiff **Agus Prajoga** is a 48-year-old man from Indonesia who has lived in the United States for 19 years. He was detained by ICE for three months at

Pike County Correctional Facility. He has diabetes, cholesterol, high blood pressure, and hepatitis B. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. On March 27, 2020, after this lawsuit was filed, ICE released Mr. Prajoga from Pike County Correctional Facility.

13. Plaintiff **Mansyur** is a 41-year-old man from Indonesia who has lived in the United States for 21 years. He was detained by ICE at Pike County Correctional Facility for six months. He has diabetes, thyroid issues, and high blood pressure. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. On March 27, 2020, after this lawsuit was filed, ICE released Mr. Mansyur from Pike County Correctional Facility.

14. Plaintiff **Catalino Domingo Gomez Lopez** is a 51-year-old man from Guatemala who has lived in the United States for 16 years. He was detained by ICE at York County Prison for 16 months. Since being detained he suffered with the flu four times and in February 2020 was so ill that he was coughing blood. He was not tested for COVID-19 while detained. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Lopez was released from York County Prison pursuant to a TRO granted by this Court on March 31, 2020.

15. Plaintiff **Dexter Anthony Hillocks** is a 54-year-old man from Trinidad & Tobago who has lived in the United States for 20 years. He is a lawful permanent resident. He was detained by ICE at Pike County Correctional Facility for almost

five years. Mr. Hillocks suffers serious health problems, including diabetes, high blood pressure, high cholesterol, and anemia. He also was recently diagnosed with leukemia. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Hillocks was released from Pike County Correctional Facility pursuant to a TRO granted by this Court on March 31, 2020.

16. Plaintiff **Fazal Ghaffar** is a 70-year-old man from Pakistan who has lived in the United States for more than 20 years. He has been detained by ICE at York County Prison since January 2020. He was the victim of a crime and has an application for a U nonimmigrant status pending. His age places him at high risk of severe illness or death if he contracts COVID-19.

17. Plaintiff **Juan Antonio Gumbs Navarro** is a 50-year-old man from the Dominican Republic who has lived in the United States for over thirty years. He is a lawful permanent resident who has been detained by ICE at York County Prison since September 2019. He suffers from diabetes, high blood pressure, and high cholesterol. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19.

18. Plaintiff **T.S.N.** is a 33-year-old woman from the Dominican Republic who has lived in the United States for nearly 17 years. T.S.N. is a pseudonym used herein to protect her identity due to the nature of her medical condition. She has been detained by ICE at York County Prison since July 2019. She suffers from

asthma and is HIV positive. Her medical conditions place her at high risk of severe illness or death if she contracts COVID-19.

19. Plaintiff **Robinson Agustin Yoc** is a 31-year-old man from Guatemala who has lived in the United States since 2003. He has been detained by ICE since July 8, 2019 and is currently held at York County Prison. He suffers from asthma, a traumatic brain injury, PTSD, amnesia, anxiety, and depression. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19.

20. Plaintiff **Andrew Davis** is a 37-year-old man from Jamaica who has lived in the United States since 2009. He is a lawful permanent resident who has been detained by ICE since October 2019 and is currently held at York County Prison. He suffers from diabetes, high blood pressure, and high cholesterol. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19.

21. Plaintiff **Abdul Mohammed** is a 22-year-old man from Ghana who came to the United States three years ago as a student on an athletic scholarship. He has been detained by ICE at York County Prison since August 2019. He has asthma and high blood pressure, which puts him at high risk of severe illness or death if he contracts COVID-19.

22. Plaintiff **Mikhail Viktorovich Goloverya** is a 36-year-old man who was born in the U.S.S.R region that is now the country of Kazakhstan. He is stateless. He has lived in the United States for 22 years and has been detained by ICE at Pike County Correctional Facility since November 2019. He suffers from high blood pressure, which places him at heightened risk of complications if he contracts COVID-19.

23. Plaintiff **Oleg Zhuiko** is a 53-year-old man from Kazakhstan who has lived in the United States for 23 years. He has been detained by ICE at Pike County Correctional Facility since November 2019. He suffers from high blood pressure, which places him at a heightened risk of complications if he contracts COVID-19.

24. Plaintiff **Stephen Brown** is a 56-year-old man from Jamaica who has lived in the United States for 39 years. He is an army veteran and lawful permanent resident who has been detained by ICE at Clinton County Correctional Facility since November 2019. He suffers from high blood pressure and borderline diabetes, has high cholesterol, and is a cancer survivor. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19.

25. Plaintiff **D.F.** is a 42-year-old man from Jamaica who has lived in the United States since 2007. D.F. is a pseudonym used herein to protect his identity due to the nature of his medical condition. He has been detained by ICE at Clinton County Correctional Facility since June 2019. He has HIV and kidney disease. His

medical conditions place him at high risk of severe illness or death if he contracts COVID-19.

26. Plaintiff **Ajarhi Sazimbi Roberts** is a 27-year-old man from Jamaica who has lived in the United States since he was a child. He is a lawful permanent resident who has been detained by ICE at Clinton County Correctional Facility since March 2020. He suffers from asthma, which places him at high risk of severe illness or death if he contracts COVID-19.

Defendants

27. Defendant **Clair Doll** is the Warden of the York County Prison in York, Pennsylvania. Defendant Doll is an immediate, physical custodian of Plaintiffs. He is sued in his official capacity.

28. Defendant **Craig A. Lowe** is the Warden of the Pike County Correctional Facility in Lords Valley, Pennsylvania. Defendant Lowe is an immediate, physical custodian of Plaintiffs. He is sued in his official capacity.

29. Defendant-Defendant **Angela Hoover** is the Warden of the Clinton County Correctional Facility in McElhattan, Pennsylvania. Defendant Hoover is an immediate, physical custodian of Plaintiffs. She is sued in her official capacity.

30. Defendant **Simona Flores-Lund** is the Field Office Director for Enforcement and Removal Operations (“ERO”) in the Philadelphia Field Office of Immigration and Customs Enforcement (“ICE”), an agency within the U.S.

Department of Homeland Security. ERO is a division of ICE that manages and oversees the immigration detention system. In her capacity as Field Director for ERO, Defendant Flores-Lund exercises control over and is a custodian of immigration detainees held at all of the correctional facilities in Pennsylvania that house ICE detainees, including the York County Prison, the Pike County Correctional Facility, and Clinton County Correctional Facility. At all times relevant to this Complaint, Defendant Flores-Lund was acting within the scope and course of her employment with ICE. She is sued in her official capacity.

31. Defendant **Matthew T. Albence** is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Defendant Albence is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. Defendant Albence is a legal custodian of Plaintiffs. At all times relevant to this complaint, Defendant Albence was acting within the scope and course of his position as an ICE official. He is sued in his official capacity.

32. Defendant **ICE** is a federal law enforcement agency within the Department of Homeland Security. ICE is responsible for the criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. ERO, a division within ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiffs.

33. Defendant **Chad Wolf** is sued in his official capacity as the Acting Secretary for DHS. In this capacity, he has responsibility for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a), has authority over ICE and its field offices, and has authority to order the release of Plaintiffs. At all times relevant to this complaint, Defendant Wolf was acting within the scope and course of his position as the Acting Secretary for DHS. He also is a legal custodian of Plaintiffs. He is sued in his official capacity.

STATEMENT OF FACTS

A. COVID-19 Poses A Grave and Elevated Risk of Harm, Including Serious Illness or Death, to Persons Age 45 and Over and Those with Certain Medical Conditions.

34. COVID-19 is a disease caused by coronavirus that has reached pandemic status. According to the World Health Organization, as of April 14, more than 1,848,439 people have been diagnosed with COVID-19 in 213 countries or territories around the world and 117,217 have died as a result. Ex. 35, Apr. 15, 2020 Declaration by Dr. Joseph J. Amon (“Amon-New Decl.”) at ¶ 5.² The United States has the highest number of reported cases and deaths in the world: as of April 14,

² Plaintiffs rely on two declarations from Dr. Amon. Ex. 35 (“Amon-New Decl.”) has been prepared for this lawsuit and is dated April 15. Plaintiffs also rely on an earlier Amon declaration that was attached to the original March 24, 2020, petition/complaint, which will continue to be referred to as “Amon Decl.” See ECF 2-1.

2020, over 594,000 people have been diagnosed with the disease and over 25,000 people have died thus far. *Id.* In Pennsylvania, there are at least 25,000 confirmed cases and over 580 deaths. *Id.* The rates of infection are exponential, meaning that, for each person infected one day, the next day we should expect to see not one, but many more instances of infection. *Id.* Without effective public health interventions, CDC projections indicate about 200 million people in the United States could be infected over the course of the pandemic, with as many as 1.5 million people dying from this infection. Golob Decl. at ¶ 11 (ECF 2-2).³ Outcomes from COVID-19 vary from asymptomatic infection to death. Individuals who are at low risk may experience mild symptoms, while high-risk individuals may suffer respiratory failure from the disease. Amon-New Decl. at ¶ 6. In the highest risk populations, the fatality rate is about 15 percent, meaning that out of 100 vulnerable people infected, fifteen will die. Golob Decl. at ¶ 4 (ECF 2-2). In other words, more than one in every seven people in this high-risk group are likely to die, and an even higher percentage will suffer serious illness.

35. Those who do not die may experience long-term harm. COVID-19 can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases, can cause a permanent loss of respiratory capacity. *Id.* at ¶ 9.

³ Dr. Golob's declaration was attached to the original complaint, see ECF 2-2, but is still relevant to provide medical background about the virus.

36. COVID-19 may also target the heart muscle, causing a medical condition called myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure that limits exercise tolerance and the ability to work. *Id.*

37. Emerging evidence also suggests that COVID-19 can trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury. *Id.*

38. Individuals aged 45 and older and those of any age with certain underlying medical conditions are at higher risk of severe complications or death if they are infected with COVID-19. Amon-New Decl. at ¶¶ 8, 9. According to the CDC, these underlying conditions include: blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders, including diabetes, metabolic disorders, heart and lung disease, neurological and neurodevelopmental conditions (“including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy [seizure disorders], stroke, intellectual disability”), and current or recent pregnancy. *Id.* The CDC also identifies individuals with hypertension or body mass index (BMI) greater than 40 to be at higher risk for severe illness. *Id.* at ¶ 8.

39. There is no vaccine, cure, or anti-viral treatment for COVID-19 at this time. The only way to protect vulnerable people from serious health outcomes, including death, is to prevent them from being infected in the first place. *Id.* at ¶ 6; Golob Decl. at ¶ 10 (ECF 2-2).

40. COVID-19 infects people who come into contact with respiratory droplets that contain the coronavirus. Amon-New Decl. at ¶ 22. Speech alone can produce these droplets. *Id.* at 23. Contact with particles that transmit the virus can occur at a distance of six feet, with confirmed transmission in hospital settings at a distance of 13 feet. *Id.* at ¶ 22. It is also possible that an individual can become infected by touching a surface with the virus and then touching their mouths. The virus may also travel on surfaces. *Id.* Thus, the only known means of minimizing the risk of infection are social distancing and increased sanitization. *Id.* at ¶ 24.

41. Research shows that social distancing is the primary means of risk mitigation. Distancing must occur before individuals display symptoms, as they may be contagious before they are symptomatic. *Id.* at ¶24. The CDC recommends a social distance of at least six feet to minimize the risk of spread. *Id.* at ¶¶ 22; Golob Decl. at ¶ 10 (ECF 2-2).

42. In response to this research, countries around the world have made social distancing public policy. In the United States, 50 states, seven territories, and the District of Columbia have all taken formal executive action to contain the

outbreak. Amon-New Decl. at ¶ 25. These measures include stay at home orders that now cover at least 316 million people across the country. *Id.* On April 1, Governor Wolf extended the pre-existing county-by-county stay-at-home orders in Pennsylvania to cover the entire state. *Id.* The idea behind these actions is that, by “flattening the curve,” those most vulnerable will be least likely to become infected and, if they do, the numbers of infected individuals will be low enough that medical facilities will have enough beds, masks, and ventilators for those who need them. *Id.* at ¶ 26.

B. Conditions in Pennsylvania’s Immigration Detention Facilities Increase the Risk of COVID-19 Infection.

43. The conditions in the three immigrant detention facilities contravene medical and public health directives for risk mitigation. The only effective way to prevent infection is to practice proper hygiene and, crucially, social distancing of at least six feet. Plaintiffs and those who are similarly situated at Clinton, Pike, and York describe conditions in these facilities that render it impossible to practice social distancing. They sleep in dorms with poor ventilation that house 50 to 70 other individuals on bunk beds that are well under six feet apart, or in small cells where they are double or triple bunked. They share bathrooms, have to use the same sinks in which they brush their teeth to access hot water for food and coffee, and crowd around communal eating tables so small the edges of their trays touch.

44. Plaintiffs at York are in dorms of 50 to 60 men and sleep two to three feet apart or in dorms with 40 women who sleep so close they can reach out and touch each other. Ex. 37 (Gumbs Navarro Decl.) at ¶ 16; Ex. 40 (Davis Decl.) at ¶ 12; Ex. 38 (T.S.N. Decl.) at ¶ 15; *see also* Augustin Decl. at ¶ 16 (ECF 2-11). At Clinton, 70 men are housed in a single dorm, where they sleep on bunk beds that are within an arm's length. Ex. 45 (D.F. Decl.) at ¶ 8; *see also* Pratt Decl. at ¶ 6 (ECF 2-10); Idowu Decl. at ¶ 11 (ECF 2-4). And at Pike, they are usually double or triple bunked in cells and sleep within two or three feet of one another. Ex. 43 (Zhuiko Decl.) at ¶ 12; Ex. 42 (Goloverya Decl.) at ¶ 10; *see also* Thakker Decl. at ¶ 11 (ECF 2-3).

45. The bathrooms are similarly cramped. At York, there are only six toilets and six showers for nearly 60 people. Davis Decl. at ¶ 14; Ex. 36 (Ghaffar Decl.) at ¶ 9; *see also* Augustin Decl. at ¶ 20 (ECF 2-11). At Pike, Plaintiffs have a toilet and sink in their cell, which further crowds the tiny space, making it impossible to maintain 6 feet of distance from each other. Zhuiko Decl. at ¶ 14; *see also* Stubbs Decl. at ¶ 13 (ECF 2-5). Plaintiffs in Pike share three showers among the entire block. Goloverya Decl. at ¶ 12. At Clinton, there are only four showers, four sinks, and four toilets for seventy men. Ex. 44 (Brown Decl.) at ¶ 14. The bathrooms also have a persistent pest problem: black bugs crawl out from the drain. Ex. 46 (Roberts

Decl.) at ¶ 9; Pratt Decl. at ¶ 10 (ECF 2-10) There are flies throughout the dorm, including in the eating area. Roberts Decl. at ¶ 10.

46. Plaintiffs also eat close together. At York, people are forced to eat nearly elbow to elbow from open trays. Ghaffar Decl. at ¶ 8; Davis Decl. at ¶ 13. At Clinton, the communal eating space is so limited that about half of the 70 individuals in each dorm have to eat in their beds. Brown Decl. at ¶ 13; *see also* Idowu Decl. at ¶ 12 (ECF 2-4). And at Pike, people are required to eat in their cells, forcing them to eat in their beds due to the size of the cells. Zhuiko Decl. at ¶ 13.

47. Other troubling practices persist. Phones and tablets at Pike are shared among many detained individuals within each block, yet the allotted supplies to clean are diluted and insufficient. Zhuiko Decl. at ¶ 10. At York, detainees also share phones and tablets but they are not provided cleaning supplies to disinfect them. Juarez Juarez at ¶ 15 (ECF 2-8); Ex. 41 (Mohammed Decl.) at ¶ 13. Hallways also pose risks of contagion. At York and Clinton, all blocks share narrow hallways where social distancing is not and cannot be practiced, and everyone, including quarantined individuals, must use these hallways to access services. D.F. Decl. at ¶ 20; Augustin Decl. at ¶ 19 (ECF 2-11); Stubbs Decl. at ¶ 12 (ECF 2-5). Two of the three washing machines are regularly broken at Clinton, leaving just one washer for 70 men. Roberts Decl. at ¶ 13; *see also* Stubbs Decl. at ¶ 12 (ECF 2-5); Pratt Decl. at ¶ 11 (ECF 2-10).

48. To make matters worse, Defendants regularly fail to provide Plaintiffs with adequate supplies. Men at York are still given only one bar of soap a week (women are given two bars), which they must bring with them to the bathroom. Davis Decl. at ¶ 16; T.S.N. Decl. at ¶ 20; Gumbs Navarro Decl. at ¶ 22. They are not provided any sanitizer. *Id.* While Clinton provides soap for hand washing, the facility regularly runs out. Roberts Decl. at ¶ 11. The same is true for the newly installed hand sanitizer, which runs out regularly and is not replenished until a shift change. *Id.* At Pike, soap continues to be rationed. Goloverya Decl. at ¶ 12; *see also* Stubbs Decl. at ¶ 16 (ECF 2-5). One Plaintiff, who can afford to buy soap, buys his own from the commissary. Goloverya Decl. at ¶ 12. They are still not provided hand sanitizer. Zhuiko Decl. at ¶ 11.

49. Other new measures instituted by the detention facilities are likewise inadequate. Facilities have provided face masks but are requiring Plaintiffs to reuse them for up to two weeks. Ghaffar Decl. at ¶ 12; T.S.N. Decl. at ¶ 26; Gumbs Navarro Decl. at ¶ 18; Zhuiko Decl. at ¶ 16; Brown at ¶ 18. Such re-use transforms the masks into vectors for infection. *See* Amon-New Decl. at ¶ 41(d). Furthermore, they have no way to properly wash their masks. At York, people hand-wash their masks in the bathroom sinks. Ghaffar Decl. at ¶ 12. At Clinton, one or two of the three washing machines are often out of order, which limits their ability to wash their clothes and masks. Roberts Decl. at ¶ 13.

50. York and Clinton continue practices that are wholly insufficient to prevent viral spread across the facility. At York, all people housed in a single unit are still put on quarantine within the same dorms where they are unable to practice social distancing. Ghaffar Decl. at ¶ 10; *see also* Baranoski Decl. at ¶ 6 (ECF 2-18). Temperature checks are infrequent, with one individual reporting checks just twice since March and another reporting a single test in early April, four days ago. Davis Decl. at ¶ 18; Gumbs Navarro Decl. at ¶ 23. In the women's unit at York, a woman was sick with COVID-19 symptoms for six days before she received medical attention. T.S.N. Decl. at ¶ 22. Despite multiple women now exhibiting symptoms of COVID-19, no one has been tested. *Id.* at ¶ 23. Nor have the dorms been rearranged to implement recommended social distancing. *Id.* at ¶15. Last week at Clinton, a Plaintiff saw a contractor having his temperature checked after he was already in their dorm. D.F. Decl. at ¶ 21. And, although some individuals have reported temperature checks, no Plaintiffs have received cheek swab tests. Because of asymptomatic and pre-symptomatic transmission, temperature checks alone are insufficient to identify infected individuals who may be infected and thus infecting others. Amon-New Decl. at ¶ ¶ 24, 37.

51. Similarly, instead of instituting protective measures, like social distancing, Pike's response has been a facility lockdown, which has exacerbated the unsafe conditions. Goloverya Decl. at ¶ 11. Because they are locked in their cells for

twenty-three and half hours a day, Plaintiffs sometimes forego showering to have time to call family or prepare food. *Id.* Additionally, even though there are now empty cells, Defendants continue to detain people two or three to a cell. Zhuiko Decl. at ¶ 8. Furthermore, cleaning supplies continue to be in short supply and their use is communal: the block uses the same mop and bucket of water for the entire day. Goloverya Decl. at ¶ 13; *see also* Thakker Decl. at ¶ 14 (ECF 2-3).

52. The failure to perform tests of staff who have ongoing community contacts presents a daily risk of introduction of the virus into the detention facility. Amon-New Decl. at ¶ 37(a), (d). The entire state of Pennsylvania is reported to have “widespread” community transmission, and therefore all staff are potential vectors of the virus. *Id.* at ¶¶ 50(a), 27(a). The possibility of asymptomatic transmission means that monitoring staff for fever is also inadequate for identifying all who may be infected and preventing transmission. *Id.* at ¶ 37(d).

53. In other jurisdictions where testing has been made available to correctional officers who enter and leave facilities regularly, the confirmed rates of infection are high. *Id.* at ¶¶ 49-51.

54. The risk to Plaintiffs and the proposed class is all the greater because COVID-19 has already arrived at the ICE facilities. As of April 16, 2020, ICE reports

that seven detainees have tested positive at Pike, and one at York.⁴ Although ICE reports numbers of ICE employees who test positive for COVID-19 at its own facilities, it does not report similar figures for employees at facilities where it detains immigrants under contract with local jails, such as Pike, York, and Clinton. However, news reports show that multiple staff and workers have tested positive at Pike.⁵ Infectious spread has proven lethal: two women serving criminal sentences at Pike thus far have contracted COVID-19 and died.⁶

C. Continued ICE Detention is Unsafe for Those Most Vulnerable to COVID-19.

55. Without a vaccine or cure for COVID-19, mitigating the risk of contracting the virus is the only known way to protect those who are most vulnerable to serious harm from infection. Golob Decl. at ¶ 10 (ECF 2-2); Amon-New Decl. at ¶¶ 6, 24.

⁴ Confirmed Cases, ICE Guidance on COVID-19, <https://www.ice.gov/coronavirus> (last visited April 17, 2020)

⁵ Coronavirus COVID-19 Updates from the Pike County Commissioners, April 2, 2020 Update, <https://news.pikepa.org/post/2020/03/09/COVID-19-Update> (last visited April 17, 2020)

⁶ Joseph Kohut, *Two Pike County inmates die from coronavirus; seven staff members, five other inmates test positive*, Times Tribune (Apr. 7, 2020), available at <https://www.thetimes-tribune.com/coronavirus/two-pike-county-inmates-die-from-coronavirus-seven-staff-members-five-other-inmates-test-positive-1.2615732>).

56. Because the risk of infection is at its zenith in detention centers where social distancing measures are impossible to implement, where people share common spaces that are not regularly sanitized, and where individuals are regularly exposed to potential vectors of infection, public health experts have recommended release of vulnerable individuals from custody. Amon-New Decl. at ¶¶ 58-59.

57. Medically vulnerable individuals who become infected will not receive adequate medical treatment. Immigration detention facilities lack adequate medical infrastructure to address the strain of an outbreak. Amon-New Decl. at ¶ 53. As a result, detained individuals who are age 45 and over, or are any age with specified pre-existing medical conditions that put them at high risk of illness if infected by COVID-19 are at grave risk of severe illness and death and should be released.

58. If they are not released before the virus spreads through the prison, detainees will likely be unable to access necessary medical care, including positive pressure ventilation and, in extreme cases, extracorporeal mechanical oxygenation. *See Golob Decl. at ¶ 8 (ECF 2-2)*. This is because an outbreak among detainees and corrections staff will strain the limited medical infrastructure in the rural counties in which these detention facilities are located. Once infection spreads throughout the detention center, the burden of caring for these individuals will shift to local medical facilities. The few facilities will likely not be able to provide care to all infected individuals with serious cases, increasing the likelihood that these individuals will

die. Amon-New Decl. at ¶ 54. Thus, high risk individuals should be released from detention centers before it is too late.

59. Similar viral spread has already occurred at detention facilities throughout the country. Cook County Jail has become an epicenter of the pandemic, with the highest number of infected individuals of any single location in the country. As of April 13, 2020, there were 524 confirmed cases. *Id.* at ¶ 49. The rate of spread at these facilities has been shown to far exceed the rate in the general population. In New York City, for example, where testing began earlier than in Pennsylvania, the infection rate for COVID-19 at local city jails is more than seven times higher than the rate citywide and 87 times higher than the country at large. *Id.* As of April 14, 2020, at least 323 people in local jails in New York City had confirmed COVID-19 cases, even after authorities had released several hundred people from custody. *Id.*

60. In another well-publicized example, a low-security federal prison in Oakdale, Louisiana, has experienced a severe outbreak of COVID-19. Since mid-March, dozens of prisoners and workers at the prison have tested positive, and at least six people at Oakdale have died. As of April 10, the Washington Post reported that over 100 prisoners at the facility were under quarantine.⁷

⁷ See Kimberly Kindy, *Inside the deadliest federal prison, the seeping coronavirus creates fear and danger*, Wash. Post (Apr. 10, 2020), available at https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0_story.html

D. Plaintiffs Must Be Released from ICE Custody Because They Are Particularly Vulnerable to Serious Illness or Death If Infected by COVID-19.

61. Plaintiffs in this case are all individuals who are especially vulnerable to serious illness and death if they are infected with COVID-19, but ICE nonetheless insisted on detaining the original plaintiffs, and continues to detain the newly added plaintiffs at York County Prison, Pike County Correctional Facility, and Clinton County Correctional Facility while they await adjudication of their immigration cases.

Original Plaintiffs from March 24, 2020, Complaint

62. Plaintiff **Bharatkumar G. Thakker** is a 65-year-old citizen of India. Thakker Decl. at ¶ 1 (ECF 2-3). He was detained by ICE at Pike County Correctional Facility for 27 months before this Court ordered his release. *Id.* at ¶ 4. Mr. Thakker has significant health issues including high blood pressure, high cholesterol, a history of seizures, and kidney disease that will soon require dialysis. *Id.* at ¶¶ 6-8. While he had a heart stent put in over ten years ago, he continues to have respiratory issues. He takes 11 medications a day. *Id.* at ¶ 6. While detained, Mr. Thakker twice has been sent from the prison to the community hospital. *Id.* at ¶ 10. Mr. Thakker is critically vulnerable to severe illness or death from COVID-19 because of his age and significant health issues. Amon Decl. at ¶ 12 (ECF 2-1).

63. Plaintiff **Adebodun Adebomi Idowu** is a 57-year-old man from Nigeria. Idowu Decl. at ¶ 1 (ECF 2-4). He has lived in the United States since 2012 and his wife is a U.S. citizen. *Id.* at ¶ 2. He is applying for relief under the Convention Against Torture (CAT). *Id.* Mr. Idowu was detained by ICE at Clinton County Correctional Facility for 17 months before this Court ordered his release. *Id.* at ¶ 3. Mr. Idowu suffers from Type II diabetes, high blood pressure, and high cholesterol. *Id.* at ¶ 4. He receives medication for these conditions. *Id.* He was hospitalized three times while at Clinton County Correctional Center. *Id.* at 5. Each hospitalization was after Clinton failed to provide him with his diabetes medication. *Id.* His most recent hospitalization was in December 2019, after he was not provided insulin for two days. *Id.* at ¶ 8. Mr. Idowu lost consciousness and was taken to the emergency room. *Id.* He spent two nights at the hospital before being brought back to Clinton County Correctional Facility. *Id.* Because of his chronic health conditions, Mr. Idowu is critically vulnerable to severe illness or death from COVID-19. Amon Decl. at ¶ 16 (ECF 2-1). He was released on March 31 pursuant to this Court's order, but he has now been hospitalized for the past week with COVID-19.

64. Plaintiff **Courtney Stubbs** is a 52-year-old citizen of Jamaica who has lived in the United States since 1991. Stubbs Decl. at ¶ 1 (ECF 2-5). He has a U.S. fiancée and 9-year-old son. *Id.* at ¶ 2; Arizzi Decl. at 1 (ECF 2-6). Mr. Stubbs was detained by ICE at Pike County Correctional Facility for 9 months before this Court

ordered his release. Stubbs Decl. at ¶ 7 (ECF 2-5). ICE detained him despite his continued compliance with his Order of Supervision (OSUP), which he was on for 14 years. *Id.* at ¶¶ 5-6. ICE has been unable to remove him because Jamaica has repeatedly refused to accept him after reviewing his medical records. *Id.* at ¶ 7; Arizzi Decl. at ¶ 5 (ECF 2-6). He has Type II diabetes and heart stents. Stubbs Decl. at ¶ 4 (ECF 2-5). Mr. Stubbs takes 12 pills a day for his various medical ailments, including medicine so that his body does not reject his kidney transplant. *Id.* at ¶ 3. Mr. Stubbs is critically vulnerable to severe illness or death from COVID-19 because of his diabetes, kidney condition, and his other serious health issues. Amon Decl. at ¶ 13 (ECF 2-1).

65. Plaintiff **Rigoberto Gomez Hernandez** is a 52-year-old Mexican national. Gomez Hernandez Decl. at ¶ 1 (ECF 2-7). He was granted non-LPR cancellation of removal on January 16, 2020, but remained detained by ICE at Pike County Prison because the government appealed the decision to the Board of Immigration Appeals (BIA). He was released pursuant to this Court's order. Mr. Gomez Hernandez has multiple chronic health issues. *Id.* at ¶ 4. He is diabetic and currently receiving treatment for an ulcer. *Id.* He is critically vulnerable to severe illness and death from COVID-19 because of his diabetes. Amon Decl. at ¶ 18 (ECF 2-1).

66. Plaintiff **Rodolfo Agustín Juárez Juárez** is a 21-year-old asylum seeker from El Salvador. Juárez Decl. at ¶ 1 (ECF 2-8). His asylum application is before the Executive Office for Immigration Review (“EOIR”). *Id.* at ¶ 4. He was detained by ICE at York County Prison for a month before this Court ordered his release. *Id.* at ¶ 3. Mr. Juárez suffers from diabetes and had a fever, persistent cough, and trouble breathing for the week preceding his release. *Id.* at ¶¶ 5-6. He was not tested for COVID-19 at York and was told by correctional officers that COVID-19 tests are not available at the facility. *Id.* at ¶ 11. Mr. Juárez is critically vulnerable to severe illness and death from COVID-19 because of his significant health problems. Amon Decl. at ¶ 15 (ECF 2-1).

67. Plaintiff **Meiling Lin** is a 45-year-old citizen of China. Lin Decl. at ¶ 1 (ECF 2-9). She was detained by ICE at York County Prison for one year before she was released. *Id.* She fled China after being forcibly sterilized by the Chinese government and was detained on arrival in the United States. *Id.* at ¶¶ 2, 5. She is appealing a decision by an Immigration Judge denying her asylum to the Board of Immigration Appeals. *Id.* at ¶ 2. Ms. Lin has chronic hepatitis B and suffers from severe chronic pain and other medical complications as a result of her forced sterilization surgery. *Id.* at ¶ 4-8. Ms. Lin is critically vulnerable to severe illness or death from COVID-19 because of her hepatitis B, liver disease and other significant health problems. Amon Decl. at ¶ 14 (ECF 2-1).

68. Plaintiff **Henry Pratt** is a 50-year-old citizen of Liberia. Pratt Decl. at ¶ 1 (ECF 2-10). Mr. Pratt fled Liberia 30 years ago and won asylum in the United States and later became a lawful permanent resident. Ex. 48 (Pratt Supp. Decl.) at ¶ 9. He applied for his citizenship and but was unsuccessful and was placed into removal proceedings in February 2017. *Id.* at ¶ 2. Since 2018, ICE has been unable to obtain travel documents to effectuate his removal. Pratt Supp. Decl. at ¶ 9. Mr. Pratt was detained by ICE for three years before this Court ordered his release from Clinton County Correctional Facility. *Id.* at ¶ 2. He suffers from Type II diabetes and high blood pressure and receives medication for these conditions. *Id.* at ¶ 4. Mr. Pratt is critically vulnerable to severe illness and death from COVID-19 because of his diabetes. Amon Decl. at ¶ 19 (ECF 2-1).

69. Plaintiff **Jean H.C. Augustin** is a 34-year-old citizen of Haiti. Augustin Decl. at ¶ 1 (ECF 2-11). He came to the U.S. when he was 15 years old and has been living in the U.S. for the past 18 years. *Id.* at 2. He is seeking relief under the Convention Against Torture (CAT). *Id.* at ¶ 3. He was detained by ICE at York County Prison from June of 2018 until this Court ordered his release. *Id.* at ¶ 2. Mr. Augustin suffers from diabetes, high blood pressure, chronic anemia, nerve issues. *Id.* at ¶¶ 4-6. Mr. Augustin also has a myriad of health issues stemming from a gunshot injury, with pieces of the bullet still lodged in his body. *Id.* at ¶ 6. He had a number of medical emergencies while at York County Prison and as a result had to

be hospitalized multiple times. *Id.* at ¶¶ 10-11. Mr. Augustin is critically vulnerable to severe illness or death from COVID-19 because of his significant health problems. Amon Decl. at ¶ 14a (ECF 2-1).

70. Plaintiff **Mayowa Abayomi Oyediran** is a 40-year-old-male asylum seeker from Nigeria. Oyediran Decl. at ¶¶ 1-3 (ECF 2-12). He is awaiting a decision on his asylum case, which was heard by an immigration judge on March 10, 2020. *Id.* ¶ at 3. Mr. Oyediran was detained by ICE from November 7, 2019, until this Court ordered his release. Mr. Oyediran has severe asthma and has an infection in his lungs. *Id.* ¶¶ at 4, 7. York County Prison did not provide him with an inhaler or treatment for the lung infection. *Id.* at ¶¶ 5-6. He also has a history of high blood pressure and high cholesterol. *Id.* at 8. Mr. Oyediran is critically vulnerable to severe illness and death from COVID-19 because of his severe asthma. Amon Decl. at ¶ 20 (ECF 2-1).

71. Plaintiff **Agus Prajoga** is a 48-year-old citizen of Indonesia. Prajoga Decl. at ¶ 2 (ECF 2-13). He has a pending Motion to Reopen based on changed country conditions regarding the treatment of Christians in Indonesia. *Id.* ICE detained Mr. Prajoga and held him at Pike County Prison for 3 months before he was released. *Id.* Mr. Prajoga has diabetes, cholesterol, high blood pressure, and hepatitis B. *Id.* at ¶ 3. He takes medication for these conditions. *Id.* at ¶ 4. Mr. Prajoga is critically vulnerable to severe illness and death from COVID-19 because of his

diabetes and hepatitis, as well as other health problems. Amon Decl. at ¶ 22 (ECF 2-1).

72. Plaintiff **Mansyur** is a 41-year-old-male citizen of Indonesia. Mansyur Decl. (ECF 2-14). He is a Christian Indonesian who is seeking relief from removal. *Id.* at ¶ 2. The Board of Immigration Appeals (BIA) recently granted an Emergency Stay of Removal and his Motion to Reopen before the BIA is pending. *Id.* Mr. Mansyur was detained by ICE at Pike County Prison for more than 3 months before he was released. Mr. Mansyur has diabetes, thyroid issues, and high blood pressure. *Id.* at ¶ 3. He receives medication for these medical issues. *Id.* at ¶ 4. He is critically vulnerable to severe illness and death from COVID-19 because of his diabetes. Amon Decl. at ¶ 21 (ECF 2-1).

73. Plaintiff **Catalino Domingo Gomez Lopez** is a 51-year-old Guatemalan national. Gomez Lopez Decl. ¶ at 1 (ECF 2-15). He is seeking relief under the Convention Against Torture (CAT). *Id.* His case is pending before the Third Circuit Court of Appeals. He was detained by ICE at York County Prison from November 2018 until this Court ordered his release. *Id.* at ¶ 3. Mr. Gomez Lopez had the flu four times during his detention at York. *Id.* at ¶ 5. His most recent illness with the flu was in mid-February 2020; he was ill for four weeks, during which time he had a fever and a persistent cough. *Id.* He had trouble sleeping because of his cough, which was so severe that he coughed blood. *Id.* Mr. Gomez Lopez is critically

vulnerable to severe illness and death from COVID-19 because of his persistent viral infections. Amon Decl. at ¶ 16a (ECF 2-1).

74. Plaintiff **Dexter Anthony Hillocks** is a 54-year-old lawful permanent resident from Trinidad and Tobago who has lived in the United States since 2000. Hillocks Decl. at ¶ 2 (ECF 2-16). Despite a recent Third Circuit Court of Appeals decision that reversed and vacated his order of removal, ICE continued to detain him at Pike County Correctional Facility pending further proceedings until this Court ordered his release. *Id.* at ¶ 4. At that point he had been detained for almost five years. *Id.* at ¶ 2. Mr. Hillocks has several serious health problems. Seven months ago, he was diagnosed with leukemia. *Id.* at ¶ 6. He does not yet know the full extent of his cancer diagnosis. *Id.* He also has diabetes, high blood pressure, and high cholesterol, for which he takes medication, as well as anemia. *Id.* at ¶¶ 5, 7-8. Mr. Hillocks is critically vulnerable to severe illness and death from COVID-19 because of his significant health problems. Amon Decl. at ¶ 17 (ECF 2-1).

Newly Added Plaintiffs

75. Plaintiff **Fazal Ghaffar** is a 70-year-old man from Pakistan who has lived in the United States for more than 20 years. Ex. 36 (Ghaffar Decl.) at ¶¶ 1-2. He is married to a lawful permanent resident. *Id.* at ¶ 3. Their son is a U.S. citizen who works as a registered nurse. *Id.* For eight years, he complied with his Order of Supervision and reported to ICE. After the filing of his U-visa-nonimmigrant-status

application, which is still pending before the USCIS, he began arrangements to return to Pakistan but was unable to obtain travel documents since ICE had his passport. *Id.* at ¶ 2. ICE detained him prior to a check-in and he has been detained at York County Prison since January 2020. *Id.* On March 25, 2020, his immigration lawyer asked ICE to release him due to his age, but ICE has not responded. *Id.*

76. Mr. Ghaffar has had a persistent cough for several months. *Id.* at ¶ 5. He has low blood pressure, which causes him fatigue, he has balance problems and must steady himself with a wall. *Id.* He has bladder problems and has a frequent need to urinate, even at night. *Id.* He has some internal bleeding and was told he needed a colonoscopy but he has not been given one. *Id.* His advanced age places him at a high risk for severe disease and death if he contracts COVID-19. Amon-New Decl. at ¶ 11.

77. Plaintiff **Juan Antonio Gumbs Navarro** is a 50-year-old man from the Dominican Republic who has lived in the United States since he was sixteen years old. Ex. 37 (Gumbs Navarro Decl.) at ¶ 2. He has been a lawful permanent resident for 25 years. *Id.* at ¶ 2. His application for Lawful Permanent Resident Cancellation of Removal is pending before the BIA. *Id.* at ¶ 4. His partner gave birth to their daughter on April 11, 2020. *Id.* at ¶ 8. They have another daughter together, and Mr. Gumbs Navarro also has four other U.S. citizen children. *Id.* at ¶ 9. He has been detained by ICE at York County Prison since September 2019. *Id.* at ¶ 3.

78. Mr. Gumbs Navarro suffers from diabetes, high blood pressure, and high cholesterol, for which he takes many medications *Id.* at ¶¶ 10-11. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Amon-New Decl. at ¶ 12.

79. Plaintiff **T.S.N.** is a 33-year-old woman from the Dominican Republic who has lived in the United States for nearly 17 years. Ex. 38 (T.S.N. Decl.) at ¶ 2. She recently retained new immigration counsel to represent her in her removal case. *Id.* at ¶ 4. She has a two-year-old son, who is a U.S. citizen. *Id.* at ¶¶ 2, 6. T.S.N. has been detained by ICE at York County Prison since July 2019.

80. Prior to her detention, T.S.N. had been hospitalized on several occasions due to severe asthma attacks. *Id.* at ¶ 10. She used an inhaler, daily medication, and a nebulizer machine to treat her asthma. *Id.* at ¶ 8. Since her detention, she has not received daily medication for her asthma. *Id.* at ¶ 9. Instead, she was told she would receive treatment if it became necessary. *Id.* T.S.N. is also HIV positive. *Id.* at ¶¶ 7, 11. Prior to her detention, she went for bloodwork every two months. *Id.* In the ten months of her detention, T.S.N. has not been taken to the hospital for blood work. *Id.* Her medical conditions place her at high risk of severe illness or death if she contracts COVID-19. Amon-New Decl. at ¶ 13.

81. Plaintiff **Robinson Agustin Yoc** is a 31-year-old man from Guatemala who has lived in the United States for approximately seventeen years. Ex. 39

(Augustin Yoc Decl.) at ¶ 2. He qualified for free representation through the National Qualified Representatives Program, which is a federally funded program that provides free representation to immigrants who are determined to be incompetent to represent themselves in their removal proceedings. Mr. Augustin Yoc has been detained by ICE since July 8, 2019. *Id.* For his first of month detention, he was at Pike; then he was transferred to York County Prison, where he remains. *Id.* at ¶ 2.

82. Mr. Augustin Yoc suffers from asthma and had a traumatic brain injury in March 2019. *Id.* at ¶ 5. Additionally, he suffers from post-traumatic stress disorder (PTSD), amnesia, anxiety, and depression. *Id.* His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Amon-New Decl. at ¶ 14.

83. Plaintiff **Andrew Davis** is a 37-year-old man from Jamaica who has lived in the United States for over ten years. Ex. 40 (Davis Decl.) at ¶¶ 1-2. He is married with two children—a U.S. citizen son and a lawful permanent resident daughter. *Id.* He is seeking Lawful Permanent Resident Cancellation of Removal and asylum, which will soon be before the Board of Immigration Appeals. *Id.* at ¶ 3. ICE detained him on his way to a probation check-in for a marijuana offense. *Id.* at ¶ 4. He has been detained since October 2019, first at Pike, and since March 2020, at York County Prison. *Id.*

84. Mr. Davis suffers from diabetes, high blood pressure, and high cholesterol. *Id.* at ¶ 7. Prior to his detention, he treated his diabetes with insulin and a pill. *Id.* at ¶ 8. Since being detained, he has only received insulin when his blood sugar is low. *Id.* His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Amon-New Decl. at ¶ 15.

85. Plaintiff **Abdul Mohammed** is a 22-year-old man from Ghana. Ex. 41 (Mohammed Decl.) at ¶ 1. He is eligible to adjust his status through his U.S. citizen wife. *Id.* at ¶ 2. He entered the United States on a student visa and had an athletic scholarship to play collegiate soccer. *Id.* After he injured his knee playing soccer, he sought treatment in New York and transferred to another school but fell out of status. *Id.* He has been detained at the York County Prison since August 22, 2019. *Id.* at ¶ 3.

86. Mr. Mohammed has suffered from asthma since childhood. *Id.* at ¶ 4. As a soccer player, he took special care to have his inhaler accessible in the event of an asthma attack, yet York has not yet provided him with an inhaler despite his repeated requests. *Id.* Recently, he has experienced breathing issues and sought medical attention. *Id.* The nurse told him that she tried to order him an inhaler but it was out of stock. *Id.* His asthma puts him at high risk of severe illness or death if he contracts COVID-19. Amon-New Decl. at ¶ 16.

87. Plaintiff **Mikhail Viktorovich Goloverya** is a 36-year-old man who was born in the U.S.S.R region that is now the country of Kazakhstan. Ex. 42 (Goloverya Decl.) at ¶ 1. He has lived in the United States for 22 years. *Id.* at ¶ 2. He has been detained by ICE since November 2019 at the Pike County Correctional Facility. *Id.* at ¶ 3. He was ordered removed in February 2020, but because he is stateless, ICE has been unable to deport him. *Id.* at ¶ 1-2.

88. Mr. Goloverya suffers from high blood pressure. *Id.* at ¶ 5. He takes medication for this, along with medication for his anxiety and depression. *Id.* at ¶¶ 5, 7. Despite his medication, he still suffers from panic attacks, which can be severe. *Id.* He recently had a panic attack where he almost passed out. *Id.* Mr. Goloverya has also recently experienced shortness of breath and chest pain but has been told it is due to his panic attacks. *Id.* at 8. His high blood pressure places him at heightened risk of complications if he contracts COVID-19. Amon-New Decl. at ¶ 17.

89. Plaintiff **Oleg Zhuiko** is a 53-year-old man who has lived in the United States for 23 years. Ex. 43 (Zhuiko Decl.) at ¶¶ 1-2. He lost his citizenship from Kazakhstan and is stateless. *Id.* He has two U.S. citizen children (ages 14 and 18). *Id.* He has been detained by ICE at Pike County Correctional Facility for 16 months. *Id.* at ¶ 3. He has a forthcoming appeal before the U.S. Court of Appeals for the Third Circuit to reopen his immigration proceedings. *Id.* at ¶ 2.

90. Mr. Zhuiko was diagnosed with high blood pressure three years ago, for which he takes daily medication. *Id.* at ¶ 4. He has also complained of recurring chest pains and has had bronchitis multiple times. *Id.* at ¶ 5. His high blood pressure places him at a heightened risk of complications if he contracts COVID-19. Amon-New Decl. at ¶ 18.

91. Plaintiff **Stephen Brown** is a 56-year-old man from Jamaica who has lived in the United States for 39 years. Ex. 44 (Brown Decl.) at ¶ 1. At the age of 17, he immigrated to the United States. *Id.* at ¶ 3. Six months later he enlisted in the Army, for which he received a general discharge under honorable conditions. *Id.* He and his wife have been together for 33 years (and married for 26 years). *Id.* at ¶ 4. Together, they raised five children, as well as a nephew, who is now a police officer. *Id.* He has been detained by ICE at Clinton County Correctional Facility since March 4, 2020. *Id.* His case is before an immigration judge. *Id.* at ¶ 6.

92. Mr. Brown suffers from high blood pressure and borderline diabetes, has high cholesterol, and is a cancer survivor. *Id.* at ¶¶ 7-8. Recently, he began experiencing symptoms similar to those that led to his previous cancer diagnosis. *Id.* at ¶ 8. He is awaiting test results and an appointment with a specialist, which has not yet been scheduled. *Id.* His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Amon-New Decl. at ¶ 19.

93. Plaintiff **D.F.** is a 42-year-old man from Jamaica who has lived in the United States since 2007. Ex. 45 (D.F. Decl.) at ¶ 3. He won asylum and later became a lawful permanent resident. *Id.* D.F. has been detained by ICE for 10 months (since June 7, 2019) at Clinton County Correctional Facility. *Id.* at ¶ 4. While he is now subject to a final order of removal, Jamaica will not accept him for removal due to his serious health conditions. *Id.*

94. D.F. is HIV positive. While he has been taking medication for his HIV since 2008, the medications have caused him kidney damage. Last month, his glomerular filtration rate (GFR) was 56, which is classified as moderate to severe kidney damage. *Id.* at ¶ 6. Prior to his detention, his HIV medication had also impacted his kidney health, which is why his doctor switched him to a different medication. *Id.* At his arrival at the jail, he was told that his current medication was too expensive, and he was prescribed Tivicay. *Id.* at ¶ 5. D.F.'s medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Amon-New Decl. at ¶ 20.

95. Plaintiff **Ajarhi Sazimbi Roberts** is a 27-year-old man from Jamaica who has lived in the United States since he was 10-years-old. Ex. 46 (Roberts Decl.) at ¶ 1. He is a lawful permanent resident who was recently placed into removal proceedings. *Id.* at ¶¶ 1, 4. He has been detained by ICE at Clinton County Correctional Facility since March 4, 2020. *Id.* at ¶ 4.

96. Mr. Roberts has suffered from asthma since he was a child. He also has high blood pressure for which he takes daily medication. *Id.* at ¶ 3. Mr. Roberts was recently evaluated for his asthma and was told that he would be prescribed an inhaler. *Id.* at ¶ 5. His asthma places him at high risk of severe illness or death if he contracts COVID-19. Amon-New Decl. at ¶ 21.

E. ICE Continues to Expose Plaintiffs to Dangerous Conditions of Confinement Despite Being Warned of These Dangers

97. Public health measures across the country, including in Pennsylvania, demonstrate the widespread recognition that the only clinically recommended course of action to protect individuals who have medical conditions that make them vulnerable to serious illness or death from COVID-19 is to practice social distancing and increased hygiene. Only these practices mitigate the risk of contracting this novel virus that has no cure. Golob Decl. at ¶ 10 (ECF 2-2); Amon-New Decl. at ¶¶ 6, 24.

98. Social distancing is the primary means to limit disease transmission. Amon-New Decl. at ¶ 24. CDC guidance for detention centers and prisons specifically recommends implementing social distancing strategies that increase the physical space between people, “ideally 6 feet between all individuals, regardless of the presence of symptoms.” *Id.* at ¶ 31.

99. While ICE’s guidance identifies social distancing as a recommended preventative measure, it concedes that facilities may not be able to follow the CDC’s

guidance. Moreover, ICE only directs implementation of distancing practices where “possible” or “practicable.” *Id.* at ¶¶ 35; 35 (c). This failure to mandate social distancing renders any plan for risk mitigation ineffective. *Id.* at ¶ 35(c). None of the ICE facilities at issue here are following CDC guidance on social distancing, putting the lives of everyone, and especially those who are over 45 or have one of the specified pre-existing medical conditions, in jeopardy. *Id.* at ¶ 56. Plaintiffs are forced to sleep in crowded dorms that do not allow six feet of distance from each other, Gumbs Navarro Decl. at ¶ 16; Davis Decl. at ¶12 D.F at ¶ 10,⁸ or are housed three to an eight-foot-by-twelve-foot cell, with two people sharing a bunk bed, and with a toilet and sink shared between all three. Zhuiko Decl. at ¶ 12; Goloverya Decl. at ¶ 10.⁹ None of the dorms has been depopulated to a degree that individuals are able to maintain at least six feet of distance from others, nor have any of the Plaintiffs been isolated to a single cell. Amon-New Decl. at ¶ 35(d).

100. By confining Plaintiffs and others similarly situated in these conditions, Defendants are subjecting Plaintiffs to exposure as they are confined to small spaces with many other people and unable to practice social distancing, which is the primary means of protection against COVID-19. *Id.* at ¶¶ 24, 35(c).

⁸ See also Pratt Decl. at ¶ 7 (ECF 2-10); Idowu Decl. at ¶ 11 (ECF 2-4); Augustin Decl. at ¶16. (ECF 2-11).

⁹ See also Thakker Decl. at ¶ 11 (ECF 2-3).

101. CDC guidance emphasizes that there are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including from staff, new admissions, and transfer of persons from other facilities. Amon-New Decl. at ¶ 55. The ICE action plan only provides for verbal screening and temperature checks. But asymptomatic transmission of the virus means that monitoring staff or detainees for fever is inadequate for identifying all who may be infected, and thereby ineffective at preventing transmission. *Id.* at ¶¶ 37(a), (d). Effective screening would require temperature checks or isolation, but tests are not being routinely conducted, nor can staff be isolated each time they enter the facility. *Id.*

102. Defendants also do not have the capacity to implement safe quarantines for newly arrived individuals. Given the degree of infectious spread in Pennsylvania, a large share of newly arrived people will have had recent contact with an infected person or come from an area of community spread. *Id.* at ¶ 37(a). Housing newly arrived pre-symptomatic and asymptomatic individuals in any housing configuration short of single-celling will facilitate transmission. *Id.* at ¶ 37(c). Defendants neither claim to be isolating new arrivals in this way, nor do they have the physical infrastructure or personnel to do so. *Id.* at ¶ 37(b).

103. Defendants also have failed to implement ICE's own alleged isolation protocol. The protocol states: "ICE places detainees with fever and/or respiratory symptoms in a single medical housing room, or in a medical airborne infection

isolation room specifically designed to contain biological agents, such as COVID-19.” *Id.* at ¶ 40(a). Plaintiffs’ declarations make clear that Defendants are not following these procedures. Instead, individuals with symptoms are left in common dorm spaces for days, and close contacts are neither tested nor isolated. T.S.N Decl. at ¶¶ 22-24.

104. The respective detention centers’ physical-infrastructure limitations and Defendants’ lack of staffing capacity make compliance with their own guidance impossible. Amon-New Decl. at ¶ 40(a). Given the rate of spread in detention facilities, there will be many more people with COVID-19 symptoms than there are isolation rooms in the facilities. *Id.* With insufficient infrastructure ICE will not be able to isolate symptomatic individuals and will therefore expose non-infected individuals to infected individuals. *Id.* at ¶¶ 40(a), (b).

105. Recently issued ICE guidance contends that facilities can mitigate this risk of infectious spread by “cohorting” groups of noncitizens with each other, and away from other detainees. The CDC recognizes cohorting as a measure of *last resort* in detention facilities. Moreover, the CDC cautions that people with confirmed diagnoses should not be cohorted with those who have suspected cases of COVID-19 or who have had close contact with a particular COVID-19 case. Amon-New Decl. at ¶ 41(b). With little guidance from ICE on when to test for COVID, the number of confirmed cases will lag behind actual infection. *Id.* at ¶ 38(a). Because

Defendants cannot isolate symptomatic individuals and fail to conduct widespread testing, infected individuals who do not yet qualify as “confirmed cases” remain in cohorts where they will facilitate transmission to others.

106. The cohorting policy will also fail to prevent the spread of the virus to Plaintiffs and class members given the characteristics of the cohorts in which people are confined. As part of its policy, ICE cohorts large groups of people who have had close contact with an infected person, but without testing them to confirm transmission, and then houses them together in tight quarters where social distancing is impossible. At Pike, Defendants cohort people in small double or triple-celled units; at York, Defendants cohort 40 to 60 people in a single room even after exposure to COVID-19; and at Clinton, Defendants cohort 70 people in dormitories. Amon-New Decl. at ¶¶ 40(c), 41(f); T.S.N. Decl. at ¶¶ 15, 22. Rather than slowing the virus’s spread, these cohorts threaten to expose many more individuals to the virus. Amon-New Decl. at ¶ 41(f).

107. ICE’s mask guidance also falls short. Face masks must be properly cleaned and worn in order to prevent the spread of infection; single-use masks should not be reused. *Id.* at ¶ 41(d). Yet Plaintiffs report that they were told to reuse single-use masks, sometimes for up to two weeks. *Id.* at ¶ 43(b). The CDC also recognizes that masks are at best the lesser of two evils where contact is necessary. Even masks,

and especially the cloth masks Plaintiffs wear for days on end, are no substitute for social distancing. *Id.* at ¶¶ 24, 43.

108. Defendants also expose Plaintiffs to unsanitary conditions that increase the risk of infection and spread. Plaintiffs must use common toilets and showers. With only one shower for eight to ten people at York, Davis Decl. at ¶ 14, three showers for 20 people at Pike, Goloverya Decl. at ¶ 12, and one for about 18 people at Clinton, Brown Decl. at ¶ 14, Defendants force Plaintiffs into repeated contact with potentially infected surfaces with little evidence of sanitization between use. Amon-New at ¶ 42, 42(a), 42(b). Plaintiffs have no control over their soap rations or access to other sanitization products, which are often in short supply. Davis Decl. at ¶ 16; Zhuiko Decl. at ¶ 11; Roberts Decl. at ¶ 11. These realities contradict ICE’s most recent guidance, which states that soap dispensers and paper towels are “routinely checked and available for use,” and that “liquid soap, running water... disposable paper towels, and no touch receptacles” are all readily available. Amon-New Decl. at ¶ 42(a).

109. Defendants have been aware of the serious hygiene issues at their facilities. Stakeholders sent a detailed letter to Defendants Flores-Lund and Doll in July 2019 detailing various deficiencies in hygiene, sanitation, and medical care at York County Prison. *See* Ruiz Decl. at ¶ 3 (ECF 2-19). To date, York Country Prison has not implemented any changes. *Id.* at ¶ 12.

110. On March 13, 2020, as infection rates began to rise in Pennsylvania at an alarming rate, the ACLU of Pennsylvania sent a letter to Defendant Flores-Lund, and other agency officials, alerting them to the high risk of COVID-19 infection in detention facilities and the dangerous health outcomes likely for vulnerable individuals. ACLU Letter March 13, 2020 (ECF 2-20). Neither Ms. Flores-Lund nor any other agency official has responded to the letter.

111. CDC guidance recognizes that incarcerated/detained persons are at “heightened” risk for COVID-19 infection once the virus is introduced. Amon-New Decl. at ¶ 55. All of the risks are present here, where Plaintiffs cannot practice social distancing, share confined common spaces and touch common surfaces, and where new individuals and staff come into the facility each day.

CLASS ACTION ALLEGATIONS

112. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and all other persons similarly situated. The proposed class is defined as follows:

All noncitizens who are now, or will in the future be, detained in ICE custody in the Middle District of Pennsylvania, and who have been diagnosed with, or are receiving treatment for, a preexisting medical condition and/or are over the age of 45.

Those preexisting medical conditions are:

- Chronic kidney disease (including receiving dialysis);
- Chronic liver disease (including cirrhosis and chronic hepatitis);
- Endocrine disorders (including diabetes mellitus);

- Compromised immune system (immunosuppression) (e.g., receiving treatment such as chemotherapy or radiation, received an organ or bone marrow transplant and is taking immunosuppressant medications, taking high doses of corticosteroids or other immunosuppressant medications, HIV or AIDS);
- Metabolic disorders (including inherited metabolic disorders and mitochondrial disorders);
- Heart disease (including congenital heart disease, congestive heart failure and coronary artery disease);
- Lung disease including asthma or chronic obstructive pulmonary disease (chronic bronchitis or emphysema) or other chronic conditions associated with impaired lung function or that require home oxygen;
- Neurological and neurologic and neurodevelopment conditions (including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury);
- Current or recent pregnancy (in the last two weeks);
- Body mass index (BMI) greater than 40; and
- Hypertension.

113. The class is so numerous that joinder of all members is impracticable.

Upon information and belief, Pike, York, and Clinton hold a total of more than 400 people in ICE custody, and all facilities continue to admit new detainees. A significant proportion of these noncitizens have serious medical conditions and/or are over the age of 45. Indeed, a total of 35 noncitizens were the original Plaintiffs in just this case and *Hope*. On information and belief, in addition to the 11 new plaintiffs, there are dozens more who are detained at the three ICE facilities who fit the class definition. The class is also fluid as individuals are regularly brought into the facilities as detainees.

114. The lawfulness of the proposed class members' detention presents common questions of fact and law. All class members are similarly situated as a result of their increased risk of serious medical complications or death from contracting COVID-19. All class members are similarly situated in that conditions at the three ICE facilities make social distancing and other protective measures impossible.

115. The claims of the named Plaintiffs are typical of the claims of the proposed class. All Plaintiffs face a grave risk of serious illness or death from COVID-19 due to their age and/or a preexisting medical condition, and raise the same due process challenge to their detention. Plaintiffs' legal challenges to their detention are identical to those of the proposed class.

116. Plaintiffs are adequate representatives because they seek the same relief as the other members of the class: declaratory relief that their ongoing custody violates the Due Process Clause, and injunctive relief and a writ of habeas corpus requiring their release. Plaintiffs do not have any interests adverse to those of the class as a whole.

117. The proposed class would be represented by counsel from the ACLU of Pennsylvania, the ACLU Foundation, and Dechert LLP. Counsel have extensive experience litigating class action lawsuits, including lawsuits on behalf of incarcerated people generally, and immigration detainees in particular.

118. Defendants have acted on grounds generally applicable to the class by continuing to detain them in circumstances where they are likely to suffer serious medical complications and/or die from COVID-19. Thus, injunctive and declaratory relief is appropriate with respect to the class as a whole.

LEGAL FRAMEWORK

A. Immigrant Detainees are Entitled to Constitutional Due Process Protections Against Exposure to Infectious Disease.

119. Immigrant detainees, even those with prior criminal convictions, are civil detainees entitled to the same Fifth and Fourteenth Amendment due process protections as any other pretrial detainee. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *E. D. v. Sharkey*, 928 F.3d 299, 306–07 (3d Cir. 2019).¹⁰

120. Due process rights for civil detainees mean that they are “entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Aruanno v. Johnson*, 683 F. App’x 172, 175 (3d Cir. 2017) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)); *see also Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”).

¹⁰ The Fifth Amendment requires the federal Defendants to provide due process protections to Plaintiffs. The Fourteenth Amendment requires the state Defendants to provide the same due process protections.

121. “To determine whether challenged conditions of confinement amount to punishment, this Court determines whether a condition of confinement is reasonably related to a legitimate governmental objective; if it is not, we may infer ‘that the purpose of the governmental action is punishment that may not be constitutionally inflicted upon detainees *qua* detainees.’” *Sharkey*, 928 F.3d at 307 (quoting *Hubbard v. Taylor*, 538 F.3d 229, 232 (3d Cir. 2008)). Put differently, to assess whether a condition constitutes impermissible punishment, “[w]e must ask, first, whether any legitimate purposes are served by these conditions, and second, whether these conditions are rationally related to these purposes.” *Hubbard*, 538 F.3d at 232. Conditions must be assessed in their totality. *Id.* at 233.

122. The government has an affirmative duty to provide conditions of reasonable health and safety to the people it holds in its custody, and violates the constitution when it “fails to provide for [the] basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety” -- of those in custody. *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989); *see also Union County Jail Inmates v. Di Buono*, 713 F.2d 984, 999, 1008 (3d Cir. 1983) (explaining that conditions are cruel and unusual when they “deprive inmates of the minimal civilized measure of life’s necessities,” such as the “necessity” of “habitable shelter,” as measured under “contemporary standards of decency”).

123. Courts in this Circuit have repeatedly found such “unsanitary, unsafe, or otherwise inadequate conditions” sufficient to state a Due Process claim. *See, e.g., Petty v. Nutter*, No. 15-3430, 2016 WL 7018538, at *2 (E.D. Pa. Nov. 30, 2016) (being “forced to live in a 7’X10’ cell with two other inmates”, sleep[ing] on a plastic ‘boat’ next to the cell’s toilet [which] is exposed to urine and fecal matter[,]” and “nearly contin[uous] lockdowns” raise a colorable due process conditions claim); *Grohs v. Lanigan*, No. 16-7083, 2019 WL 150061, at *11 (D.N.J. Apr. 5, 2019) (allegations of exposure to “extreme heat combined with lack of potable water, as well as generally unsanitary conditions” sufficient to state a conditions-of-confinement claim under the Fourteenth Amendment).

124. Conditions that would violate the Eighth Amendment are more than enough to also violate a civil detainee’s due process rights. *See Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) (explaining that the Fourteenth Amendment affords pretrial detainees protections ‘at least as great as the Eighth Amendment protections available to a convicted prisoner’’) (quoting *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983)).

125. To prevail on a claim that conditions of confinement violate the Eighth Amendment, Plaintiffs must meet two requirements: (1) the deprivation alleged must be, objectively, “sufficiently serious,” and (2) the “prison official must have a sufficiently culpable state of mind”—that is, deliberate indifference to the detainee’s

health or safety. *See Thomas v. Tice*, 948 F.3d 133, 138 (3d Cir. 2020) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)).

126. The Supreme Court has recognized that it violates the Eighth Amendment to crowd prisoners into cells with others who have “infectious maladies,” “even though the possible infection might not affect all of those exposed.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Plaintiffs can establish deliberate indifference based on circumstantial evidence that the risk is obvious. The obviousness of the risk the Plaintiffs face, by itself, is enough to allow a factfinder to conclude that Defendants know of the risk. *Phillips v. Superintendent Chester SCI*, 739 F. App’x 125, 129 n.7 (3d Cir. 2018) (citing *Farmer v. Brennan*, 511 U.S. 825, 842 (1994)). *See also Farmer*, 511 U.S. at 842 (explaining that “[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence”).

127. Due process rights may be violated even before a detainee contracts a disease. Because the Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which is ‘reasonable safety[,]’” *Helling v. McKinney*, 509 U.S. at 33 (quoting *DeShaney*, 489 U.S. at 200), “[i]t would be odd to deny an

injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them[.]” *Id.*

B. Defendants Are Violating Plaintiffs’ Constitutional Due Process Rights.

128. The conditions at the ICE Facilities described above, *supra* ¶¶ 43-54 demonstrate that Plaintiffs’ constitutional due process rights are being violated. Keeping vulnerable Plaintiffs detained in such close proximity to one another and without the sanitation necessary to combat the spread of the virus serves no legitimate purpose. Nor is detention under these circumstances rationally related to the enforcement of immigration laws.

129. Plaintiffs’ due process rights are also being violated because their conditions of confinement place them at serious risk of being infected with COVID-19 and Defendants are being deliberately indifferent to this critical safety concern.

130. There is no question that COVID-19 poses a serious risk to Plaintiffs. COVID-19 is highly contagious and can cause severe illness and death. *See supra.*, Statement of Facts § A. Plaintiffs are at a heightened risk because of their age and/or underlying health conditions. *See supra* ¶¶ 62-74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, and 96.

131. Defendants are aware of and have completely disregarded the serious risk that COVID-19 poses to Plaintiffs. *See supra* ¶¶ 109-110.

132. The risk that COVID-19 poses to Plaintiffs is also obvious, including to Defendants. Medical experts for the Department of Homeland Security have identified the risk of COVID-19 spreading to ICE detention centers.¹¹ John Sandweg, a former acting director of ICE, has written publicly about the need to release nonviolent detainees because ICE detention centers “are extremely susceptible to outbreaks of infectious diseases” and “preventing the virus from being introduced into these facilities is impossible.”¹² Prisons and jails around the country are **already** releasing non-violent detainees because the risk of contagion is overwhelming.¹³

¹¹ See March 19, 2020 letter from Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH to House and Senate Committees on Homeland Security, available at <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>.

¹² See John Sandweg, “*I Used to Run ICE. We Need to Release the Nonviolent Detainees*,” The Atlantic (March 22, 2020), available at <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>.

¹³ See, e.g., Order, Supreme Court of New Jersey, Docket No. 084230 (March 22, 2020) (ordering release of most county jail detainees), available at <https://njcourts.gov/notices/2020/n200323a.pdf?c=4EF>; *United States v. Stephens*, No. 15-cr-95, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (concluding that the “unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic” constituted compelling circumstances to adjust a Defendant’s bail conditions and release him, even though there was “not yet a known outbreak among the jail and prison populations” when the order was issued). On April 10, 2020, Governor Wolf ordered Department of Corrections officials to establish a Temporary Program to Reprieve Sentences of Incarceration to begin the process of releasing vulnerable and non-violent inmates from state prisons. See Governor Tom Wolf Newsroom, Gov. Wolf: Department of Corrections to Establish Temporary Program to Reprieve Sentences of Incarceration, April 10, 2020 Press release, <https://www.governor.pa.gov/newsroom/gov-wolf-department-of->

133. The circumstances of this case demonstrate that release is the only means to ensure compliance with Plaintiffs’ due process rights. Public health experts make clear that the only way to prevent infection is through social distancing and increased hygiene, and that these measures are imperative to protect individuals with underlying medical conditions. *See supra* ¶¶ 97-108. The only course of action that can remedy these unlawful conditions is release from the detention centers where risk mitigation is impossible.

C. ICE Regularly Uses Its Authority To Release People Detained In Custody Because They Suffer Serious Medical Conditions.

134. ICE has a longstanding practice of exercising prosecutorial discretion, which demonstrates that the agency understands that its authority extends to— and includes—humanitarian releases from custody on medical grounds. The agency has routinely exercised its authority to release particularly vulnerable detainees. As former Deputy Assistant Director for Custody Programs in ICE Enforcement and Removal Operations Andrew Lorenzen-Strait explains, “ICE has exercised and still

corrections-to-establish-temporary-program-to-reprieve-sentences-of-incarceration/. This program could result in release of up to 1,800 individuals. *See* Jeremy Roebuck, Erin McCarthy, and Anna Orso, *Thousand of state prison inmates in Pa and N.J. are now eligible for temporary release as governors act to avert coronavirus spread*, The Philadelphia Inquirer (Apr. 10, 2020), *available at* <https://www.inquirer.com/health/coronavirus/coronavirus-prisoners-pennsylvania-new-jersey-governor-wolf-murphy-20200410.html>.

exercises discretion for purposes of releasing individuals with serious medical conditions from detention.” *See* Lorenzen-Strait Decl. at ¶ 3 (ECF 2-17).

135. ICE has a range of highly effective tools at its disposal to ensure that individuals report for court hearings and other appointments, including conditions of supervision. For example, ICE’s conditional supervision program, called ISAP (Intensive Supervision Appearance Program), relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. A government-contracted evaluation of this program reported a 99% attendance rate at all immigration court hearings and a 95% attendance rate at final hearings. *See id.* at ¶ 15.

136. This exercise of discretion comes from a long line of agency directives explicitly instructing officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating against detention. *See id.* at ¶¶ 10-14. For example, under 8 C.F.R. § 212.5(b)(1), ICE has routinely exercised its discretion to release particularly vulnerable detainees. *Id.* at 4-11.

137. While ICE officers may be exercising discretion less frequently in recent years, the statutory and regulatory authority underlying the use of

prosecutorial discretion in custodial determinations remains in effect. *See* Lorenzen-Strait Decl. at ¶ 13 (ECF 2-17).

138. Moreover, ICE has released individuals on medical grounds regardless of the statutory basis for a noncitizen's detention. *See id.* at ¶ 11.

139. Here, the Due Process Clause of the Fifth Amendment to the U.S. Constitution requires that ICE release detainees where civil detention has become punitive and where release is the only remedy to prevent this impermissible punishment. The fact that ICE has a longstanding practice of releasing immigrants on medical grounds indicates that the remedy Plaintiffs request is neither unprecedented nor unmanageable for the agency.

D. This Court Has Authority to Order Plaintiffs' Release to Vindicate Their Fifth Amendment Rights, and Such Relief Is Necessary Here.

140. Courts have broad power to fashion equitable remedies to address constitutional violations in prisons, *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978), and “[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011); *see also Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

141. The circumstances of this case make clear that release is the only means to ensure compliance with the Fifth Amendment's prohibition against punitive detention. Plaintiffs' medical conditions put them at grave risk of severe illness or death if they contract COVID-19. Public health experts agree that the only way to prevent infection is through social distancing and increased hygiene, and that these measures are most imperative to protect individuals with pre-existing medical conditions. Yet Defendants are detaining vulnerable Plaintiffs under conditions where they are forced into close contact with many other detainees and officers. By continuing detention in these circumstances, Defendants are subjecting Plaintiffs to unreasonable harm. The only course of action that can remedy these unlawful conditions is release from the detention centers where risk mitigation is impossible.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive Due Process (Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement)

142. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it fails to satisfy its affirmative duty to provide conditions of reasonable health and safety to the people it holds in its custody, and violates the Constitution when it fails to provide for the basic human needs—e.g., food, clothing, shelter, medical care, and

reasonable safety — of those in its custody. The federal government also violates substantive due process when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment.

143. By detaining Plaintiffs in the ICE Facilities, Defendants are subjecting Plaintiffs to a heightened risk of contracting COVID-19, for which there is no vaccine and no cure. Plaintiffs are persons who are particularly vulnerable to serious medical complications from COVID-19 infection and are at substantial risk of serious illness and death as long as they are held in detention. By subjecting Plaintiffs to this risk Defendants are imposing detention conditions that amount to punishment and fail to ensure safety and health, in violation of Plaintiffs' due process rights.

144. Likewise, Defendants' continued detention of Plaintiffs at the ICE Facilities is deliberately indifferent to Plaintiffs' health and safety because only releasing Plaintiffs from custody can adequately protect them from COVID-19. Defendants are both aware of the serious risk posed by COVID-19 and are failing to take the only action that can respond to Plaintiffs' medical needs, which is to release them.

COUNT TWO

Defendants' Detention of Plaintiffs Stubbs, Pratt, Ghaffar, Goloverya, Zhuiko, and D.F. Where Removal Is Not Significantly Likely in the Foreseeable Future Violates 8 U.S.C. § 1231(a)(6)

145. Due process requires that immigration detention bear a reasonable relation to its purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The

principal purpose of the statute that authorizes post-final-order detention, 8 U.S.C. § 1231, is to effectuate removal. Where removal cannot be effectuated, detention is not reasonably related to its purpose, would violate due process, and is not statutorily authorized.

146. Plaintiffs Stubbs, Pratt, Ghaffar, Goloverya, Zhuiko, and D.F. have met their burden of establishing good reason to believe that their removal is not reasonably likely in the foreseeable future. Defendants have not rebutted this showing, as they have provided no evidence that their removal is reasonably foreseeable. Absent such evidence, the detention of Plaintiffs Stubbs, Pratt, Ghaffar, Goloverya, Zhuiko, and D.F. is not authorized by statute and they are entitled to immediate release under orders of supervision.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs request that the Court grant the following relief:

- a. Certify, pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the following Plaintiff class:

All noncitizens who are now, or will in the future be, detained in ICE custody in the Middle District of Pennsylvania, and who have been diagnosed with, or are receiving treatment for, a preexisting medical condition and/or are over the age of 45.

- b. Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);
- c. Issue a declaration that Defendants' continued detention in civil immigration custody of individuals at increased risk for severe illness, including all

people ages 45 and older and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;

- d. Issue injunctive relief ordering Defendants to release Plaintiffs and those similarly situated to them, with appropriate precautionary public health measures, on the grounds that their continued detention violates their constitutional due process rights;
- e. Issue a writ of habeas corpus ordering Defendants to release Plaintiffs and those similarly situated to them, with appropriate precautionary public health measures, on the grounds that their continued detention violates their constitutional due process rights;
- f. Declare that for Plaintiffs Stubbs, Pratt, Ghaffar, Goloverya, Zhuiko, and D.F., there is good reason to believe that there is no significant likelihood of their removal in the reasonably foreseeable future, and that Plaintiffs Stubbs, Pratt, Ghaffar, Goloverya, Zhuiko, and D.F. must be released unless the government can rebut that showing;
- g. Find that Defendants have failed to rebut the showing of Plaintiffs Stubbs, Pratt, Ghaffar, Goloverya, Zhuiko, and D.F. that their removal is not significantly likely in the reasonably foreseeable future; order the government immediately to release Plaintiffs Stubbs, Pratt, Ghaffar, Goloverya, Zhuiko,

and D.F from detention under orders of supervision; and enjoin Defendants from redetaining Plaintiffs Stubbs, Pratt, Ghaffar, Goloverya, Zhuiko, and D.F unless or until Defendants can establish that their removal is significantly likely in the reasonably foreseeable future;

- h. Award Plaintiffs their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504, and on any other basis justified under law; and
- i. Grant any other and further relief that this Court may deem just and proper.

Dated: April 17, 2020

Respectfully Submitted,

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**Admitted pro hac vice*

***Petition for permission to file pro hac vice forthcoming*

****Admitted pro hac vice; not admitted in DC; practice limited to federal courts*