

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

TATALU HELEN DADA
MATILDE FLORES DE SAAVEDRA
ROSABEL CARRERA
SONIA LEMUS TEJADA DEJASO
GRISELDA DEL BOSQUE
NADIRA SAMPATH GRANT
PARDEEP KUMAR
SURESH KUMAR
HASAN SALEH
LaSalle ICE Processing Center
830 Pine Hill Road
Jena, LA 71342;

ABRAHAM GEBREMEDHIN
GEBREMICHAEL
Richwood Correctional Center
180 Pine Bayou Circle
Monroe, Louisiana 71202;

SIROUS ASGARI
EDUARDO DEVORA ESPINOSA
Winn Correctional Center
560 Gum Springs Road
Winnfield, LA 71483;

ROLANDO ALEX COLON
KARTHIKEYAN PONNUSAMY
Catahoula Correctional Center
499 Old Columbia Road
Harrisonburg, LA 71340;

ARACELIO RODRIGUEZ
Jackson Parish Correctional Center
327 Industrial Drive
Jonesboro, LA 71251

DESMOND NKOBEI
Pine Prairie ICE Processing Center
1133 Hampton Dupre Road
Pine Prairie, LA 70576,

Petitioners-Plaintiffs,

**PETITION FOR A WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Civil Action No. _____

v.

DIANNE WITTE, *in her official capacity as Interim New Orleans Field Office Director*,
U.S. Immigration and Customs Enforcement
1250 Poydras, Suite 325
New Orleans, LA 70113;

MATTHEW T. ALBENCE, *in his official capacity as Deputy Director and Senior Official Performing the Duties of the Director of the U.S. Immigration and Customs Enforcement*,
U.S. Immigration and Customs Enforcement
500 12th St., S.W.
Washington, DC 20536;

IMMIGRATION AND CUSTOMS
ENFORCEMENT,
500 12th St., S.W.
Washington, DC 20536;

STEVEN DEBELLEVUE, *in his official capacity as Warden*,
Richwood Correctional Center
180 Pine Bayou Circle
Richwood, Louisiana 71202;

DAVID COLE, *in his official capacity as Warden*,
LaSalle ICE Processing Center
830 Pine Hill Road
Jena, LA 71342;

KEITH DEVILLE, *in his official capacity as Warden*,
Winn Correctional Center
560 Gum Springs Road
Winnfield, LA 71483;

PAT BOOK, *in his official capacity as Warden*,
Catahoula Correctional Center
499 Old Columbia Road
Harrisonburg, LA 71340;

TIM DUCOTE, *in his official capacity as*

Warden,
Jackson Parish Correctional Center
327 Industrial Drive
Jonesboro, LA 71251;

ERIC STAIGER, *in his official capacity as*
Warden,
Pine Prairie ICE Processing Center
1133 Hampton Dupre Road
Pine Prairie, LA 70576,

Respondents-Defendants.

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April 13, 2020

**PETITION FOR A WRIT OF HABEAS CORPUS AND COMPLAINT FOR
INJUNCTIVE RELIEF**

INTRODUCTION

1. This case presents a request for immediate relief on behalf of sixteen Petitioner-Plaintiffs (“Plaintiffs”), who are highly vulnerable to serious injury or death if they contract COVID-19, the lethal disease that is sweeping the globe. Respondent-Defendants (“Defendants”) are holding Plaintiffs in civil immigration detention in the Richwood Correctional Center, in Richwood, Louisiana, the LaSalle ICE Processing Center in Jena, Louisiana, the Winn Correctional Center in Winnfield, Louisiana, the Catahoula Correctional Center in Harrisonburg, Louisiana, the Jackson Parish Correctional Center in Jonesboro, Louisiana, and the Pine Prairie ICE Processing Center in Pine Prairie, Louisiana, all facilities within the New Orleans ICE Field Office area of responsibility. Louisiana has seen an especially grave outbreak of the coronavirus, which feeds on precisely the unsafe, congregate conditions in which Plaintiffs are being held. As of April 13, 2020, Pine Prairie now has two confirmed COVID-19 cases, and both Winn and Richwood each have one as well. At least 11 staff members and 6 detained persons have so far tested positive for COVID-19 at Louisiana ICE facilities.¹ Plaintiffs are therefore at imminent risk of contracting the lethal COVID-19 disease.

2. The risks and consequences of COVID-19 cannot be overstated. COVID-19 has reached global pandemic status. As of April 13, 2020, over 1,773,000 individuals worldwide have confirmed diagnoses, including more than 524,500 in the United States.² More than 111,650 individuals worldwide have died as a result of COVID-19, including over 20,400 in the United

¹ ICE COVID-19 Guidance, <https://www.ice.gov/coronavirus> (Apr. 8, 2020).

² World Health Org., *Coronavirus Disease 2019 (COVID-19) Situation Report – 84*, Apr. 13, 2020, available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200413-sitrep-84-covid-19.pdf?sfvrsn=44f511ab_2.

States.³ Those numbers are growing exponentially, with almost 76,500 new cases worldwide in the past day alone.⁴ By the time the Court reads this complaint, there will be more confirmed cases, and more death, with no end in sight.

3. As of April 13, 2020, there were nearly 21,100 COVID-19 cases in Louisiana.⁵ The number of infected people is rising exponentially. More than 880 people in Louisiana have died from the disease.⁶ Every parish in Louisiana has now reported confirmed COVID-19 cases.⁷

4. These data include all the counties where the detention centers are located. Ouachita Parish, home to Richwood Correctional Center, has 384 cases and five reported deaths. LaSalle Parish, where the LaSalle ICE Processing Center is located, has 13 cases. Winn Parish, the site of Winn Correctional Center, has 12 cases and 2 deaths.⁸ Catahoula Parish, the site of Catahoula Correctional Center, has 21 cases, and one reported death.⁹ Jackson Parish, the site of Jackson Parish Correctional Center, has eight cases.¹⁰ Evangeline Parish, the site of Pine Prairie ICE Processing Center, has 38 confirmed cases.¹¹ These numbers are rising exponentially, and are likely an underestimate given the difficulty of testing asymptomatic people and the lack of widespread testing across the United States generally.

5. The exponential growth of coronavirus cases in Louisiana has been staggering. Data released March 21, 2020 show that Louisiana presently has the fastest spread of COVID-10

³ *Id.*

⁴ *Id.*

⁵ Louisiana Department of Health, *Coronavirus (COVID-19)* (Apr. 13, 2020), <http://ldh.la.gov/coronavirus/>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

of any region in the world.¹² Statewide, Louisiana is second only to New York in deaths per 100,000, with 582 reported as of April 7.¹³ Six parishes in the New Orleans area are in the top ten in deaths of all counties in the nation.¹⁴ Immediate relief is necessary before the coronavirus ignites across the immigration detention facilities in Louisiana.

6. Plaintiffs fear for their lives because they have medical conditions which make them vulnerable to serious injury or death should they be infected with COVID-19. And for good reason: they are trapped in facilities which can only be described as breeding grounds for the disease. Despite warnings and pleas for release from public health experts and advocates, Defendants have chosen to continue to confine Plaintiffs in close proximity, without adequate soap and/or hand sanitizer; to admit and transfer individuals without COVID-19 testing or screening; to refuse to implement cleaning and protection procedures adequate to combat COVID-19; and to resist releasing even the most medically vulnerable individuals. The conditions and treatment at these facilities have created a dangerous situation that threatens their lives, as well as the well-being of staff, others in the surrounding community, and the general public.

7. There is no known treatment for or vaccine against COVID-19, and there is no known cure. The only known effective measures to reduce the risk of COVID-19 are to prevent

¹² Louisiana Governor's Office of Homeland Security and Emergency Preparedness, *COVID-19 Louisiana Case Info*, 2 (Mar. 21, 2020), <https://gov.louisiana.gov/assets/docs/covid/govCV19Brief-2.pdf>; see also Katy Reckdahl, et al., *New Orleans Faces a Virus Nightmare and Mardi Gras May Be Why*, N.Y. Times, Mar. 26, 2020, available at <https://www.nytimes.com/2020/03/26/us/coronavirus-louisiana-new-orleans.html>.

¹³ Coronavirus tracker, The Washington Post, April 8, 2020, available at <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>; Emma Discher, *Coronavirus in Louisiana: Cases, deaths increase; number of patients on ventilators drops*, The New Orleans Advocate, April 7, 2020, available at https://www.nola.com/news/coronavirus/article_139dd82a-78ec-11ea-b8c4-5f458d197eab.html.

¹⁴ Scott Calvert, *New Orleans Area Has Worst Coronavirus Death Rate in U.S.*, The Wall Street Journal, April 4, 2020, available at <https://www.wsj.com/articles/new-orleans-area-has-worst-coronavirus-death-rate-in-u-s-11586008800>; Kimberly Curth, *New Orleans and Jefferson Parish have the Highest COVID-19 Death Rates in the Country*, FOX8, Mar. 28, 2020, available at <https://www.msn.com/en-us/health/medical/new-orleans-and-jefferson-parish-have-the-highest-covid-19-death-rates-in-the-country/ar-BB11Ownx>.

infection through social distancing and vigilant hygiene. Yet “social distancing” is a meaningless term in these detention centers, where detainees are in constant close contact with each other and with facility staff. Increased and vigilant hygiene is similarly unavailable under the conditions at these facilities.

8. Several recent federal court rulings ordering release have explained the health risks—to those who are detained, staff, and the outside community at large—created by large prison and detention populations. *See, e.g., Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 26, 2020) (ordering release of detained immigrant in the midst of the COVID-19 pandemic and noting that “being in a jail enhances risk” and that in jail “social distancing is difficult or impossible”); *Basank v. Decker*, No. 1:20-cv-02518-AT (S.D.N.Y. Mar. 26, 2020) (ordering the release of ten people from three immigration detention facilities in New Jersey because “confining vulnerable individuals . . . without enforcement of appropriate social distancing and without specific measures to protect their delicate health ‘pose[s] an unreasonable risk of serious damage to [their] future health’”) (internal citation omitted); *Thakker v. Doll*, No. 1:20-cv-00480-JEJ (M.D. Pa. Mar. 31, 2020) (ordering release of 13 people from three immigration detention facilities in Pennsylvania because “preventative measures” against the “grave risk” of COVID-19 cannot be practiced in “tightly confined, unhygienic spaces”); *Frailhat v. Wolf*, ED CV 20-00590 TJH (KSx) (C.D. Cal. Mar. 30, 2020) (ordering release of individual from immigration detention facility because COVID-19 “can spread uncontrollably with devastating results in a crowded, closed facility”); *In the Matter of the Extradition of Alejandro Toledo Manrique*, No. 19-mj-71055, 2020 WL 1307109, at *1 (N. D. Cal. March 19, 2020) (ordering change to conditions of bail for an individual to postpone incarceration, in part in light of risk of vulnerability to the coronavirus)

United States v. Barkman, No. 3:19-cr-0052-RCJ-WGC, 2020 U.S. Dist. LEXIS 45628 (D. Nev. Mar. 17, 2020).

9. Recognizing the urgency of this situation, judges, prosecutors and correctional authorities across the country have been ordering releases to protect individuals and the public health. Law enforcement officials in New Orleans, Los Angeles, New York City, Chicago, Oakland, New Jersey, Cleveland, Nashville, Houston, San Antonio, Charlotte, and numerous other jurisdictions are releasing thousands of individuals in both civil and criminal detention and incarceration, because of the threat COVID-19 poses inside jails, prisons, and detention centers. On March 22 the New Jersey Supreme Court issued a consent order for the presumptive release of approximately 1,000 persons by March 26. On April 2, 2020, the Chief Justice of the Louisiana Supreme Court offered guidance on reducing the jail population, encouraging district court judges to release detained persons because a coronavirus outbreak in jails and prisons would be “catastrophic for jail staff, the families of jail staff, and inmates.”¹⁵

10. Such releases not only protect the people with the greatest vulnerability to serious illness and death from COVID-19, they also protect all those in custody or working in a prison, jail, or detention center, and reduce the burden on the surrounding region’s health care infrastructure, as they lessen the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time. This is particularly significant here, as the rural communities in Louisiana has very limited health care infrastructure.

¹⁵ Chief Justice Bernette Joshua Johnson, Letter To the Louisiana District Judges, April 2, 2020, *available at* <https://www.lasc.org/COVID19/2020-04-02-LASC-ChiefLetterReCOVID-19andjailpopulation.pdf>; *see also* Javonti Thomas, *Louisiana Chief Justice calls for reduced jail populations to combat COVID-19 outbreak*, KALB, April 3, 2020, *available at* <https://www.kalb.com/content/news/Louisiana-Chief-Justice-calls-for-reduced-jail-populations-to-avoid-COVID-19-outbreak--569348241.html>.

11. By contrast, Defendants' response to the threats the pandemic poses to immigrants has been abysmal and haphazard. Following public outcry, on March 17, 2020, ICE issued a statement that it would modify its enforcement efforts in apparent recognition of the need for alternatives to detention to protect public health.

12. Yet in litigation across the country, ICE has repeatedly called the threat of coronavirus spread in detention centers merely "speculative." *See Thacker v. Doll*, No. 1:20-cv-480-JEJ at 5-6 (M.D. Pa. March 31, 2020). ICE's head-in-the-sand response to the threats of this pandemic will prove deadly to Plaintiffs if it is not remedied through this Court's intervention.

13. On March 19, 2020, two medical experts for the Department of Homeland Security's Office of Civil Rights and Civil Liberties sent a whistleblower letter to Congress, to highlight "the need to implement immediate social distancing to reduce the likelihood of exposure to detainees, facility personnel, and the general public," and arguing that "***it is essential to consider releasing all detainees who do not pose an immediate risk to public safety.***"¹⁶ On multiple occasions since at least February 25, 2020, these experts had sounded the alarm within the agency about the impending risks to the health of those in immigration detention and the public at large unless swift mitigation measures, including releasing persons in immigration detention, are taken.

14. Inside the facilities at issue here, Defendants are not consistently adhering to the measures ICE claims it is taking. For example, Defendants are bringing new individuals into the detention centers without any screening, testing, or mandatory quarantine period, and continue to transfer individuals between detention centers without such protective measures.

¹⁶ Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to Congressional Committee Chairpersons, dated Mar. 19, 2020, *available at* <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf> (emphasis in original).

15. This echoes a concern of the two DHS medical experts, who say that “the track record of ICE facilities implementing [early screening, testing, isolation and quarantine] protocols historically has been inconsistent.” Moreover, even if ICE was consistently taking these precautions, the DHS experts have explained that they will not be enough without rapidly releas[ing] those who do not pose an immediate danger to public safety. Defendants stubbornly refuse to heed the advice of public health experts, including their own. As Judge John E. Jones, III, sitting in the Middle District of Pennsylvania, said in terms equally applicable to the Louisiana detention facilities, “it is not a matter of *if* COVID-19 will enter Pennsylvania prisons, but *when* it is finally detected therein.” *Thakker v. Doll*, No. 1:20-CV00480 (M.D. Pa. Mar. 31, 2020) at 8 (emphasis in original).

16. Plaintiffs, who cannot be subject to any form of punitive detention, are at risk of serious injury and death because of Defendants’ flawed choices and the conditions in their detention facilities. Defendants’ failure to follow public health guidance endangers the lives of those they have chosen to detain. The only way to effectively slow down the spread of the coronavirus and to protect Plaintiffs and others from the risks posed by COVID-19 infection is to immediately release Plaintiffs, so that they can actually adhere to the guidance from public health experts and take the necessary steps to protect themselves.

17. Defendants cannot justify continuing to subject Plaintiffs to extraordinary risk of illness and death with any legitimate government objective, particularly in light of the alternatives available to them to supervise Plaintiffs. The danger posed by Plaintiffs’ detention during the current outbreak of COVID-19 is “so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk” and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993) (emphasis in original).

Plaintiffs bring this action to remedy grave violations of their constitutional rights that imminently threaten them with serious illness and death.

18. Unless this Court intervenes to order the release of the Plaintiffs, they, along with many other detained individuals and entire communities, will face dramatically increased chances of contracting COVID-19, becoming seriously ill, and dying.

JURISDICTION AND VENUE

19. This action arises under the Due Process Clause of the Fifth Amendment to the United States Constitution, the federal habeas corpus statute, 28 U.S.C. § 2241, and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*

20. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 1346 (original jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

21. Venue is proper in the Western District of Louisiana pursuant to 28 U.S.C. § 2241(d) and pursuant to 28 U.S.C. § 1391(b) and (e). All sixteen Petitioner-Plaintiffs in this matter are detained in facilities in the Western District of Louisiana.

PARTIES

Petitioner-Plaintiffs¹⁷

22. Petitioner-Plaintiff **Tatalu Helen Dada** is a 40-year-old woman and Nigerian national, who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. In addition to depression and anxiety, Ms. Dada suffers from Grave's Disease, which is a serious

¹⁷ Several Petitioner-Plaintiffs in this action filed a prior case in the Eastern District of Louisiana, which was dismissed without prejudice for lack of jurisdiction. *See Dada, et al. v. Witte, et al.*, No. 2:20-cv-01093-GGG-KWR (E.D. La. Apr. 6, 2020). Consequently, Petitioners are refiling this action in the Western District of Louisiana.

autoimmune disorder that attacks the thyroid; she suffers from hypothyroidism, hypertension, asthma, malnutrition, and vision loss, and has been hospitalized numerous times due to her rapidly deteriorating health. She is therefore at extremely high risk of severe complications or death if she contracts COVID-19. If released, she will reside with her sister in Ruston, Louisiana.

23. Petitioner-Plaintiff **Matilde Flores de Saavedra** is a 78-year-old woman and Mexican national, who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She was recently diagnosed with diabetes, which remains uncontrolled and subjects her to extremely high blood-sugar levels; she also suffers from hypertension. She is therefore at high risk of severe illness or death if she contracts COVID-19. If released, she will reside with her son in Falfurrias, Texas.

24. Petitioner-Plaintiff **Sirous Asgari** is a 59-year-old man and Iranian national who is currently detained at the Winn Correctional Center in Winnfield, Louisiana. He suffers from a chronic lung condition that leaves him susceptible to pneumonia and other infections, as well as hypertension and Grade 2 fatty liver disease. While detained by ICE he has suffered from influenza and pneumonia, as well as fainting from extremely high blood pressure. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his daughter in Redwood City, California.

25. Petitioner-Plaintiff **Eduardo Devora Espinosa** is a 34-year-old man and Cuban national who is currently detained at the Winn Correctional Center in Winnfield, Louisiana. He suffers from hypertension and diabetes. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his cousin in Mount Pleasant, Texas.

26. Petitioner-Plaintiff **Rosabel Carrera** is a 59-year-old woman and Mexican national and is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She

suffers from diabetes, which is not under control, and takes both oral medication and insulin for her condition. She also has a history of stroke and suffers from heart disease, hypertension, arthritis, and vision loss. She is therefore at high risk of severe illness or death if she contracts COVID-19. If released, she will reside with her son in White Bluff, Tennessee.

27. Petitioner-Plaintiff **Sonia Lemus Tejada Dejaso** is a 53-year-old woman and Guatemalan national who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She suffers from heart disease and hypertension and has a history of hospitalization. She is therefore at high risk of severe illness or death if she contracts COVID-19. If released, she will reside with her son in Edinburg, Texas.

28. Petitioner-Plaintiff **Griselda Del Bosque** is a 57-year-old woman and Mexican national who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She suffers from severe asthma, requires the use of an inhaler, and has had numerous asthma attacks and coughing fits while she has been detained. She also suffers from glaucoma and chronic arm, back, and knee pain, that make it hard for her to walk. She is therefore at high risk of severe illness or death if she contracts COVID-19. If released, she will reside with her daughter in Dallas, Texas.

29. Petitioner-Plaintiff **Nadira Sampath Grant** is a 53-year-old woman and national of Trinidad and Tobago who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She suffers from diabetes and diabetic related complications such as neuropathy and issues with her kidneys and vision. She relies on oral medication for her diabetic care. She is therefore at high risk of severe illness or death if she contracts COVID-19. If released, she will reside with her husband and son in Fort Lauderdale, Florida.

30. Petitioner-Plaintiff **Suresh Kumar** is a 37-year-old man and Indian national who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. Since November 2019, Mr. Kumar has participated in a hunger strike in peaceful protest of ICE and federal immigration policies. As a result, Mr. Kumar has lost close to 40 pounds and had to be hospitalized in January 2020. ICE is currently painfully force-feeding Mr. Kumar liquid nutrients through a large tube that runs through his nose and into his esophagus. He is so weakened he requires the use of a wheelchair. He suffers from Hepatitis C, a chronic liver infection, malnutrition, and chronic pain to his chest, head, stomach, throat, and lower back. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his brother-in-law in Grants Pass, Oregon.

31. Petitioner-Plaintiff **Pardeep Kumar** is a 28-year-old man and Indian national who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. He also has participated in a hunger strike for close to four months and has lost 24 pounds. He had to be hospitalized on March 20, 2020 due to significant chest pains. He is severely malnourished, which puts him at high risk for heart damage, as well as a kidney infection, chronic pain, and vision loss; he is so weakened he requires the use of a wheelchair. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his uncle in Kent, Washington.

32. Petitioner-Plaintiff **Abraham Gebremedhin Gebremichael** is a 33-year-old man and Ethiopian national who is currently detained by ICE at the Richwood Correctional Center in Richwood, Louisiana. He suffers bradycardia, a heart condition that leaves his body without sufficient oxygen. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his cousin in Houston, Texas.

33. Petitioner-Plaintiff **Rolando Alex Colon** is a 47-year-old man and Honduran national who is currently detained by ICE at the Catahoula Correctional Center in Harrisonburg, Louisiana. He suffers from hypertension and high cholesterol. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his sister in New York, New York.

34. Petitioner-Plaintiff **Karthikeyan Ponnusamy** is a 42-year-old man and Indian national who is currently detained by ICE at the Catahoula Correctional Center in Harrisonburg, Louisiana. He suffers from hypertension, diabetes, and Low Lactate Dehydrogenase . He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside at his home in Austin, Texas.

35. Petitioner-Plaintiff **Hasan Saleh** is a 62-year-old man and Jordanian national who is currently detained by ICE at LaSalle ICE Processing Center, in Jena, Louisiana. He suffers from diabetes, hypertension, and high cholesterol. Due to his age and medical conditions, he is at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his wife and five children in Fort Lauderdale, Florida.

36. Petitioner-Plaintiff **Aracelio Rodriguez** is a 61-year-old man and Cuban national who is currently detained by ICE at the Jackson Parish Correctional Center in Jonesboro, Louisiana. He suffers from severe asthma. Due to his age and medical conditions, he is at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his sister in West Palm Beach, Florida.

37. Petitioner-Plaintiff **Desmond Nkobenei** is a 25-year-old man and Cameroonian national who is currently detained by ICE at the Pine Prairie ICE Processing Center in Pine Prairie, Louisiana. He suffers from hypertension. He is therefore at high risk of severe illness

or death if he contracts COVID-19. If released, he will reside with his cousin in Capitol Heights, Maryland.

Respondent-Defendants

38. Respondent-Defendant Dianne Witte is the Interim ICE New Orleans Field Office Director. The New Orleans Field Office is responsible for carrying out ICE's immigration detention operations at all Louisiana detention centers that house detained immigrants, including all of Petitioner-Plaintiffs. Defendant Witte is a legal custodian of Petitioner-Plaintiffs. She is sued in her official capacity.

39. Respondent-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 Petitioner-Plaintiffs. He is sued in his official capacity.

40. Respondent-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. Enforcement and Removal Operations ("ERO"), a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Petitioner-Plaintiffs.

41. Respondent-Defendant Steven DeBellevue is Warden of Richwood Correctional Center, where Petitioner-Plaintiffs Mr. Gebremichael is detained. Respondent-Defendant DeBellevue is a legal custodian of Petitioner-Plaintiffs Mr. Gebremichael. He is sued in his official capacity.

42. Respondent-Defendant David Cole is the Warden of the LaSalle ICE Processing Center, where Petitioner-Plaintiffs Ms. Dada, Ms. Flores de Saavedra, Ms. Carrera, Ms. Tejada

Dejaso, Ms. Del Bosque, Ms. Sampath Grant, Mr. Pardeep Kumar, Mr. Suresh Kumar, and Mr. Saleh are detained. Respondent-Defendant Cole is a legal custodian of Petitioner-Plaintiffs Ms. Dada, Ms. Flores de Saavedra, Ms. Carrera, Ms. Tejada Dejaso, Ms. Del Bosque, Ms. Sampath Grant, Mr. Pardeep Kumar, Mr. Suresh Kumar, and Mr. Saleh. He is sued in his official capacity.

43. Respondent-Defendant Keith Deville is the Warden of Winn Correctional Center, where Petitioner-Plaintiffs Mr. Asgari and Mr. Devora Espinosa are detained. Respondent-Defendant Deville is a legal custodian of Petitioner-Plaintiffs Mr. Asgari and Mr. Devora Espinosa. He is sued in his official capacity.

44. Respondent-Defendant Tim Ducote is the Warden of Jackson Parish Correctional Center, where Petitioner-Plaintiff Mr. Rodriguez is detained. Respondent-Defendant Ducote is a legal custodian of Petitioner-Plaintiff Mr. Rodriguez. He is sued in his official capacity.

45. Respondent-Defendant Pat Book is the Warden of Catahoula Correctional Center, where Petitioners-Plaintiffs Mr. Colon and Mr. Ponnusamy are detained. Respondent-Defendant Book is a legal custodian of Petitioners-Plaintiffs Mr. Colon and Mr. Ponnusamy. He is sued in his official capacity.

46. Respondent-Defendant Eric Staiger is the Warden of Pine Prairie ICE Processing Center, where Petitioner-Plaintiff Mr. Nkobenei is detained. Respondent-Defendant Book is a legal custodian of Petitioner-Plaintiff Mr. Nkobenei. He is sued in his official capacity.

FACTUAL BACKGROUND

A. COVID-19 Is an Unprecedented and Lethal Global Pandemic.

47. COVID-19 is a disease caused by a novel coronavirus that has reached global pandemic status. As of April 13, 2020, over 1,773,000 individuals worldwide have confirmed

diagnoses, including more than 524,500 in the United States.¹⁸ More than 111,650 individuals worldwide have died as a result of COVID-19, including over 20,400 in the United States.¹⁹ Those numbers are growing exponentially, with more than 76,500 new cases worldwide in the past day alone.²⁰

48. Nationally, CDC projections indicate that over 200 million individuals in the United States could be infected with COVID-19 over the course of the epidemic without effective public health intervention, with as many as 1.7 million deaths in the worst projections.²¹

49. President Trump has projected, optimistically, that the United States will experience up to 200,000 coronavirus-related deaths.²²

50. COVID-19 is a highly contagious disease that is easily transmitted through respiratory droplets, especially when one is within six feet of an infected individual. Due to this, President Trump issued guidelines for U.S. citizens, recommending that all individuals “avoid nonessential travel, going to work, eating at bars and restaurants, or gathering in groups of more

¹⁸ World Health Org., *Coronavirus disease 2019 (COVID-19) Situation Report – 71*, Mar. 31, 2020, available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200331-sitrep-71-covid-19.pdf?sfvrsn=4360e92b_4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See James Glanz, et al., *Coronavirus Could Overwhelm U.S. without Urgent Action, Estimates Say*, N.Y. Times, Mar. 20, 2020, available at <https://www.nytimes.com/interactive/2020/03/20/us/coronavirus-model-us-outbreak.html>; Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. Times, Mar. 13, 2020, available at <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>.

²² See Rebecca Ballhause et al., *White House Extends Social-Distancing Guidelines Until End of April*, The Wall Street Journal, Mar. 30, 2020, available at https://www.wsj.com/articles/coronavirus-deaths-top-30-000-as-china-opens-up-province-where-it-began-11585466594?mod=hp_lead_pos1 (“So, if we can hold that down, as we’re saying to 100,000—it’s a horrible number—maybe even less, but to 100,000 — so we have between 100,000 to 200,000 — we all together have done a very good job,” the president said.”).

than 10” at least until April 30, 2020 and perhaps until June.²³ Its symptoms include fever, cough, and shortness of breath.²⁴

51. People can also spread COVID-19 but be asymptomatic,²⁵ making testing or seclusion of only those who are symptomatic an ineffective solution.

52. COVID-19 can result in respiratory failure, kidney failure, and death. Infected individuals who do not die from the disease can face serious damage to the lungs, heart, liver, or other organs, resulting in prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity.

53. COVID-19 can also severely damage lung tissue, affect cardiac functions, and cause widespread damage to other organs. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.

54. Younger and healthy individuals who contract COVID-19 may require supportive care. And those who develop serious complications will need advanced support, including highly specialized equipment that is in very limited supply, and an entire team of care providers giving 24-hour care, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. This level of support is especially difficult to provide to detained individuals, particularly at unsafe and under-resourced ICE detention facilities.

²³ Michael D. Shear, *Trump Extends Social Distancing Guidelines Through End of April*, N.Y. Times, Mar. 29, 2020, available at <https://www.nytimes.com/2020/03/29/us/politics/trump-coronavirus-guidelines.html>.

²⁴ Centers for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)* <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

²⁵ A study in Iceland, where COVID-19 testing is widespread, found that about half those who tested positive have no symptoms. Jason Gale, *Coronavirus Cases Without Symptoms Spur Call for Wider Tests*, Bloomberg, Mar. 22, 2020, available at <https://www.bloomberg.com/news/articles/2020-03-22/one-third-of-coronavirus-cases-may-show-no-symptom-scmp-reports>.

55. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from influenza. According to recent estimates, the fatality of people infected with the coronavirus is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems.

56. There is no vaccine against COVID-19, nor is there any known medication to prevent or cure infection from the virus.

57. The only known effective measure to reduce the risk of severe illness or death to vulnerable individuals is to prevent them from being infected with the coronavirus. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including frequently washing hands with soap and water and disinfecting commonly touched areas, are the only known effective measures to prevent infection. In addition, those who are symptomatic, or who have come into contact with those who have tested positive for the virus, are advised to self-quarantine, removing themselves entirely from physical contact with others so as to prevent spread of the virus for a period of up to 14 days.

58. None of these practices are possible in detention facilities, where large numbers of people are housed in close quarters in congregate settings, with minimal access to sinks, showers, toilets, water, personal hygiene and facility cleaning supplies.

B. COVID-19 is Exceedingly Dangerous for Individuals Like Petitioner-Plaintiffs, Who Have Underlying Health Concerns.

59. Older individuals and those with certain medical conditions face dramatically higher chances of serious illness or death from COVID-19. Certain underlying medical conditions increase the risk of serious COVID-19 disease for individuals of any age, including lung disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems, blood disorders, inherited metabolic disorders, stroke, and pregnancy.

60. Individuals detained in immigration detention centers, including those in Louisiana, are also more susceptible to experiencing complications from infectious diseases than the population at large. This is especially true for individuals with underlying conditions such as diabetes, lung disease, kidney disease, or other illness.

61. Petitioner-Plaintiffs in this case are individuals who are particularly vulnerable to serious illness or death if infected by COVID-19 and who are currently detained in immigration detention in Louisiana facilities as they await adjudication of their immigration cases.

62. **Tatalu Helen Dada** is a 40-year-old woman and Nigerian national, who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. In addition to depression and anxiety, Ms. Dada suffers from Grave's Disease, which is a serious autoimmune disorder that attacks the thyroid; she suffers from hypothyroidism, hypertension, asthma, malnutrition, and vision loss, and has been hospitalized numerous times due to her rapidly deteriorating health. She is therefore at extremely high risk of severe complications or death if she contracts COVID-19.

63. Ms. Dada's medical conditions qualify as disabilities under the Rehabilitation Act.

64. **Matilde Flores de Saavedra** is a 78-year-old woman and Mexican national, who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She was recently diagnosed with diabetes, which remains uncontrolled and subjects her to extremely high blood-sugar levels; she also suffers from hypertension. She is therefore at high risk of severe illness or death if she contracts COVID-19.

65. Ms. Flores de Saavedra's diabetes and hypertension qualify as disabilities under the Rehabilitation Act.

66. **Sirous Asgari** is a 59-year-old man and Iranian national who is currently detained by ICE at Winn Correctional Center in Winnfield, Louisiana. He has chronic lung problems and

susceptibility to lung infections, and in fact contracted pneumonia while in early 2020 while in another ICE detention center. While in ICE custody, he has suffered from hypertension. He also has a diagnosis of Grade 2 fatty liver disease. He is therefore at high risk of severe illness or death if he contracts COVID-19.

67. Mr. Asgari's lung disease and hypertension qualify as disabilities under the Rehabilitation Act

68. **Suresh Kumar** is a 37-year-old man and Indian national who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. Mr. Kumar suffers from Hepatitis C, a chronic liver infection, malnutrition, and chronic pain to his chest, head, stomach, throat, and lower back. He is therefore at high risk of severe illness or death if he contracts COVID-19.

69. Suresh Kumar's medical conditions qualify as disabilities under the Rehabilitation Act.

70. **Pardeep Kumar** is a 28-year-old man and Indian national who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. He suffers from malnutrition, which puts him at high risk for heart damage, as well as a kidney infection, chronic pain, and vision loss. He is therefore at high risk of severe illness or death if he contracts COVID-19.

71. Pardeep Kumar's medical conditions qualify as disabilities under the Rehabilitation Act.

72. **Rosabel Carrera** is a 59-year-old woman and Mexican national and is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She suffers from diabetes. She also has a history of stroke and suffers from heart disease, hypertension, arthritis, and vision loss. She is therefore at high risk of severe illness or death if he contracts COVID-19.

73. Ms. Carrera's diabetes and hypertension qualify as disabilities under the Rehabilitation Act.

74. **Sonia Lemus Tejada Dejaso** is a 53-year-old woman and Guatemalan national who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She suffers from heart disease and hypertension and has a history of hospitalization for her heart issues. She is therefore at high risk of severe illness or death if she contracts COVID-19.

75. Ms. Tejada Dejaso's heart disease and hypertension qualify as disabilities under the Rehabilitation Act.

76. **Griselda Del Bosque** is a 57-year-old woman and Mexican national who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She suffers from severe asthma, requires the use of an inhaler, and has had numerous asthma attacks and coughing fits while she has been detained. She also suffers from glaucoma and chronic arm, back, and knee pain, that make it hard for her to walk. She is therefore at high risk of severe illness or death if she contracts COVID-19.

77. Ms. Del Bosque's asthma qualifies as a disability under the Rehabilitation Act.

78. **Nadira Sampath Grant** is a 53-year-old woman and national of Trinidad and Tobago who is currently detained by ICE at the LaSalle ICE Processing Center in Jena, Louisiana. She suffers from diabetes and diabetic related complications such as neuropathy and issues with her kidneys and vision. She is therefore at high risk of severe illness or death if she contracts COVID-19.

79. Ms. Sampath Grant's diabetes qualifies as a disability under the Rehabilitation Act.

80. Petitioner-Plaintiff **Eduardo Devora Espinosa** is a 34-year-old Cuban national who is currently detained at the Winn Correctional Center in Winnfield, Louisiana. He suffers

from hypertension and diabetes. His diabetes has resulted in complications with his foot that have left him unable to walk without immense pain. He is therefore at high risk of severe illness or death if he contracts COVID-19.

81. Mr. Devora Espinosa's medical conditions qualify as disabilities under the Rehabilitation Act.

82. Petitioner-Plaintiff **Abraham Gebremedhin Gebremichael** is a 33-year-old Ethiopian national who is currently detained by ICE at the Richwood Correctional Center in Richwood, Louisiana. He suffers from bradycardia, a heart condition that leaves his body without sufficient oxygen. He has twice lost consciousness because of this condition while detained by ICE. He is therefore at high risk of severe illness or death if he contracts COVID-19.

83. Mr. Gebremichael's medical conditions qualify as disabilities under the Rehabilitation Act.

84. Petitioner-Plaintiff **Rolando Alex Colon** is a 47-year-old man and Honduran national who is currently detained by ICE at the Catahoula Correctional Center in Harrisonburg, Louisiana. He suffers from hypertension. He is therefore at high risk of severe illness or death if he contracts COVID-19.

85. Mr. Colon's medical conditions qualify as disabilities under the Rehabilitation Act.

86. Petitioner-Plaintiff **Karthikeyan Ponnusamy** is a 42-year-old man and Indian national who is currently detained by ICE at the Catahoula Correctional Center in Harrisonburg, Louisiana. He is currently experiencing regular chest pain and suffers from hypertension, diabetes, and Low Lactate Dehydrogenase, a blood condition which makes his blood thicker than normal. He is therefore at high risk of severe illness or death if he contracts COVID-19.

87. Mr. Ponnusamy's medical conditions qualify as disabilities under the Rehabilitation Act.

88. Petitioner-Plaintiff **Hasan Saleh** is a 62-year-old Jordanian national who is currently detained by ICE and LaSalle ICE Processing Center in Jena, Louisiana. He suffers from uncontrolled diabetes, hypertension, and high cholesterol and requires a cane to walk because of blood clots in his legs. Due to his age and medical conditions, he is at high risk of severe illness or death if he contracts COVID-19.

89. Mr. Saleh's medical conditions qualify as disabilities under the Rehabilitation Act.

90. Petitioner-Plaintiff **Aracelio Rodriguez** is a 61-year-old Cuban national who is currently detained at the Jackson Parish Correctional Center in Jonesboro, Louisiana. He suffers from asthma for many years, which has led to his hospitalization for lack of oxygen. Due to his medical condition, he is at high risk of severe illness or death if he contracts COVID-19.

91. Mr. Rodriguez's medical condition qualifies as a disability under the Rehabilitation Act.

92. Petitioner-Plaintiff **Desmond Nkobenei** is a 25-year-old Cameroonian national who is currently detained at Pine Prairie ICE Processing Center in Pine Prairie, Louisiana. He suffers from hypertension, and has headaches and unclear vision because of his high blood pressure. Due to his medical condition, he is at high risk of severe illness or death if he contracts COVID-19.

93. Mr. Nkobenei's medical condition qualifies as a disability under the Rehabilitation Act.

C. Relevant ICE Detention Facilities Are Ticking Time Bombs Already Exposed to Coronavirus; They Do Not, and Cannot Meet Public Health Standards to Prevent Widespread Infections Inside the Facilities and Are Deliberately Indifferent to the Known Health Risks.

94. The LaSalle, Winn, Jackson, Catahoula, Pine Prairie, and Richwood facilities are located in Louisiana, and are under the jurisdiction of the New Orleans ICE Field Office directed by Respondent-Defendant Witte. Louisiana is experiencing a coronavirus outbreak and public officials have put in place a number of significant restrictions on public gatherings, including by closing down schools, bars, restaurants, and other public places, limiting the size of public gatherings, and issuing ‘shelter in place’ orders, requiring residents to remain in their homes.

95. As of April 13, 2020, there were nearly 21,100 COVID-19 cases in Louisiana.²⁶ The number of infected people is rising exponentially, and 880 people in Louisiana have died from the disease.²⁷

96. These data include cases in all of the counties in which these facilities are located. Ouachita Parish, home to Richwood Correctional Center, has over 384 cases and five reported deaths. LaSalle Parish, where the LaSalle ICE Processing Center is located, has 13 cases. Winn Parish, the site of Winn Correctional Center, has 12 cases and two reported deaths.²⁸ Catahoula Parish, the site of Catahoula Correctional Center, has 21 cases, and one reported death.²⁹ Jackson Parish, the site of Jackson Parish Correctional Center, has eight cases.³⁰ Evangeline Parish, the site of the Pine Prairie ICE Processing Center, has 38 confirmed cases.³¹

97. The exponential growth of coronavirus cases in Louisiana has been staggering. Data released March 21, 2020 by a researcher at the University of Louisiana Lafayette found that

²⁶ Louisiana Department of Health, *Coronavirus (COVID-19)* (April 13, 2020), <http://ldh.la.gov/coronavirus/>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Louisiana presently has the fastest spread of COVID-10 of any region in the world.³² Statewide, Louisiana is second only to New York in deaths per 100,000, with 582 reported as of April 7.³³ Six parishes in the New Orleans area are in the top ten in deaths of all counties in the nation.³⁴

98. COVID-19 has already made it into the Louisiana immigration detention facilities. As of April 13, 2020, Pine Prairie now has two confirmed COVID-19 cases, and both Winn and Richwood each have one as well. At least 11 staff members and 6 detained persons have so far tested positive for COVID-19 at Louisiana ICE facilities.³⁵ There is an immediate and impending threat that the coronavirus will spread uncontrollably throughout the Louisiana facilities.

99. Given the shortage of COVID-19 tests in the United States, generally, these detention facilities cannot currently conduct aggressive, widespread testing to identify and track all COVID-19 cases.

100. It is thus equally impossible for detention facilities to consistently and adequately screen detained individuals and staff for new, asymptomatic infection.

101. In the absence of widespread testing, there is no way to be certain that COVID-19 is not already widespread in these facilities. And given the rapid spread of COVID-19 throughout Louisiana, daily entry of staff and guards from the community, and the continued influx and

³² Louisiana Governor's Office of Homeland Security and Emergency Preparedness, *COVID-19 Louisiana Case Info*, 2 (Mar. 21, 2020), <https://gov.louisiana.gov/assets/docs/covid/govCV19Brief-2.pdf>; see also Katy Reckdahl, et al., *New Orleans Faces a Virus Nightmare and Mardi Gras May Be Why*, N.Y. Times, Mar. 26, 2020, available at <https://www.nytimes.com/2020/03/26/us/coronavirus-louisiana-new-orleans.html>.

³³ Coronavirus tracker, The Washington Post, April 8, 2020, available at <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>; Emma Discher, *Coronavirus in Louisiana: Cases, deaths increase; number of patients on ventilators drops*, The New Orleans Advocate, April 7, 2020, available at https://www.nola.com/news/coronavirus/article_139dd82a-78ec-11ea-b8c4-5f458d197eab.html.

³⁴ Scott Calvert, *New Orleans Area Has Worst Coronavirus Death Rate in U.S.*, The Wall Street Journal, April 4, 2020, available at <https://www.wsj.com/articles/new-orleans-area-has-worst-coronavirus-death-rate-in-u-s-11586008800>; Kimberly Curth, *New Orleans and Jefferson Parish have the Highest COVID-19 Death Rates in the Country*, FOX8, Mar. 28, 2020, available at <https://www.msn.com/en-us/health/medical/new-orleans-and-jefferson-parish-have-the-highest-covid-19-death-rates-in-the-country/ar-BB11Ownx>.

³⁵ ICE COVID-19 Guidance, <https://www.ice.gov/coronavirus> (Apr. 8, 2020).

transfer of new people into detention facilities on a weekly or even daily basis, it is only a short matter of time before the disease becomes widespread among people detained in close, unsanitary conditions.

102. According to Dr. Jaimie Meyer, Assistant Professor of Medicine at Yale School of Medicine and a specialist in infectious diseases in the context of jails and prisons, an outbreak in these detention centers is “highly likely and . . . the consequences of rampant COVID-19 infection in the facility would be disastrous, especially for high-risk individuals like the plaintiffs in this case.”

103. Conditions in these detention centers make rapid spread of COVID-19 very likely. Detained individuals are housed in close quarters and in large groups, often with many dozens sleeping in one room, in beds spaced well under the distance of six feet apart that the CDC recommends to maintain social distancing.

104. Detained individuals in these facilities use common spaces together, sharing tables, telephones, and bathrooms. The hallways are tight, and people in the hallways are constantly in very close proximity to each other. Bathrooms with small numbers of showers, toilets and sinks are used by large numbers of people and are not sanitized or disinfected after each use. Staff arrive and leave on a shift basis, and even asymptomatic staff could carry the infection into the facility. Many guards, staff and even doctors do not wear masks or gloves, and detained individuals are not provided with them.

105. Many facilities do not have regular cleaning, leaving detained individuals to clean the sleeping areas and bathrooms with spray bottles, and rags they must reuse. Bleach is not available in some of the facilities, and they are also not provided with protective equipment to clean.

106. Additionally, alcohol-based hand sanitizers are unavailable at these facilities, and frequent handwashing is difficult at best given minimal access to soap and sinks. In some facilities there may be signs instructing people to wash hands, but there is no effort to educate detained people about frequency or method.

107. Because of these conditions, outbreaks of infectious diseases are extremely common in confined detention centers such as these and have resulted in the hospitalization or death of some individuals. Detained persons like Petitioner-Plaintiffs face inherent challenges to protect themselves from COVID-19 infection because they live, sleep, and use the bathroom in close proximity with others, and because “[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible.”³⁶ Individuals who are detained cannot protect themselves by social distancing and vigilant hygiene as they could in the community. Congregate settings such as these detention centers allow for rapid spread of infectious diseases that are transmitted person to person, especially those that—like COVID-19—are transmitted by droplets through coughing and sneezing.

108. Therefore, a coronavirus brought into a detention facility will quickly spread among the dense group of detained individuals, including individuals, like Petitioner-Plaintiffs, who are at high risk of severe illness or death from COVID-19.

109. Moreover, these detention centers are also ill-equipped to manage an infectious disease outbreak. None of the facilities have 24-hour medical care with onsite physicians and they all have very limited on-site medical facilities. One Petitioner-Plaintiff at LaSalle, Pardeep Kumar, has been told that he cannot be transferred to a higher level of emergency medical care in

³⁶ Keri Blakinger & Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, The Marshall Project, Mar. 6, 2020, *available at* <https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus> (describing, for example, limited access to hand sanitizer and other precautionary measures).

Alexandria, Louisiana, because of a high rate of coronavirus there. Further, the medical systems in the rural communities surrounding these detention centers are already beginning to be overloaded, significantly reducing the capacity to provide emergency and intensive medical care.

110. The Louisiana detention centers also do not have negative pressure isolation units, meaning that they do not have any capacity to truly isolate spread of the disease through airborne respiratory droplets. Putting infected individuals in solitary confinement is an ineffective way to prevent transmission of the disease because air continues to flow outwards from those rooms to the rest of the facility. This makes containing the illness and caring for those who have become infected virtually impossible.

111. Further, the Louisiana detention facilities have continued to allow large numbers of detained people to enter and leave each facility, exposing thousands within the detention centers to close contact with potential new carriers. After a COVID-19 exposure was suspected at ICE's Alexandria Staging Facility, more than 30 men, including Petitioner-Plaintiff Asgari, were transferred from there to Winn, where they were housed with a dozen men already at the latter facility. The Alexandria facility now has five confirmed COVID-19 cases.³⁷

112. The coronavirus has already started to spread inside U.S. prisons and jails, and experts predict a mass contagion is only a matter of time.³⁸ For example, on Friday, March 20, 2020 New York City officials had confirmed just one case at their jail facilities. The next day, they confirmed 19. Two days later, there were 38.³⁹ By March 25, 2020, Rikers Island *alone* had 52

³⁷ ICE COVID-19 Guidance, <https://www.ice.gov/coronavirus> (Apr. 8, 2020).

³⁸ See Hannah Summers, 'Everyone Will Be Contaminated': Prisons Face Strict Coronavirus Controls, The Guardian, Mar. 23, 2020, *available at* <https://www.theguardian.com/global-development/2020/mar/23/everyone-will-be-contaminated-prisons-face-strict-coronavirus-controls>.

³⁹ A.P., *Coronavirus: 38 Test Positive in New York City Jails, Including Rikers Island*, The Guardian, Mar. 22, 2020, *available at* <https://www.theguardian.com/us-news/2020/mar/22/coronavirus-outbreak-new-york-city-jails-rikers-island>.

confirmed cases. It now has over 273 confirmed cases amongst those who are incarcerated, and there are over 370 confirmed cases amongst staff.⁴⁰ In Chicago, Illinois, the Cook County jail now has more than 350 confirmed coronavirus cases.⁴¹ At the federal Bureau of Prisons (“BOP”) facility in Oakdale, Louisiana, six people have died and 38 incarcerated people and 17 staff have confirmed cases.⁴² Oakdale officials have stopped testing for the virus due to its “sustained transmission”.⁴³ Thirty-nine staff have tested positive at the Orleans Justice Center, the jail in New Orleans, and 21 detained individuals have tested positive – and five of those have been released.⁴⁴ And in ICE detention in Louisiana, at least 11 staff and at least 6 detained persons have tested positive for COVID-19.⁴⁵

113. Despite these widespread warnings, the Louisiana detention facilities—like ICE facilities across the country—remain woefully unprepared and incapable of taking necessary precautions to protect people in their custody against a life-threatening illness.

⁴⁰ See Jan Ransom & Alan Feuer, *‘We’re Left for Dead’: Fears of Virus Catastrophe at Rikers Jail*, Mar. 30, 2020, available at <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html>; Josiah Bates, *New York’s Rikers Island Jail Sees First Inmate Death from COVID-19*, Apr. 6, 2020, available at <https://time.com/5816332/rikers-island-inmate-dies-coronavirus/>.

⁴¹ *Report: Cluster of COVID-19 Cases at Cook County Jail the Largest in the Nation*, NBC Chicago, April 7, 2020, available at <https://www.nbcchicago.com/news/local/report-cluster-of-covid-19-cases-at-cook-county-jail-the-largest-in-the-nation/2252000/>

⁴² Federal Bureau of Prisons, *COVID-19 Coronavirus: COVID-19 Cases* (April 13, 2020), <https://www.bop.gov/coronavirus/index.jsp>.

⁴³ Nicholas Chrastil, *Louisiana Federal Prison No Longer Testing Symptomatic Inmates for Coronavirus Due to ‘Sustained Transmission’*, The Lens, Mar. 31, 2020, available at https://thelensnola.org/2020/03/31/louisiana-federal-prison-no-longer-testing-symptomatic-inmates-for-coronavirus-due-to-sustained-transmission/?utm_source=The+Lens&utm_campaign=c001b3be4d-EMAIL_CAMPAIGN_2020_03_31_05_46&utm_medium=email&utm_term=0_bbcdaba031-c001b3be4d-407119417.

⁴⁴ Orleans Parish Sheriff’s Office, *Orleans Parish Sheriff’s Office Update Regarding COVID-19 Precautions and Activities (4-10-2020)* (Apr. 10, 2020), available at http://www.opcs.org/index.php?option=com_content&view=article&id=639:orleans-parish-sheriffs-office-update-regarding-covid-19-precautions-and-activities-04-10-2020&catid=1:latest-news.

⁴⁵ ICE COVID-19 Guidance, <https://www.ice.gov/coronavirus> (Apr. 8, 2020).

D. ICE's Response to COVID-19 Is Insufficient to Prevent the Spread of This Life-Threatening Disease and Is Contrary to the CDC Infectious Disease Guidance ICE is Required to Follow.

114. ICE sets standards for facilities that detain individuals in ICE custody, including the five facilities where Petitioner-Plaintiffs are currently detained. National Detention Standards for immigration detention facilities were first promulgated in 2000 and renamed and reissued by ICE as Performance-Based National Detention Standards ("PBNDS") in 2008. ICE again reissued these standards in 2011 and revised them in December 2016.

115. The PBNDS govern the prisons ICE uses to hold civil detainees, including service processing centers, contract detention facilities, and state or local government facilities used by ERO to detain people for more than 72 hours pursuant to intergovernmental service agreements.⁴⁶

116. The PBNDS, among other things, govern the medical standards for each detention facility dedicated to housing individuals in ICE custody.⁴⁷

117. The PBNDS are supposed to "ensure[] that detainees have access to appropriate and necessary medical, dental and mental health care, including emergency services." PBNDS §4.3. ("Medical Care"). Facilities are required to have plans to address the management of infectious and communicable diseases that include "control, treatment and prevention strategies." PBNDS §4.3 (V)(C)(3).

118. The PBNDS also mandate that "Center for Disease Control and Prevention ("CDC") guidelines for the prevention and control of infectious and communicable diseases *shall* be followed." PBNDS §4.3 (II)(10) (emphasis added).

⁴⁶ ICE Performance-Based Detention Standards 2011 ("PBNDS"), *available at* <https://www.ice.gov/detention-standards/2011>.

⁴⁷ PBNDS, § 4.3 ("Medical Care"), *available at* <https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf>.

119. In March 2020, in response to the COVID-19 outbreak, the CDC issued several guidelines in order to prevent the spread of COVID-19.⁴⁸

120. In order to limit the spread of COVID-19, the CDC has recommended that gatherings be limited to 50 people or less, canceling all “gatherings of more than 10 people for organizations that serve higher-risk population,” and warns that “the density of attendees within a confined area,” increases the risk of spreading the virus.⁴⁹ These guidelines recommend that individuals remain 6 feet away from one another.

121. Additionally, on or about March 23, 2020, the CDC issued guidance for detention facilities “including...federal and state prisons, local jails, and detention centers.”⁵⁰

122. The CDC guidance states that “[i]ncarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced” and warns that “[t]here are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress... and incarcerated/detained persons may have medical conditions that increase their risk of severe disease from COVID-19.”⁵¹

⁴⁸ See CDC Guideline, *Gatherings and Community Events*, March 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/index.html>; CDC guideline, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, March 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

⁴⁹ Center for Disease Control, *Gatherings and Community Events*, March 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/index.html>. See also *Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission*, March 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>

⁵⁰ Center for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, March 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

⁵¹ *Id.*

123. Further, the CDC guidance mandates that detention facilities “[e]nsure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies... are on hand and available... provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing...” and emphasizes the need for social distancing as a mechanism for preventing the transmission of COVID-19.⁵²

124. The CDC has also warned that individuals who are 65 and older or who have an array of underlying conditions, including individuals with asthma, blood disorders, heart disease, lung conditions, and those with compromised immune systems, are at a higher risk of developing serious complications if they were to contract COVID-19.⁵³

125. ICE issued an “Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19)” and has established a webpage entitled “ICE Guidance on COVID-19.” These documents (collectively the “ICE Protocols”) will not protect Petitioner-Plaintiffs. The protocols also do not address imminent shortages of medical supplies and staffing or education of detained people and staff about the virus, amongst other critical issues. Nor do they implement the CDC’s guidelines for the management of the novel coronavirus in correctional and detention settings.

126. The ICE Protocols do not even offer an effective way to determine who has the virus. Since some COVID-19 carriers can be asymptomatic or not show symptoms for weeks after exposure, “screening people based on observable symptoms is just a game of catch up.” *In re. Extradition of Alejandro Toledo Manrique*, No. 19-mj-71055, 2020 WL 1307109 (N.D. Cal.

⁵² *Id.*

⁵³ CDC, *Coronavirus Disease 2019 (COVID-19): People who are at higher risk for severe illness* (Mar. 26, 2020), available at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fpeople-at-higher-risk.html.

March 19, 2020) (ordering release on bond in part because the government’s management plan did not “say anything about testing”).

127. ICE has temporarily suspended social visitation in all detention facilities. But staff, contractors, and vendors continue to arrive and leave the detention centers. In addition, people are frequently transported to, from, and between facilities.

128. Anything short of aggressive screening and testing of all detained individuals, staff, officials and other care and service providers who enter the facility is insufficient to prevent infection. Neither ICE nor the Louisiana facilities have the resources necessary to engage in such measures, especially considering the shortage in available tests.

129. Instead, the only measure ICE has committed to taking is to segregate those who meet CDC criteria for epidemiologic risk of exposure to the coronavirus. Even assuming adequate space, isolation of people who are ill is generally an ineffective way to prevent transmission of COVID-19 because air continues to flow outward from rooms to the rest of the facility and because asymptomatic people also transmit the disease. Further, there is substantial evidence that ICE’s COVID-19 protocols are not being followed in detention centers throughout the country, including in the Louisiana detention facilities, and that ICE is otherwise failing to provide an adequate response—which has historically been the case—exacerbating the risk of harm to Petitioner-Plaintiffs.

130. ICE has failed to follow the CDC guidelines designed to prevent the spread of COVID-19 in any of the six detention centers where Petitioner-Plaintiffs are held.

131. In LaSalle ICE Processing Center, where Petitioner-Plaintiffs Ms. Dada, Ms. Del Bosque, Ms. Sampath Grant, Ms. Carrera, Ms. Tejada Dejaso, Ms. Flores de Saavedra, Mr. Suresh Kumar, Mr. Pardeep Kumar, and Mr. Saleh are being detained, 80 people share one dorm, sharing

at most 6 toilets, 3 showers, 8 sinks and one microwave, with all day spent indoors except for 2-3 hours of exercise in an enclosed yard. At least 15 new detained people have been brought into the facility in the last two weeks, including one person brought into the facility who was sneezing and coughing. Conditions are unsanitary, with no sinks to clean food bowls. Detained people who clean the dorms for \$1.00 per day are not given no masks or other protective gear for cleaning, and often run out of cleaning supplies. Beds are spaced a yard and a half apart, staff and detained people are not given masks or gloves, and dorms are cleaned only once per day. Doctors in the medical unit, where Petitioner-Plaintiffs Suresh Kumar and Pardeep Kumar are detained, do not wear masks.

132. In Richwood Correctional Center, where Petitioner-Plaintiff Mr. Gebremichael is being detained, 110 people share one dorm in which beds are spaced less than one meter apart. Detained people there have not had soap for a week and often do not have any supplies with which to clean or disinfect the dorms. Guards do not wear masks or gloves. Staff have told detained persons that if they drink water, they will be fine.

133. In the Winn Correctional Center, where Petitioner-Plaintiff Mr. Asgari and Mr. Devora Espinosa are detained, one bathroom and two unenclosed toilets are available for 44 detained men, rusted metal beds are spaced less than two feet apart, and the environment is so humid that the men's bed sheets are soaked with perspiration each morning. Cleaning is done by the detained men, with some bleach made available but no masks or other protection. Detained persons at that facility were told by staff that there is no coronavirus in Louisiana.

134. In the LaSalle, Richwood, and Winn facilities, ICE has large numbers of people sleeping within as little as half a meter apart; has failed to provide enough cleaning materials or frequency of cleaning to prevent spread of illness from surfaces; has not provided detained people with adequate soap or hygiene facilities for hand-washing crucial to prevent the spread of COVID-

19; has provided no masks, gloves or protective gear for detained people or most staff; and has transferred new people into the facilities within the last several weeks, after the outbreak of COVID-19 began, all in violation of CDC guidelines.

135. In the Jackson Parish Correctional Center, where Petitioner-Plaintiff Mr. Rodriguez is detained, 100 men are confined to one room where they sleep in beds three feet apart. Cleaning supplies and soap are in short supply.

136. In the Catahoula Correctional Center, where Petitioners-Plaintiffs Mr. Colon and Mr. Ponnusamy are detained, men are confined about 60-100 men to a room and share one restroom, one shower room, and two telephones that are not disinfected after use. They have not been given soap and there is not even soap available to purchase. Guards do not wear masks or gloves.

137. In the Pine Prairie ICE Processing Center, where Petitioner-Plaintiff Mr. Nkobenei is detained, ICE crams 70 men into a 15-meter by 15-meter dorm in which they sleep in beds less than a meter apart. Guards only wear masks and gloves sporadically. The guards told the men in that facility not to believe the information on CNN about coronavirus and that no one in Pine Prairie has coronavirus, even after ICE had publicly confirmed on April 3, 2020 that a detained person at the facility had tested positive for COVID-19.

138. Importantly, the COVID-19 pandemic—and ICE’s unreasonable response to it—will significantly strain ICE’s already broken medical care system. Long before the COVID-19 outbreak, numerous public reports, including by DHS itself, have identified serious and substantial flaws in ICE’s medical care system. For example, a 2017 OIG report that assessed care at certain ICE facilities identified “lack of cleanliness and limited hygienic supplies” as well as “long waits

for the provision of medical care[.]”⁵⁴ Other reports echo these alarming findings about substandard medical care in ICE facilities.⁵⁵

139. Immigration detention facilities have faced outbreaks of other infectious diseases in recent years due to overcrowding, poor hygiene measures, medical negligence, and poor access to resources and medical care. As recently as last year, ICE mishandled and failed to take adequate measures to protect detained individuals in Louisiana against outbreaks of chicken pox and mumps.⁵⁶

140. And ICE has a long history of mishandling infectious and communicable diseases, struggling to contain them, and failing to follow nationally accepted standards. The Office of the Inspector General (“OIG”) of the Department of Homeland Security (“DHS”) even concluded in a 2019 report that ICE “does not adequately hold detention facility contractors accountable for not meeting performance standards,” “issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards,” and “does not adequately share information about ICE detention contracts with key officials.”⁵⁷

⁵⁴ DHS Office of the Inspector General, *Concerns About ICE Detainee Treatment and Care at Detention Facilities*, OIG-18-32 at 7 (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

⁵⁵ See, e.g., U.S. Gov’t Accountability Off., GAO-16-23: *Immigration Detention: Additional Actions Needed to Strengthen Mgmt. and Oversight of Detainee Med. Care* (Feb. 2016), available at <https://www.gao.gov/assets/680/675484.pdf>; Human Rts. Watch *et al.*, *Code Red: The Fatal Consequences of Dangerously Substandard Med. Care in Immigration Detention*, at 15, 19, 25, 46 (June 2018), available at https://www.hrw.org/sites/default/files/report_pdf/us0618_immigration_web2.pdf; J. David McSwane, *ICE Has Repeatedly Failed to Contain Contagious Diseases, Our Analysis Shows. It’s a Danger to the Public*, PROPUBLICA (Mar. 20, 2020), available at <https://www.propublica.org/article/ice-has-repeatedly-failed-to-contain-contagious-diseases-our-analysis-shows-its-a-danger-to-the-public>.

⁵⁶ Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (Jun. 14, 2019), available at https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox.

⁵⁷ See DHS Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, OIG-19-18, at 1 (Jan. 29, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

141. Moreover, ICE has routinely failed to remedy inhumane conditions because, according to the OIG, “ICE does not adequately follow up on identified deficiencies or consistently hold facilities accountable for correcting them, which further diminishes the usefulness of inspections. . . . with some deficiencies remaining unaddressed for years.”⁵⁸

142. ICE has even publicly acknowledged the need to limit the spread of the virus and the number of people in its detention centers, announcing that it will delay enforcement actions to arrest fewer immigrants and will use alternatives to detention as a response to the COVID-19 outbreak for new people they arrest in the field.⁵⁹ But the agency still has no plan to release vulnerable individuals who are currently in custody,⁶⁰ and has not stopped bringing new people into the detention centers.

143. Given the rapid spread of COVID-19, the likelihood of spread before a person infected with the virus is symptomatic, highly limited availability of testing, ICE’s repeated failure to meet adequate standards for controlling infectious disease outbreaks in its facilities, and current conditions at the Louisiana detention centers, Defendants cannot prevent the spread of COVID-19 in those facilities.

E. ICE’s Inadequate Response to COVID-19 Has Also Unreasonably Limited Petitioner-Plaintiffs’ Right of Access to Counsel.

⁵⁸ See DHS Office of the Inspector General, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, OIG-18-67, at 1 (June 26, 2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

⁵⁹ See Maria Sacchetti and Arelis R. Hernández, *ICE to stop most immigration enforcement inside the U.S., will focus on criminals during coronavirus outbreak*, The Washington Post (Mar. 18, 2020), available at https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab_story.html.

⁶⁰ Noah Lanard, *ICE Is Ignoring Recommendations to Release Immigrant Detainees to Slow the Spread of Coronavirus*, Mother Jones (Mar. 20, 2020), available at <https://www.motherjones.com/politics/2020/03/ice-is-ignoring-recommendations-to-release-immigrant-detainees-to-slow-the-spread-of-coronavirus/>.

144. ICE's regulations provide for meaningful access to counsel. *See* 8 C.F.R. §292.5(b) (requiring that "[w]hen an examination is provided for . . . the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs.").

145. In addition, the PBNDS provide the primary mechanism through which ICE executes its duty to ensure access to counsel. The PBNDS require that facilities "permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days ... and a minimum of four hours per day on weekends and holidays." *Id.* at § 5.7 (IV)(J)(2). Meetings between detained people and legal representatives must be "confidential" and "[p]rivate consultation rooms shall be available for such meetings." *Id.* at § 5.7 (II)(2). In addition, "[d]etainees and their legal counsel shall be able to communicate effectively with each other," "[p]rivacy for detainee telephone calls regarding legal matters shall be ensured," and "[t]elephone access procedures shall foster legal access and confidential communications with attorneys." *Id.* at § 5.6 (II)(4)-(6).

146. ICE has erected numerous barriers to meaningful access to counsel to people detained in immigration facilities long before the outbreak of COVID-19, for example by detaining people in remote locales far from family and counsel such as the LaSalle, Richwood, and Winn facilities. In addition, ICE and the entities it contracts with to detain immigrants frequently restrict access to interpreters, limit in-person contact with attorneys, or interfere with confidential communications with counsel through scarcity of private meeting rooms and telephones.

147. These barriers to meaningful access to counsel have been heightened during the COVID-19 emergency. On March 13, 2020, ICE announced that it would be suspending all social

visitation to detained people and issuing limitations on in-person legal visitation. For example, in addition to requiring attorneys seeking in-person contact with their clients to undergo “the same [screening] procedures as staff . . . ICE will require all legal visitors to provide and wear PPE (e.g., gloves, N-95 masks, and eye protection) while visiting with any client at any facility.”⁶¹ There is currently a shortage of PPE and other protective materials across the nation, and attorneys that cannot obtain PPE are not able to meet with their clients.

148. There is no parallel requirement for guards and staff who enter from the outside community to wear PPE while inside detention facilities. Indeed, many guards and staff at the LaSalle, Winn, and Richwood facilities do not wear masks, gloves, or other forms of PPE while on duty.

149. LaSalle provides essentially no confidential phone access for detained people. The Richwood facility has no VTC capability. With few telephones shared among several dozen people in all facilities and several days’ waiting time for the VTC system in facilities with such capabilities, detained people do not have adequate access to counsel when in-person visitation is limited.

150. These barriers are heightened even further for detained people like Petitioner-Plaintiffs, whose native language is not English, who may not be familiar with the United States court system, and who are disabled and/or facing significant medical challenges.

151. At a time when individuals in detention are facing increasing risks of harm as a result of the COVID-19 pandemic, access to attorneys is essential for the purpose of preparing highly fact-intensive applications for bond and parole proceedings. These restrictions significantly

⁶¹ ICE Guidance on COVID-19 (updated March 24, 2020), *available at* <https://www.ice.gov/coronavirus#wcm-survey-target-id>. “PPE” refers to “Personal Protective Equipment.”

reduce, and in some cases eliminate, meaningful access to counsel and the courts, for vulnerable people facing the extremely high stakes of immigration proceedings.

F. The Consensus of Public Health Experts Is That Individuals Most Vulnerable to COVID-19 Should Immediately Be Released to Protect them From Serious Illness or Death.

152. The only viable public health strategy currently available in the United States is risk mitigation. For this reason, public health experts with experience in immigration detention and correctional settings have consistently recommended the release of vulnerable detained individuals from custody.

153. As early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts to the Department of Homeland Security, shared concerns with the agency about the specific risk to detained immigrants as a result of COVID-19. These experts warned of the danger of rapid spread of the coronavirus in immigration detention facilities. In a whistleblower letter to Congress, Dr. Allen and Dr. Rich recommended that “[m]inimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases.” They concluded that “acting immediately will save lives not of only those detained, but also detention staff and their families, and the community-at-large.”⁶²

154. Indeed, governments in the United States and worldwide have recognized the threat posed by COVID-19 spread among detained and incarcerated populations and have released detained individuals for that reason. For example, Iran temporarily released more than 80,000 detained individuals to curb the spread of the virus.⁶³ In the United States, several jurisdictions

⁶² Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to Congressional Committee Chairpersons, dated Mar. 19, 2020, *available at* <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

⁶³ Parisa Hafezi, *Iran Temporarily Frees 85,000 From Jail Including Political Prisoners*, Reuters (Mar. 17, 2020), *available at* <https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-from-jail-including-political-prisoners-amid-coronavirus-idUSKBN21410M>.

including Los Angeles, New York, and Chicago have also released detained individuals for the same reasons.⁶⁴ In New Orleans, Orleans Parish Sheriff Marlin Gusman has released individuals and called upon the courts to do so as well.⁶⁵

155. Releasing the most vulnerable people, such as Petitioner-Plaintiffs, would also reduce the burden on regional hospitals and health centers. In case of an outbreak at a detention center, those institutions would bear the brunt of having to treat infected individuals from detention centers and would have fewer medical resources available for the general population.

156. ICE has the authority to release individuals from custody on medical grounds and has routinely exercised its authority to release particularly vulnerable detained individuals like Petitioner-Plaintiffs. The former Acting Director of ICE, John Sandweg, has stated that “ICE can, and must, reduce the risk [COVID-19] poses to so many people, and the most effective way to do so is to drastically reduce the number of people it is currently holding.”⁶⁶

⁶⁴ Jan Ransom & Alan Feuer, *We’re Left for Dead: Fears of Virus Catastrophe at Rikers Jail*, New York Times (Mar. 30, 2020), available at <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html>; Maura Dolan, Alene Tchekmedyan & Paige St. John, *California releases more jail inmates amid coronavirus crisis*, Los Angeles Times (Mar. 20, 2020), available at <https://www.latimes.com/california/story/2020-03-20/california-releases-more-jail-inmates-amid-coronavirus-crisis>; David Struett, *Cook County Jail releases several detainees ‘highly vulnerable’ to coronavirus*, Chicago Sun-Time (Mar. 17, 2020), available at <https://chicago.suntimes.com/coronavirus/2020/3/17/21183289/cook-county-jail-coronavirus-vulnerable-detainees-released-covid-19>.

⁶⁵ The Orleans Parish Sheriff’s Office has released at least 23 individuals from the Orleans Justice Center, the parish jail. WDSU Digital Team, *Orleans Parish Sheriff’s Office releases some inmates with minor charges under COVID-19 plan*, WDSU (Mar. 19, 2020), available at <https://www.wdsu.com/article/orleans-parish-sheriffs-office-releases-some-inmates-with-minor-charges-under-covid-19-plan/31788756#>. Orleans Parish Sheriff Marlin Gusman has also called on the judges of the Orleans Parish Criminal District Court to release individuals. Letter from Orleans Parish Sheriff Marlin N. Gusman to Hon. Robin Pittman, Deputy Chief Judge, Orleans Parish Criminal District Court (Mar. 26, 2020), available at <https://www.documentcloud.org/documents/6819741-Letter-From-Sheriff-Gusman-to-Judge-Pittman.html>.

⁶⁶ John Sandweg, *I Used to Run ICE. We Need to Release the Nonviolent Detainees*, The Atlantic Monthly (Mar. 22, 2020), available at <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>; Camilo Montoya-Galvez, “Powder kegs”: Calls grow for ICE to release immigrants to avoid coronavirus outbreak, CBS News (Mar. 19, 2020), available at <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>.

LEGAL FRAMEWORK

A. Petitioner-Plaintiffs have a Substantive Due Process Right to Protection from Serious Illness and Potentially Lethal Harm.

157. Because Petitioner-Plaintiffs are in federal civil immigration detention, their constitutional rights flow from the procedural and substantive guarantees of the Fifth Amendment. *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir. 1996); *Ortega v. Rowe*, 796 F.2d 765, 767 (5th Cir. 1986).

158. When the government holds individuals in its custody, it assumes the affirmative obligation to provide for their basic human needs, including medical care, reasonable safety, and protection from harm. *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 200 (1989); *Hare*, 74 F.3d at 650 (5th Cir. 1996). A government “transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause” when it fails to satisfy its “affirmative duty to protect.” *DeShaney*, 489 U.S. at 200.

159. “Under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” *Hare*, 74 F.3d at 651. *See also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Therefore, persons detained civilly, including in immigration detention like Petitioner-Plaintiffs, are entitled to “more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *In re Kumar*, 402 F. Supp. 3d 377, 384 (W.D. Tex. 2019). A person detained civilly has due process rights that are “at least as great as the Eighth Amendment protections available to a convicted prisoner.” *Hare.*, 74 F.3d at 639 (citations omitted).

160. Courts have held that an immigration detainee’s due process rights should be evaluated at an even higher standard than that of pretrial detainees. *In re Kumar*, 402 F. Supp. 3d

at 384; *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004). But at the very least, the standard applicable in the pretrial criminal detention context applies here.

161. The government violates the due process rights of a person in civil detention when the conditions of his or her confinement “amount[s] to punishment.” *Garza v. City of Donna*, 922 F.3d 626, 632 (5th Cir. 2019), *cert. denied sub nom. Garza v. City of Donna, Texas*, 140 S. Ct. 651 (2019). If “a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees.” *Bell v. Wolfish*, 441 U.S. 520, 539 (1979); *accord Hare*, 74 F.3d at 640 (5th Cir. 1996).

162. To show that a condition of confinement amounts to punishment, the detained person need not demonstrate an official subjectively or maliciously intends to punish; instead “intent may be inferred from the decision to expose the detainee to an unconstitutional condition.” *Shepherd v. Dallas Cty.*, 591 F.3d 445, 452 (5th Cir. 2009). “[E]ven where a State may not want to subject a detainee to inhumane conditions of confinement or abusive jail practices, its intent to do so is nevertheless presumed when it incarcerates the detainee in the face of such known conditions and practices.” *Hare*, 74 F.3d at 644. “A pervasive pattern of serious deficiencies” that subjects a detainee to the risk of serious injury, illness or death “amounts to unconstitutional punishment.” *Shepherd*, 591 F.3d at 454. Such a pattern is evidenced by, for example, failing to provide adequate means to control a known risk of serious infections. *Duvall v. Dallas Cty., Tex.*, 631 F.3d 203, 208 (5th Cir. 2011).

163. In addition, it is cruel and unusual punishment under the Eighth Amendment, and therefore necessarily a violation of the Fifth Amendment’s Due Process Clause that is applicable here, for a federal official to show “deliberate indifference to a substantial risk of serious harm” to

a detainee. *Doe v. Robertson*, 751 F.3d 383, 385 (5th Cir. 2014) (citing *Farmer v. Brennan*, 511 U.S. 825 (1994)); *Hare*, 74 F.3d at 649. This occurs, for example, when officials “know[] of and disregard[] an excessive risk to inmate health or safety.” *Doe v. Robertson*, 751 F.3d at 388.

164. A detained person “does not need to show that death or serious illness has yet occurred to obtain relief,” instead, they need only “show that the conditions pose a substantial risk of harm to which... officials have shown a deliberate indifference.” *Gates v. Cook*, 376 F.3d 323, 339 (5th Cir. 2004). Federal custodians may not ignore “a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

165. Specifically, housing detained persons in crowded conditions where they are at risk of infectious disease is unconstitutional, even when it “is not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.” *Helling v. McKinney*, 509 U.S. at 33 (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Nor can officials “be deliberately indifferent to the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms.” *Helling*, 509 U.S. at 33.

166. Despite their awareness of the rapid spread of COVID-19, the importance of social distancing and sanitary practices for its prevention, the threat that it poses to the lives of those who, like Petitioner-Plaintiffs, have certain underlying medical conditions, and the impossibility of protecting Petitioner-Plaintiffs who are held in ICE detention centers, Defendants continue to detain Petitioner-Plaintiffs. This amounts to a punitive condition of confinement or, at the very least, deliberate indifference to a substantial risk of serious harm to Petitioner-Plaintiffs – either of which suffices to show a due process violation and compels an order of release.

B. ICE Lacks a Constitutionally Sufficient Purpose for Continued Detention of Medically Vulnerable Individuals.

167. Non-criminal confinement “constitutes a significant deprivation of liberty that requires due process protection,” and, thus, the government “must have ‘a constitutionally adequate purpose for the confinement.’” *Jones v. United States*, 463 U.S. 354, 361 (1983) (quoting *O’Connor v. Donaldson*, 422 U.S. 563, 574 (1975)); see also *Foucha*, 504 U.S. at 80 (“We have always been careful not to ‘minimize the importance and fundamental nature’ of the individual’s right to liberty.” (quoting *United States v. Salerno*, 481 U.S. 739, 750 (1987))).

168. Due process requires that the nature and duration of a noncriminal confinement bear “some reasonable relation to the purpose for which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018).

169. The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person’s attendance for a legal hearing adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

170. The purpose of ensuring attendance at a merits hearing is fundamentally eviscerated where detained persons, such as Petitioner-Plaintiffs are exposed to coronavirus, symptomatic, seriously ill, or even dead. Continued detention in such circumstances is arbitrary, purposeless restraint entirely inconsistent with the principle of proportionality at the heart of due process.

171. Once an otherwise valid basis for detention no longer applies, substantive due process requires the state to release the detained person. *Foucha*, 504 U.S. at 86 (ordering petitioner’s release from commitment to mental institution because there was no longer any evidence of mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 363-64 (1997) (upholding statute

requiring civil confinement for sex offenders in part because it provided for immediate release once an individual no longer posed a threat to others).

C. Petitioner-Plaintiffs’ Continued Detention Violates Procedural Due Process

172. Where a governmental action limits a fundamental right, here freedom from detention, heightened scrutiny is applied, and the governmental action will be upheld only if it is necessary to promote a compelling governmental interest. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996)) (“Due process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.”) (internal citations and quotations omitted). In addition to demonstrating a “compelling interest” in detention, the government must show that the detention is narrowly tailored, i.e., “implemented in a manner that is ‘carefully limited’ and ‘narrowly focused.’” *Reno v. Flores*, 507 U.S. 292, 302 (1993) (quoting *Foucha*, 504 U.S. at 81).

173. In addition to substantive limits on detention, detained persons must “be afforded adequate procedures ensuring against erroneous confinement.” *Demore v. Kim*, 538 U.S. 510, 566, n. 22 (2003) (Souter, J. concurring). *See id.* at 551 (“the substantive demands of due process necessarily go hand in hand with the procedural.”); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (Noncriminal detention must be subject to “strong procedural protections.”). At bottom, Fifth Amendment’s Due Process Clause requires proportionality in government conduct. *See, e.g., BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996); *Austin v. United States*, 509 U.S. 602, 606 (1993).

174. As previously alleged, the government’s only legitimate interest in Petitioner-Plaintiffs’ continued detention – either to minimize flight risk pending trial or removal or to prevent danger to the community, *Zadvydas*, 533 U.S. at 690 – is no longer applicable. Yet the

purportedly legitimate government purposes for detention simply fall away when someone is facing lethal harm. Continued detention despite changed circumstances that render the basis of detention null, is the height of arbitrariness. *See Reno v. Flores*, 507 U.S. at 343 (“a blanket rule that simply *presumes* that detention is more appropriate than release to responsible adults is not narrowly focused on serving that interest.”).

175. Similarly, given restrictions on counsel and the adjudicative process, all removal proceedings have or likely will be suspended. And, a hearing weeks or months from this date may be no relief at all, because Petitioners may contract COVID-19 and die. *See Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (“[T]here is a significant risk that the individual will be needlessly deprived of the fundamental right to liberty.”) At the same time, there are more “narrowly focused” means to ensure Petitioner-Plaintiffs’ appearance in legal proceedings, which do not subject them to the dangers of detention, for example, supervised or conditional release would suffice to meet the government’s interest without subjecting Petitioner-Plaintiffs to severe danger.

176. The Government also cannot establish that it has a compelling interest in keeping Petitioner-Plaintiffs detained. Each Plaintiff has a severe medical ailment and is immunocompromised. Given that the only established method to protect oneself from the virus is to self-isolate, the likelihood of a post-release danger to the community from elderly or ill persons is infinitesimal and cannot justify the maximal deprivation of liberty – detention – with a resulting risk of serious illness or death

177. Under normal circumstances, at least some of the Petitioner-Plaintiffs would be able to seek either initial or changed-circumstances bond hearings in the immigration courts, *see* 8 U.S.C. § 1226(a)(1)-(2), or could petition for release on parole. 8 U.S.C. § 1182(d)(5)(A).

However, these are not normal circumstances. As alleged *supra*, because of the circumstances generated by the pandemic Petitioner-Plaintiffs’ access to counsel is sparse, if at all, and the immigration courts charged with reviewing challenges to detention are struggling to manage caseloads, hold timely hearings, and consider relevant evidence. This is a quintessential procedural due process violation. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”).

178. The bond, parole and removal proceedings may be civil in nature, but they have the highest possible stakes for Plaintiffs-Petitioners. *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (“The severity of deportation. . . underscores how critical it is” for immigrants to have effective counsel). The remedy for the deprivation of Petitioner-Plaintiffs’ procedural due process rights is outright release, if not release pending future bond hearings and parole considerations once immigration proceedings regain regularity.

D. Habeas Is a Broad, Flexible Remedy That Authorizes Courts to Order Release from Unlawful Detention Conditions as Law and Equity Requires.

179. Petitioner-Plaintiffs seek relief under the federal habeas statute, 28 U.S.C. § 2241, which is itself infused with long-standing common law equitable principles. *See* 28 U.S.C. § 2241(c)(3) (the writ extends to those prisoners “in custody in violation of the Constitution or laws or treaties of the United States”). “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

180. Habeas invests in federal courts broad, equitable authority to “dispose of the matter as law and justice require,” 28 U.S.C. § 2243, as the “very nature of the writ demands that it be administered with the initiative and flexibility.” *Harris v. Nelson*, 394 U.S. 286, 292 (1969); *see Boumediene v. Bush*, 553 U.S. 723, 780 (2008) (“Habeas is not ‘a static, narrow, formalistic

remedy; its scope has grown to achieve its grand purpose.’’) (quoting *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

181. Accordingly, the illegality of custody under the “Constitution or laws . . . of the United States” may stem from the fact of detention and the duration of detention – what is often referred to as the “historical core” of habeas – and, as many courts recognize, for unlawful placement or conditions of detention. See *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971) (habeas challenging “living conditions and disciplinary measures” is “cognizable in federal habeas corpus”); see also *Aamer v. Obama*, 742 F.3d 1023, 1031-38 (D.C. Cir. 2014) (surveying history, purpose and Supreme Court jurisprudence and “the weight of the reasoned precedent in the federal Courts of Appeal” relating to habeas and concluding “habeas corpus tests not only the fact but also the form of detention.”). Here, because Petitioner-Plaintiffs seek relief from detention conditions that cannot be remediated or improved, their challenge cannot be deemed a challenge to conditions of confinement of the kind that some courts find lie outside of habeas; because the only available remedy in these circumstances is release, their claims challenge the unlawful fact of detention and sit at the core of habeas.

182. A court is fully empowered to remediate the particular illegality here – an outbreak of lethal and unavoidable virus that threatens petitioners and violates their constitutional rights to be free from arbitrary and punitive detention – by ordering their release. Habeas corpus is, “above all, an adaptable remedy,” *Boumediene*, 553 U.S. at 780, and federal courts retain “broad discretion in conditioning a judgment granting habeas relief . . . ‘as law and justice require’.” *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (quoting 2243). That authority includes an order of release, *Boumediene*, 553 U.S. at 779, so as “to insure that miscarriages of justice within [the writ’s] reach are surfaced and corrected.” *Harris*, 395 U.S. at 291.

E. ICE's Restrictions on Access to Counsel Violate the Fifth Amendment.

183. People detained by ICE are entitled to meaningful access to counsel. Courts consistently interpret the Due Process Clause of the Fifth Amendment to require people in removal proceedings to have access to counsel at full and fair hearings. *See, e.g., Barthold v. U.S. Immigration & Naturalization Service*, 517 U.S. 689 (1975); *Nunez v. Boldin*, 537 F. Supp. 578 (N.D. Tex. 1982).

184. ICE's restrictions on access to counsel violate Petitioner-Plaintiffs' rights to counsel under the Due Process Clause. Given the severity and projected length of the pandemic and the increasing likelihood of risk to both detained people and their visitors, Petitioner-Plaintiffs' rights to meet with counsel and prepare for their cases cannot be guaranteed while they are detained, and they must be released.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF:

VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS

185. Petitioner-Plaintiffs reallege and incorporate by reference the foregoing paragraphs.

186. The Due Process Clause of the Fifth Amendment guarantees persons in civil immigration detention the right to reasonable safety and to be free from punitive conditions of confinement, and requires that the government have a constitutionally adequate, non-punitive purpose for continued detention. These requirements are violated when a condition of detention is not reasonably related to a legitimate government objective and when government officials are deliberately indifferent to a substantial risk of harm to the detained person.

187. Defendants continue to detain Petitioner-Plaintiffs, whose underlying health conditions render them particularly vulnerable to contracting COVID-19, spreading it to others, and suffering serious injury or death as a result.

188. The conditions of detention in the LaSalle, Winn, and Richwood facilities increase Petitioner-Plaintiffs' risk of contracting COVID-19. There have been cases of COVID-19 reported in the parishes or counties where each of these facilities are located. Defendants have not, and could not possibly, implement social distancing measures that are required to prevent the rapid spread of COVID-19 in these facilities. Defendants also have not implemented any adequate hygiene practices as recommended by the CDC.

189. Defendants have failed in their obligation to adequately protect Petitioner-Plaintiffs from exposure to COVID-19. This puts Petitioner-Plaintiffs at a substantial risk of serious illness or death.

190. Defendants know about the prevalence of COVID-19 in Louisiana, and the risk that it poses to individuals with certain underlying conditions. Under these circumstances, Petitioner-Plaintiffs' continued detention by Defendants amounts to deliberate indifference to a substantial risk of harm to Petitioner-Plaintiffs.

191. Defendants' exposure of Petitioner-Plaintiffs to this substantial risk of serious illness or death amounts to punishment.

192. Petitioner-Plaintiffs' ongoing confinement lacks a reasonable relationship to any legitimate government purpose. Petitioner-Plaintiffs do not pose a danger or a flight risk, and these considerations alone are insufficient to countervail the severe risk of severe illness or even death that Petitioner-Plaintiffs face if they are not released.

193. Absent judicial relief in the form of release from detention, Petitioner-Plaintiffs are suffering and will continue to suffer irreparable harm.

SECOND CLAIM FOR RELIEF:

VIOLATION OF FIFTH AMENDMENT RIGHT TO PROCEDURAL DUE PROCESS

194. Petitioner-Plaintiffs reallege and incorporate by reference the foregoing paragraphs.

195. The Due Process Clause of the Fifth Amendment guarantees persons in immigration detention the fundamental right to freedom from confinement. To justify a denial of this right, there must be a compelling governmental interest that is narrowly tailored, and detained persons must be afforded adequate procedures that ensure against erroneous confinement.

196. The weight of the government's interests in ensuring a lack of flight risk and preventing danger to the community is severely diminished during the pendency of the pandemic. Further, mandating Petitioner-Plaintiffs' continued detention at risk of death during a global pandemic is grossly disproportionate to the government's interests. Furthermore, it is not sufficiently tailored, fails to account for reasonable alternatives, and denies Petitioner-Plaintiffs the right to be meaningfully heard.

197. To ensure adequate procedural protections exist, the extraordinary circumstances alleged justify this Court's intervention to order Petitioner-Plaintiffs' outright release during the pendency of the COVID-19 crisis, or at least release until immigrations proceedings regain regularity, at which point it may order bond hearings and requests for parole.

198. Absent judicial relief in the form of release from detention, Petitioner-Plaintiffs are suffering and will continue to suffer irreparable harm.

THIRD CLAIM FOR RELIEF:

HABEAS AUTHORITY TO ORDER RELEASE FROM UNLAWFUL DETENTION

199. Petitioner-Plaintiffs reallege and incorporate by reference the foregoing paragraphs.

200. The Court has broad, equitable authority under the habeas statute, 28 USC 2241, 2243 and the common law, to dispose of Petitioners-Plaintiffs' cases as law and justice require, based on the unique facts and circumstances of their cases, in order to remedy Petitioners' unlawful conditions of detention.

201. The Court should exercise this authority to grant Petitioner-Plaintiffs' habeas corpus petition and to fashion any and all additional relief, necessary to effectuate Petitioner-Plaintiffs' expeditious release from unlawful detention. In the absence of such relief, Petitioner-Plaintiffs are suffering and will continue to suffer irreparable harm.

FOURTH CLAIM FOR RELIEF:

VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS (RIGHT TO COUNSEL AND TO A FULL AND FAIR HEARING)

202. Petitioner-Plaintiffs reallege and incorporate by reference the foregoing paragraphs.

203. The Due Process Clause of the Fifth Amendment guarantees the right to the effective assistance of counsel in their removal proceedings at no cost to the government and to a full and fair hearing.

204. Petitioner-Plaintiffs are represented by counsel in removal proceedings. Defendants' policies, practices, and omissions have created substantial barriers to Petitioner-Plaintiffs efforts to access counsel and prepare their claims.

205. Petitioner-Plaintiffs have a substantial interest in avoiding prolonged detention during a highly infectious pandemic as well as in ultimately prevailing in their bond, parole, and removal proceedings.

206. Petitioner-Plaintiffs have suffered and will imminently suffer irreparable injury as a result of Defendants' policies, practices, and omissions and are entitled to injunctive relief to avoid any further injury.

FIFTH CLAIM FOR RELIEF

VIOLATION OF THE REHABILITATION ACT (FAILURE TO PROVIDE REASONABLE ACCOMMODATION TO PERSONS WITH DISABILITIES)

207. Petitioner-Plaintiffs reallege and incorporate by reference the foregoing paragraphs.

208. Section 504 of the Rehabilitation Act requires federal agencies to provide "reasonable accommodations" to individuals with disabilities so they can fully participate in benefits administered by these agencies. 29 U.S.C. § 794(a).

209. DHS regulations implementing the Rehabilitation Act mandate that "[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department." 6 C.F.R. § 15.30; *see also* 29 U.S.C. § 794(a). The regulations implementing Section 504 prohibit entities receiving federal financial assistance from utilizing "criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons." 34 C.F.R. § 104.4(b)(4).

210. The removal process is a benefit administered by DHS and Petitioner-Plaintiffs are entitled to participate in the removal process. The services, programs, and activities within the detention centers where DHS detains Petitioner-Plaintiffs receive substantial federal financial assistance.

211. Petitioner-Plaintiffs' underlying medical conditions qualify as disabilities for purposes of the Rehabilitation Act. 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.

212. By exposing them to a heightened risk of contracting COVID-19, Defendants are preventing Petitioner-Plaintiffs from participating in the removal process by reason of their disability.

213. By failing to take account of their special vulnerability to severe illness or death if they were to contract COVID-19, Defendants are preventing Petitioner-Plaintiffs from participating in the removal process by reason of their disability.

214. By failing to provide Petitioner-Plaintiffs adequate protection from COVID-19 through the only effective means to reduce the risk of severe illness or death, Defendants have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of removal proceedings and the services, programs, and activities within the detention centers with respect to Petitioner-Plaintiffs.

215. The only available "reasonable accommodation" that would mitigate Petitioner-Plaintiffs' disability is release from detention. Defendants have failed to implement this reasonable accommodation, which would not be unduly burdensome nor require a fundamental alteration in the removal process or the programs and activities of the detention center.

216. Defendants' ongoing detention of Petitioner-Plaintiffs constitutes discrimination because it is either disparate treatment of, or at the very least has a disparate impact on, people

with qualifying disabilities who are at severe risk of serious illness or death if they were to contract COVID-19.

217. For these reasons, Defendants' ongoing detention of Petitioner-Plaintiffs violates the Rehabilitation Act.

PRAYER FOR RELIEF

WHEREFORE, Petitioner-Plaintiffs request that this Court:

a. Issue a writ of habeas corpus and order Petitioner-Plaintiffs' immediate release or placement in community-based alternatives to detention such as conditional release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause and/or the Rehabilitation Act;

b. In the alternative, issue a temporary restraining order or preliminary and permanent injunctive relief ordering Defendants to immediately release Petitioner-Plaintiffs or place them in community-based alternatives to detention such as conditional release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause and/or the Rehabilitation Act;

c. Declare that Defendants' continued civil detention of individuals at increased risk for severe illness, including all people over the age of 50 and persons of any age with underlying medical conditions that increase the risk of serious illness or death upon contracting COVID-19 violates the Due Process Clause and/or the Rehabilitation Act;

d. Award Petitioner-Plaintiffs all costs incurred in maintaining this action, including reasonable attorneys' fees under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and

e. Grant Petitioner-Plaintiffs any other and further relief this Court deems just and proper.

Dated: April 13, 2020
New Orleans, Louisiana

Respectfully submitted,

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