

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

LEYANIS TAMAYO ESPINOZA
EDILIA DEL CARMEN MARTINEZ
JOSE RUBEN LIRA ARIAS
VIANKIS MARIA YANES PARDILLO
NDIKUM KESHIA ANGU ANJOH
ANTHONY BAPTISTE
LINDA CHUO FRU
Adams County Detention Center
20 Hobo Fork Road
Natchez, MS 39120,

Petitioners-Plaintiffs,

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;

SHAWN GILLIS, *in his official capacity as
Warden,*
Adams County County Detention Center
20 Hobo Fork Road
Natchez, MS 39120;

Respondents-Defendants.

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

Civil Action No. 5:20-cv106-DCB-MTP

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April 16, 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 seven Petitioner-Plaintiffs (“Plaintiffs”), who are highly vulnerable to serious injury and death if they contract COVID-19, the lethal disease that is sweeping the globe. Respondent-Defendants (“Defendants”) are holding Plaintiffs in Adams County Detention Center (“Adams”), a civil immigration detention facility in Natchez, Mississippi. The coronavirus feeds on precisely the unsafe, congregate conditions in which Plaintiffs are being held, putting Plaintiffs 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 12, 2020, nearly 1.7 million individuals worldwide have confirmed diagnoses of COVID-19 and more than 100,000 individuals worldwide have died.¹ Those numbers are growing exponentially, with more than 85,000 new cases worldwide in a 24-hour period between April 11 and April 12 alone.² In the United States, more than 579,000 have confirmed cases, and more than 22,000 have died.³ By the time the Court reads this complaint, there will be more diagnoses, and more death, with no end in sight.

3. As of April 15, 2020, there were 3360 COVID-19 cases in Mississippi and, according to ICE, 5 known positive cases within Adams. In Louisiana, on the border with Natchez,

¹ World Health Org., *Coronavirus Disease 2019 (COVID-19) Situation Report – 83*, Apr. 12, 2020, available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200412-sitrep-83-covid-19.pdf?sfvrsn=697ce98d_4.

² *Id.*

³ Center for Disease Control, Cases in U.S. (Apr. 15, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

where the Adams facility is located, there are 21,951 COVID-19 cases.⁴ The number of infected people is rising exponentially. 122 people in Mississippi and 1103 people in Louisiana have died from the disease.⁵

4. The Adams facility is under the jurisdiction and direction of the regional ICE Field Office located in New Orleans, which has jurisdiction over detention facilities in Mississippi, Louisiana and Alabama. As of April 15, 2020, ICE reports that Adams already has 5 confirmed cases of detained people with COVID-19, and that facilities nationwide with 89 cases of COVID-19 among detained people nationwide, including 14 at 7 different facilities within the New Orleans Field Office's jurisdiction, and 13 cases of COVID-19 among employees at the Alexandria Staging Facility, also within the New Orleans Field Office's jurisdiction.⁶ Because ICE does not engage in regular testing, all of these numbers must be assumed to be far higher. The New Orleans ICE Field Office regularly transfers individuals from one of these facilities to another, and continues to make such transfers and receive transfers from other parts of the United States even since the COVID-19 outbreak.⁷

⁴ Louisiana Department of Health, *Coronavirus (COVID-19)* (Apr. 15, 2020), <http://ldh.la.gov/coronavirus/>; Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)* (Apr. 15, 2020), https://msdh.ms.gov/msdhsite/_static/14,0,420.html.

⁵ Louisiana Department of Health, *Coronavirus (COVID-19)* (Apr. 15, 2020), <http://ldh.la.gov/coronavirus/>; Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)* (Apr. 15, 2020), https://msdh.ms.gov/msdhsite/_static/14,0,420.html.

⁶ Immigration and Customs Enforcement, *ICE Guidance on COVID-19, Confirmed Cases*, (Apr. 15, 2020), <https://www.ice.gov/coronavirus>. The Natchez Democrat reports that an employee of the facility also has COVID-19. See Scott Hawkins, Adams County Correctional Facility now has 6 COVID-19 cases, Natchez Democrat (Apr. 15, 2020), available at <https://www.natchezdemocrat.com/2020/04/15/adams-county-correctional-facility-now-has-6-covid-19-cases/>.

⁷ See, e.g., Yeganeh Torbati, Dara Lind & Jack Gillum, *In a 10-Day Span, ICE Flew This Detainee Across the Country* *Nine Times*, ProPublica (Mar. 27, 2020), available at <https://www.propublica.org/article/coronavirus-ice-flights-detainee-sirous-asgari> (documenting transfer of man through several facilities, including those within jurisdiction of New Orleans Field Office).

5. There are outbreaks in the communities in which each of these facilities are located, including Adams County, which has 64 cases and three reported deaths.⁸ The growth of coronavirus cases in detention, jail and prison systems has been staggering, posing threats not only to those detained but also to staff and the communities they live in.⁹ Immediate relief is necessary before the coronavirus ignites across the immigration detention facilities that dot the Mississippi Delta, including the Adams County Detention Center.

6. Plaintiffs fear for their lives because they have medical conditions that make them vulnerable to serious injury or death should they be infected with COVID-19. And for good reason: they are trapped in a facility that can only be described as a breeding ground for the disease, and where infection has already broken out and will work toward its inevitable spread across the entire population. 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 Adams 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

⁸ Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)* (Apr. 15, 2020), https://msdh.ms.gov/msdhsite/_static/14,0,420.html.

⁹ Kevin Johnson, Coronavirus outbreak: hundreds of infected, quarantined inmates challenging prison and jail officials, *USA Today* (Apr. 9 2020), *available at* <https://www.usatoday.com/story/news/politics/2020/04/09/coronavirus-hits-workers-inmates-jails-prisons-threatened/2968807001/>.

infection through social distancing and vigilant hygiene. Yet “social distancing” is a meaningless term in Adams and other ICE 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 Adams and other 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, 2020 WL 1671563, at *8 (M.D. Pa. Mar. 31, 2020) (ordering release of 13 people from three immigration detention facilities in Pennsylvania because “preventative measures” against the “grave consequences” of COVID-19 cannot be practiced in “tightly confined, unhygienic spaces”); *Frailhat v. Wolf*, No. 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”); *United States v. Ramos*, No. 18-CR-300009-FDS, 2020 WL 14778307, at *1 (D. Mass. Mar. 25, 2020) (stating that “it is not possible for a medically vulnerable inmate . . . to isolate himself in this institutional setting as recommended by the CDC, and guards and newly arrested individuals must enter the facility on a daily basis”);

Coronel v. Decker, No. 20-cv-2472 (AJN), 2020 WL 1487274, at *3 (S.D.N.Y. Mar. 27, 2020) (noting that “being in immigration detention places petitioners at significantly higher risk of contracting COVID-19”); *United States v. Kennedy*, No. 18-20315, 2020 U.S. Dist. LEXIS 53359, at * (E.D. Mich. Mar. 27, 2020) (stating that the CDC “acknowledged that correctional detention facilities ‘present unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.’”).

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. That same day, Attorney General Barr issued a directive to the Board of Prisons urging reduction of the prison population through the use of home confinement, and on April 3, he urged “dispatch” and particular prioritization for three federal prison facilities, including the Federal Correctional Institution in Oakdale, Louisiana.¹⁰

10. On March 24, the Los Angeles County Sheriff’s Department in California had released approximately 1,700 persons from county jails in response to COVID-19. Sentencing judges in Michigan have released over 500 people from county jails in the Detroit area, as of April

1. On April 2, the Hawaii Supreme Court appointed a “special master” to coordinate potential

¹⁰ See William Barr, *Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic*, Mar. 26, 2020, available at <https://www.politico.com/f/?id=00000171-1826-d4a1-ad77-fda671420000>; William Barr, *Increasing Use of Home Confinement at Facilities Most Affected by COVID-19*, Apr. 3, 2020, available at <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>.

releases between public defenders and prosecutors. Also by April 2, 710 persons were released from Allegheny County jail in Pennsylvania upon approval from the district court administrator. In Boulder County, Colorado, the District Attorney's office has released more than 100 persons to reduce jail populations in light of COVID-19 as of April 4. By April 10, Mobile Metro Jail had decreased its population from 1,580 to 1,100 to prevent exposure of COVID-19 to particularly vulnerable populations. On April 13, almost a quarter of the persons previously in pre-trial detention in Stanislaus County Jail in California were released due to concerns over COVID-19.

11. 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 which Adams and other detention facilities within the New Orleans Field Office's jurisdiction are located have very limited health care infrastructure.

12. 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.

13. The next day, however, in response to a lawsuit for the release of vulnerable ICE detainees in Washington state, the agency showed a deep failure to appreciate the urgency and threat the COVID-19 pandemic presents, stating that "Plaintiffs' assertion that detention per se

poses an increased risk of health complications or death from COVID-19 is purely speculative.”¹¹ 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.

14. 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.***”¹² 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.

15. Inside Adams and other facilities in the New Orleans Field Office’s jurisdiction, Defendants are not consistently adhering to the measures the ICE claims it is taking. For example, Defendants have brought new individuals in and out of Adams and other regional facilities without any screening, testing, or mandatory quarantine period, and continue to transfer individuals between detention centers without such protective measures.

16. 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 releasing

¹¹ Respondents-Defendants’ Opposition at 8, *Dawson v. Asher*, ECF No. 28, Case No. 20-0409 (W.D. Wash. Mar. 18, 2020).

¹² 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).

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 Adams Detention Facility, “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).

17. 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 inhibit 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.

18. 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.

19. 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

20. This action arises under the Due Process Clauses 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.*

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

22. Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. § 2241(d) and pursuant to 28 U.S.C. § 1391(b) and (e). Petitioner-Plaintiffs are in the legal custody of Respondent-Defendant Dianne Witte, who 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, Mississippi, and Alabama detention centers that house detained immigrants. The Adams facility in which Petitioner-Plaintiffs are detained, and over which Defendant Gillis is the custodian, is located in this District.

PARTIES

Petitioner-Plaintiffs

23. Petitioner-Plaintiff **Leyanis Tamayo Espinoza** is a 46-year-old woman and Cuban national who is currently detained by ICE at the Adams County Detention Center in Natchez, Mississippi. She suffers from diabetes, hypertension, chronic renal issues, and malnutrition. She

relies on oral medication for her diabetes care. She is therefore at high risk of severe illness or death if she contracts COVID-19. If released, she will reside with her cousin in Miami, Florida.

24. Petitioner-Plaintiff **Edilia Del Carmen Martinez** is a 53-year-old woman and El Salvadoran national who is currently detained by ICE at the Adams County Detention center in Natchez, Mississippi. She suffers from diabetes, which causes dizziness that has become frequent while she has been detained, as well as kidney issues and chronic knee pain. She is therefore at high risk of severe illness or death if she contracts COVID-19. If released, she would live with her friend in Merced, California.

25. Petitioner-Plaintiff **Jose Ruben Lira Arias** is a 46-year-old man and Venezuelan national and is currently detained by ICE at the Adams County Detention Center in Natchez, Mississippi. He suffers from diabetes and hypertension. Since his detention, he has experienced higher than normal blood sugar levels. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he would live in a shelter called Casa Marianella in Austin, Texas.

26. Petitioner-Plaintiff **Viankis Maria Yanes Pardillo** is a 59-year-old woman and Cuban national who is currently detained by ICE at the Adams County Detention Center in Natchez, Mississippi. She suffers from epilepsy, has suffered numerous seizures while in detention, and has a history of hospitalization. Particularly due to her age, 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 Kentucky.

27. Petitioner-Plaintiff **Ndikum Keshia Angu Anjoh** is a 19-year-old woman and Cameroonian national who is currently detained by ICE at the Adams County Detention Center in Natchez, Mississippi. She suffers from chronic respiratory distress. She is therefore at high risk of

severe illness or death if she contracts COVID-19. If released, she will reside with her aunt in Arlington, Texas.

28. Petitioner-Plaintiff **Anthony Baptiste** is a 59-year-old man and national of Trinidad & Tobago who is currently detained by ICE at the Adams County Detention Center. He suffers from hypertension, pre-diabetes, and limited mobility as a result of a car accident prior to his detention. Due to his age and health conditions, he is at very high risk of severe illness or death if he contracts COVID-19. If released, he will live with his friend in Brooklyn, New York, where his immigration case is pending.

29. Petitioner-Plaintiff **Linda Chuo Fru** is a 26-year-old woman and Cameroonian national who is currently detained by ICE at the Adams County Detention Center. She suffers from diagnosed Hepatitis B, high blood pressure, and other conditions for which she is receiving no treatment while detained at Adams. She is therefore at grave risk of severe illness or death if she contracts COVID-19. If released, she will live with her cousin in Dallas, Texas.

Respondent-Defendants

30. 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, Mississippi, and Alabama 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.

31. 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.

32. 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.

33. Respondent-Defendant Shawn Gillis is the Warden of the Adams County Detention Center, where Petitioner-Plaintiffs Ms. Tamayo Espinoza, Ms. Martinez, Mr. Lira Arias, Ms. Yanes Pardillo, Ms. Anjoh, Mr. Baptiste, and Ms. Fru are detained. Respondent-Defendant Gillis is a legal custodian of Petitioner-Plaintiffs. He is sued in his official capacity.

FACTUAL BACKGROUND

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

34. COVID-19 is a disease caused by a novel coronavirus that has reached global pandemic status. 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.¹³

35. President Trump has projected, optimistically, that the United States will experience up to 200,000 coronavirus-related deaths.¹⁴

¹³ 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>.

¹⁴ 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.”).

36. 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 than 10” at least until April 30, 2020 and perhaps until June.¹⁵ Its symptoms include fever, cough, and shortness of breath.¹⁶

37. People can also spread COVID-19 but be asymptomatic,¹⁷ making testing or seclusion of only those who are symptomatic an ineffective solution.

38. 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.

39. 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.

40. Younger and healthy individuals who contract COVID-19 may require supportive care. And those who develop serious complications will need advanced support, including highly

¹⁵ 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>.

¹⁶ Centers for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)* <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

¹⁷ 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>.

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.

41. 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.

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

43. 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 to as to prevent spread of the virus for a period of up to 14 days.

44. 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.

45. 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.

46. Individuals detained in immigration detention centers 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.

47. 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 at Adams in Natchez, Mississippi.

48. **Leyanis Tamayo Espinoza** is 46 years old and suffers from diabetes, hypertension, chronic renal issues, and malnutrition. These conditions qualify as disabilities under the Rehabilitation Act..

49. **Edilia Del Carmen Martinez** is 53 years old and suffers from diabetes, which qualifies as a disability under the Rehabilitation Act.

50. **Jose Ruben Lira Arias** is 46 years old and suffers from diabetes and hypertension which qualify as disabilities under the Rehabilitation Act..

51. **Viankis Maria Yanes Pardillo** is 49 years old and suffers from epilepsy. She has suffered numerous seizures while in detention, and has a history of hospitalization. Her medical condition qualifies as a disability under the Rehabilitation Act.

52. **Ndikum Keshia Angu Anjoh** is 19 years old and suffers from chronic respiratory distress, which qualifies as a disability under the Rehabilitation Act.

53. **Anthony Baptiste** is 59 years old and suffers from hypertension and pre-diabetes. He had been receiving disability benefits due to injuries suffered in a car accident prior to his detention, and these additional conditions qualify as disabilities under the Rehabilitation Act.

54. **Linda Chuo Fru** is 26 years old and suffers from Hepatitis B, high blood pressure, and other conditions that are untreated in detention. Hepatitis B and hypertension qualify as disabilities under the Rehabilitation Act.

C. The Adams Facility, Like the Other Facilities Under the Jurisdiction of the Regional ICE Field Office, is a Ticking Time Bomb Already Exposed to Coronavirus; The Facility Does Not and Cannot Meet Public Health Standards to Prevent Widespread Infections Inside the Facilities and Are Deliberately Indifferent to the Known Health Risks

55. The Adams County Detention Center is located in Mississippi near the Louisiana border and falls under the jurisdiction of the New Orleans ICE Field Office directed by Respondent-Defendant Witte. States in the Mississippi Delta region are 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, in some cases, issuing ‘shelter in place’ orders, requiring residents to remain in their homes.

56. As of April 13, 2020, there were 3087 confirmed COVID-19 cases in Mississippi and 21,518 in Louisiana, on the border with Adams County.¹⁸ The number of infected people is

¹⁸ Louisiana Department of Health, *Coronavirus (COVID-19)* (Apr. 14, 2020), <http://ldh.la.gov/coronavirus/>; Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)* (Apr. 13, 2020), https://msdh.ms.gov/msdhsite/_static/14,0,420.html.

rising dramatically, with the highest number of deaths thus far recorded on April 11, 2020.¹⁹ One hundred eleven people in Mississippi and 1013 people in Louisiana have died from the disease.²⁰

57. These data include cases in all of the counties in which these facilities are located. There are 62 cases in Adams County, Mississippi,²¹ one of whom is Adams County Sheriff Travis Patten.²²

58. As of April 1, 2020, Mississippi had the highest hospitalization rate for COVID-19 in the nation, and availability of protective equipment, testing, ICU beds, and ventilators are estimated to fall far short of the projected need.²³ There is an immediate and impending threat that the coronavirus will spread uncontrollably in rural Mississippi, where scarcity of hospital beds is particularly acute.²⁴

59. 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.

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

¹⁹ *Live Updates: Missississippi has largest increase in coronavirus deaths so far on April 11*, Sun-Herald, Apr. 11, 2020, available at <https://www.sunherald.com/news/coronavirus/article241934951.html>

²⁰ Louisiana Department of Health, *Coronavirus (COVID-19)* (March 31, 2020), <http://ldh.la.gov/coronavirus/>; Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)* (Apr. 14, 2020), https://msdh.ms.gov/msdhsite/_static/14,0,420.html; Alabama Department of Public Health, *Coronavirus Disease 2019 (COVID-19)* (Apr. 13, 2020), <http://alabamapublichealth.gov/infectiousdiseases/2019-coronavirus.html>.

²¹ Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)* (Apr. 13, 2020), https://msdh.ms.gov/msdhsite/_static/14,0,420.html.

²² Patrice Clark, *Adams County Sheriff Tests Positive for Coronavirus*, WLBT, Mar. 29, 2020, available at <https://www.msn.com/en-us/news/us/adams-county-sheriff-tests-positive-for-coronavirus/ar-BB11Ssk2>.

²³ Erica Hensley, *Mississippi has nation's highest COVID-19 hospitalization rate*, Mississippi Today, Apr. 1, 2020, available at <https://mississippitoday.org/2020/04/01/mississippi-has-nations-highest-covid-19-hospitalization-rate/>

²⁴ Jerry Mitchell, *Coronavirus in Mississippi: Health Care cuts costing lives, former UMMC Chancellor says*, Clarion-Ledger, Apr. 11, 2020, available at <https://www.clarionledger.com/story/news/2020/04/11/coronavirus-health-care-cuts-mississippi-costing-lives-former-ummc-chancellor-dan-jones/5135008002/>

61. In the absence of any ability to conduct 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, Mississippi, and Alabama, and daily entry of staff and guards from the community, and the continued influx and 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.

62. 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.”

63. Conditions in these detention centers make rapid spread of COVID-19 very likely. Detained individuals are housed in close quarters and in large groups. 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 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 and staff do not wear masks or gloves, and at Adams detained individuals were not provided with masks until April 13, 2020, when some detained people received one mask each.

64. Detained individuals are left to clean the sleeping areas, bathrooms, and common areas with spray bottles and re-used rags at Adams. Detained people are not provided with protective equipment to clean. Additionally, alcohol-based hand sanitizers are unavailable at

Adams, and while there are signs instructing people to wash hands, but there is no effort to educate detained people about frequency or method.

65. Because of conditions like these, 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.”²⁵ Individuals who are detained cannot protect themselves by social distancing and vigilant hygiene as they could in the community. Congregate settings such as ICE 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. Indeed, in Mississippi, more than half of reported COVID-19 deaths have occurred in the congregate settings of long-term nursing homes.²⁶

66. 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.

67. Moreover, ICE’s detention centers are also ill-equipped to manage an infectious disease outbreak. Adams does not have 24-hour medical care with onsite physicians. Further, the medical systems in the rural communities surrounding Adams have limited capacity to provide emergency and intensive medical care.

²⁵ 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).

²⁶ Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)* (Apr. 12, 2020), https://msdh.ms.gov/msdhsite/_static/14,0,420.html

68. Adams does not have negative pressure isolation units, meaning that it does 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.

69. Further, like other facilities in the jurisdiction of the New Orleans Field Office, Adams has continued to allow new detained people to enter and leave the facility, exposing those within the detention centers to close contact with potential new carriers. For example, Petitioner-Plaintiffs Ms. Anjoh and Ms. Fru were among 40 women transferred from a detention facility in Texas to Adams on or about March 3, 2020, and a new group of detained women have arrived since.

70. 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.²⁷ As of April 15, 2020, ICE has reported that 89 detained people and 21 staff at ICE facilities have confirmed cases of COVID-19. 5 detained people at Adams have confirmed cases. Given patterns at other prisons and jails around the country, these numbers are likely to rise precipitously. 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 38.²⁸ By March 25, 2020, Rikers Island *alone* had 52

²⁷ 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>.

²⁸ 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. As of April 8, 2020, it has over 165 confirmed cases amongst those who are incarcerated, and there are roughly 288 confirmed cases among jailed people, 488 among the correctional staff, and 78 among the jail's health care workers. Seven employees of the jail have died.²⁹ Louisiana has seen six federal Bureau of Prisons ("BOP") fatalities at the BOP facility in Oakdale, Louisiana.³⁰ In March, after the Louisiana Department of Corrections reported that seven incarcerated people in Oakdale had confirmed cases, officials there have stopped testing for the virus due to its "sustained transmission."³¹

71. Despite these widespread warnings, the detention facilities across the country and within the jurisdiction of the ICE's New Orleans Field Office, including Adams, remain woefully unprepared and incapable of taking necessary precautions to protect people in their custody against a life-threatening illness.

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.

72. ICE sets standards for facilities that detain individuals in ICE custody, including Adams. National Detention Standards for immigration detention facilities were first promulgated in 2000 and renamed and reissued by ICE as Performance-Based National Detention Standards

²⁹ See Jan Ransom, *Jailed On a Minor Parole Violation, He Caught the Virus and Died*, April 9, 2020, available at <https://www.nytimes.com/2020/04/09/nyregion/rikers-coronavirus-deaths-parolees.html>.

³⁰ Kimberly Kindy, *Inside the deadliest federal prison, the seeping coronavirus creates fear and danger*, Apr. 10, 2020, available at https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0_story.html.

³¹ 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.

(“PBNDS”) in 2008. ICE again reissued these standards in 2011 and revised them in December 2016.

73. 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.³²

74. The PBNDS, among other things, govern the medical standards for each detention facility dedicated to housing individuals in ICE custody.³³

75. 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).

76. 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).

77. In March 2020, in response to the COVID-19 outbreak, the CDC issued several guidelines in order to prevent the spread of COVID-19.³⁴

³² ICE Performance-Based Detention Standards 2011 (“PBNDS”), *available at* <https://www.ice.gov/detention-standards/2011>.

³³ PBNDS, § 4.3 (“Medical Care”), *available at* <https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf>.

³⁴ 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>.

78. 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.³⁵ These guidelines recommend that individuals remain 6 feet away from one another.

79. Additionally, on or about March 23, 2020, the CDC issued guidance for detention facilities “including...federal and state prisons, local jails, and detention centers.”³⁶

80. 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.”³⁷

81. 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-19.³⁸

³⁵ 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>

³⁶ 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>.

³⁷ *Id.*

³⁸ *Id.*

82. 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-19.³⁹

83. ICE issued an “Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19)” and has established a webpage entitled “ICE Guidance on COVID-19.” On April 10, 2020, ICE’s Enforcement and Removal Office, (“ERO”) issued a “COVID-19 Pandemic Response Requirements” outlining recommendations for detention facilities.⁴⁰ 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.

84. For example, ERO’s Pandemic Response Requirements urge that facilities “adhere to CDC recommendations for cleaning and disinfection during the COVID-19 response.” (Pandemic Response Requirements at 9). But the CDC guidelines for correctional and detention facilities urge that “that “staff and incarcerated/detained people performing cleaning wear PPE.”⁴¹ Cleaning staff, typically detained people themselves, are not provided with personal protective equipment (“PPE”) for cleaning at Adams. ERO further states that “social distancing may not be

³⁹ Center for Disease Control, *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.

⁴⁰ ERO COVID-19 Pandemic Response Requirements (Apr. 10, 2020), available at <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

⁴¹ Center for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

possible in congregate settings such as detention facilities,” and instead, it recommends a number of alternative measures including directing detained people to “avoid congregating in groups of 10 or more, employing social distancing strategies at all times.” (Pandemic Response Requirements at 13). This is not possible at Adams.

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

86. 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.

87. 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 custodians at Adams (nor for that matter the custodians of any facilities within the jurisdiction of the New Orleans Field Office) have the resources necessary to engage in such measures, especially considering the shortage in available tests.

88. 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 Adams, and that, as has historically been the case, ICE is otherwise failing to provide an adequate response to the threat of infectious outbreaks, exacerbating the risk of harm to Petitioner-Plaintiffs.

89. ICE has failed to follow the CDC guidelines designed to prevent the spread of COVID-19 in Adams and other facilities under the jurisdiction of the New Orleans ICE Field Office.

90. In Adams, where Petitioner-Plaintiffs are detained, common spaces have over 100 people gathered at one time, and much of the staff does not wear masks or gloves. There is no space for social distancing, with sick people isolated rarely if ever. Dorms are cleaned only once per day, sometimes without bleach, and detained people have sometimes not had enough soap to wash hands. Food is provided on dirty plates and utensils, and the water is not clean. In the six weeks there have been at least two large transfers of detained women into the facility from other ICE detention facilities.

91. In Adams, ICE has failed to provide enough cleaning materials or frequency of cleaning to prevent spread of illness from surfaces; has not provided gloves or protective gear for detained people or most staff, and has provided one mask each to some detained people only this week; 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.

92. 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[.]”⁴² Other reports echo these alarming findings about substandard medical care in ICE facilities.⁴³

93. 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.⁴⁴

94. 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.”⁴⁵

⁴² 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>.

⁴³ 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>.

⁴⁴ 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.

⁴⁵ 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>.

95. 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.”⁴⁶

96. 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.⁴⁷ But the agency still has no plan to release vulnerable individuals who are currently in custody,⁴⁸ and has not stopped bringing new people into the detention centers.

97. 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 Adams, Defendants cannot prevent the spread of COVID-19 at Adams.

E. 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.

⁴⁶ 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>.

⁴⁷ 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.

⁴⁸ 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/>.

98. 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.

99. 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.”⁴⁹

100. 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.⁵⁰ In the United States, several jurisdictions including Los Angeles, New York, and Chicago have also released detained individuals for the

⁴⁹ 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>.

⁵⁰ 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>.

same reasons.⁵¹ In New Orleans, Orleans Parish Sheriff Marlin Gusman has released individuals and called upon the courts to do so as well.⁵²

101. 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.

102. 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.”⁵³

⁵¹ 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 Tchekmedyian & 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>.

⁵² 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>.

⁵³ 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.

103. 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).

104. 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.

105. “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).

106. 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.

107. 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).

108. 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).

109. 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.

110. 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).

111. 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.

112. 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.

113. 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))).

114. 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).

115. 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).

116. 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.

117. 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

118. 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).

119. 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).

120. 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.”).

121. The remote location of Adams and current restrictions on visitation and contact at all ICE facilities due to the pandemic significantly reduce, and in some cases eliminate, meaningful access to counsel and the courts, for vulnerable people facing the extremely high stakes of immigration proceedings and the need to prepare highly fact-intensive applications for bond and parole adjudications. Given restrictions on counsel and the adjudicative process, many 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.

122. 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

123. 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.”).

124. 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.

125. 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).

126. 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)).

127. 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 courts have recognized, 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 (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 sits at the core of habeas.

128. 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.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS

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

130. 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 detainee.

131. 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.

132. The conditions of detention in the LaSalle, Winn, Richwood, Adams and Etowah 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.

133. 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.

134. 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.

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

136. 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.

137. 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**

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

139. 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 detainees must be afforded adequate procedures that ensure against erroneous confinement.

140. 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.

141. 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.

142. 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**

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

144. 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.

145. 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 THE REHABILITATION ACT (FAILURE TO PROVIDE
REASONABLE ACCOMMODATION TO PERSONS WITH DISABILITIES)**

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

147. 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).

148. 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).

149. 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.

150. 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.

151. 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.

152. 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.

153. 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.

154. 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.

155. 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.

156. 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 16, 2020

Respectfully submitted,

s/ Cliff Johnson

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