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Attorneys for Petitioners
**Pro Hac Vice Application Forthcoming*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**Jason Anthony W [REDACTED], Melvin
A [REDACTED] A [REDACTED], Juan F [REDACTED]
S [REDACTED] L [REDACTED], Guanglei J [REDACTED], Jiaqiang
X [REDACTED], Isaias R [REDACTED] A [REDACTED], Tieku
A [REDACTED], Nery A [REDACTED] C [REDACTED]
M [REDACTED], Isaias N [REDACTED] C [REDACTED],
Nicolas M [REDACTED] M [REDACTED],**

Civil Action No.:

Petitioners,

v.

William J. ANDERSON, in his official
capacity as Warden of the Essex County
Correctional Facility; **Guy CIRILLO**, in his
official capacity as Warden of the Essex

County Correctional Facility; Orlando
RODRIGUEZ, in his official capacity as
Warden of the Elizabeth Detention Center;
John TSOUKARIS, in his official capacity
as Newark Field Office Director for U.S.
Immigration and Customs Enforcement;
Matthew T. ALBENCE, in his official
capacity as acting Deputy Director and
Senior Official Performing the Duties of the
Director of U.S. Immigration and Customs
Enforcement; **Chad F. WOLF**, in his
official capacity as acting Secretary of the
U.S. Department of Homeland Security; and
William P. BARR, in his official capacity as
Attorney General of the United States,

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. The novel coronavirus and resulting COVID-19 disease (“COVID-19”) have caused a global pandemic. COVID-19 has already reached inside the walls of immigration detention facilities in New Jersey. Petitioners/plaintiffs (the “Petitioners”) are ten individuals within those walls who are particularly vulnerable to serious illness or death if infected with the coronavirus, but due to their confinement, they are unable to protect themselves from exposure to the pathogen.

If left in the detention facilities, these individuals face a significantly higher likelihood of infection, hospitalization, and death. Each of those results carries a tremendous societal cost, as public health resources are already strained beyond capacity.

2. There is no vaccine to combat coronavirus, nor a medication or cure for the resulting COVID-19 disease. The overwhelming public-health consensus is that the only effective measures to quell the spread of the coronavirus are social distancing, quarantines, and vigilant hygiene. Older adults and those with certain medical conditions or underlying disease are most at risk of serious illness or death if infected. Elected officials and judiciaries in New Jersey and across the country have taken drastic measures in the hope of blunting the spread of the virus.

3. Petitioners are held at New Jersey facilities by United States Immigration and Customs Enforcement (“ICE”). These individuals are particularly at risk of being infected with COVID-19 and of suffering lasting harm or death as a result. They are all detained because of their immigration status. None are serving criminal sentences. In other words, they are being held in *civil detention*. They are all, unfortunately, united by the fact that they have serious pre-existing medical conditions, including lung disease, upper respiratory infections and blockages, cardiovascular disease, disabilities with comorbid conditions, bronchitis, gastrointestinal disorders, hypertension, and diabetes.

4. Petitioners are detained at the Essex County Correctional Facility (“ECCF”) and the Elizabeth Detention Center (“EDC”)—facilities that are crowded, unsafe, and inhumane. These facilities pose a danger to the detainees and facility staff.¹ It is virtually impossible for Petitioners to engage in the necessary distancing and hygiene measures to mitigate the risk of transmission, even with the best planning.² Correctional officers, contract employees, immigration officials, and county employees regularly enter the facility after interacting with the public at large. New detainees—whether detained from their communities, transferred from other detention facilities, or detained after entering the country at official ports and international airports—have continued to be added to the general population at these facilities as recently as last week. Access to soap and other hygiene items is limited.³ The conditions of confinement make EDC and ECCF prime breeding grounds for a localized epidemic.

5. As of March 31, 2020, five staff members and one immigration detainee at ECCF have already tested positive for COVID-19.⁴

¹ Ex. A, Declaration of Allen S. Keller, M.D., Apr. 2, 2020 (hereinafter “Keller Decl.”) ¶ 10.

² *See id.* ¶ 13.

³ *See id.* ¶ 17.

⁴ *See id.* ¶ 14.

6. As of March 21, 2020, one staff member at EDC has already tested positive for COVID-19,⁵ and, upon information and belief, other staff and/or immigrations detainees have not been tested but may be infected with COVID-19.

7. Clustering vulnerable individuals under these circumstances and waiting for COVID-19 to explode in detention centers is not only a humanitarian violation, but also a constitutional one. The COVID-19 pandemic, combined with the conditions of confinement at the EDC and ECCF facilities, represents an immediate threat to Petitioners' health and safety.⁶ The Court must act expeditiously to issue a temporary restraining order or preliminary injunction requiring Respondents to release Petitioners and enjoining them from arresting Petitioners for the purposes of civil immigration detention during the pendency of this habeas

⁵ See Scott Allen, Josiah Rich, and Dana Gold, *CNN: Doctors Warn of the "Tinderbox Scenario" if Coronavirus Spreads in ICE Detention*, Government Accountability Project (Mar. 21, 2020), available at <https://whistleblower.org/in-the-news/cnn-doctors-warn-of-tinderbox-scenario-if-coronavirus-spreads-in-ice-detention/> (accessed Apr. 2, 2020); Emily Kassie, *First ICE Employee Tests Positive for Coronavirus*, The Marshall Project (Mar. 19, 2020), available at <https://www.themarshallproject.org/2020/03/19/first-ice-employee-tests-positive-for-coronavirus> (accessed Apr. 2, 2020).

⁶ Ex. P, Certification of Kate Sugarman, M.D., Apr. 3, 2020 ("Sugarman Cert.") ¶¶ 3–20; Ex. A, Keller Decl.; see also, Ex. B, Declaration of Jaimie Meyer in Support of Motion for Preliminary Injunction and Class Certification, *Fraihat v. U.S. Immigration and Customs Enforcement*, Case No. 19-cv-01546-JGB(SHKx) (Mar. 24, 2020) (hereinafter "Meyer Decl."); Ex. C, Declaration of Homer Venters in Support of Motion for Preliminary Injunction and Class Certification, *Fraihat v. U.S. Immigration and Customs Enforcement*, Case No. 19-cv-01546-JGB(SHKx) (Mar. 24, 2020) (hereinafter "Venters Decl.")

petition. Petitioners are likely to succeed on the merits of their underlying claim for habeas relief, they face irreparable physical injury and ongoing constitutional harm, and the balance of interests weighs in favor of temporary restraints. The danger posed by Petitioners' 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" as well as their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993). In New Jersey and around the country, courts, government officials, and prison systems are increasingly recognizing that release from detention is the only way to protect individuals from COVID-19.⁷

8. The Court should order Respondents to show cause why Petitioners' Petition should not be granted. Petitioners suffer ongoing deprivation of their rights under the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution. Providing a swift remedy to such unlawful government conduct is precisely the function of the Great Writ. Unreasonable delays, however, vitiate that purpose. The wildfire has entered the prisons.

9. These are extraordinary times that call for extraordinary measures. Petitioners implore this Court to issue an order saving those who are most vulnerable to severe illness and death from the oncoming calamity.

⁷ See *infra* ¶¶ 48-50.

JURISDICTION

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); the Suspension Clause, Article I, § 9 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; 5 U.S.C. § 702 (waiver of sovereign immunity); and the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Additionally, the Court has jurisdiction to grant declaratory relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201(a). Petitioners are detained at the detention facilities located in New Jersey under the authority of the United States in violation of the Constitution and laws of the United States.

VENUE

11. Venue lies in this Court because Petitioners are detained at ECCF and EDC in Essex and Elizabeth, New Jersey, facilities within this District. *See* 28 U.S.C. § 1391(e).

PARTIES

Respondents

12. Respondent William P. Barr is sued in his official capacity as Attorney General of the United States. In this capacity, he is responsible for administering and enforcing immigration laws pursuant to 8 U.S.C. § 1103; as such, he is Petitioners' legal custodian. Barr's address is the United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001.

13. Respondent Chad F. Wolf is sued in his official capacity as the Acting Secretary of Department of Homeland Security (“DHS”). In this capacity, he directs each of the component agencies within DHS, including ICE; as such, he is Petitioners’ legal custodian. Wolf’s address is the United States Department of Homeland Security, Washington, D.C. 20528.

14. Respondent Matthew Albence is sued in his official capacity as Deputy Director of ICE. In this capacity, Respondent Albence oversees, directs, and coordinates policies and operations throughout the nation’s Enforcement and Removal Operations (“ERO”) field offices and sub-offices, including those policies and operations regarding the detention and release, through parole or otherwise, of immigration detainees. Respondent Albence is Petitioners’ legal custodian. Albence’s address is the United States Immigration and Customs Enforcement, 500 12th Street, SW, Washington, D.C. 20536.

15. Respondent John Tsoukaris is sued in his official capacity as ICE’s Newark Field Office Director for ERO. Respondent Tsoukaris is responsible for overseeing the detention of all persons held in immigration custody under the jurisdiction of the ICE Newark Field Office, including at EDC and the ECCF, where Petitioners are detained. Respondent Tsoukaris is therefore Petitioners’ legal custodian. Tsoukaris’s address is the United States Immigration and Customs Enforcement, Newark Field Office, 970 Broad Street, 11th Floor, Newark,

New Jersey 07102.

16. Respondent Orlando Rodriguez is sued in his official capacity as Warden of EDC and is the immediate physical custodian of those Petitioners held at that facility. Rodriguez's address is Elizabeth Detention Center, 625 Evans Street, Elizabeth, New Jersey 07201.

17. Respondents William J. Anderson and Guy Cirillo are sued in their official capacity as Wardens of ECCF. In that capacity, they are the immediate physical custodians of those Petitioners detained at ECCF. Anderson and Cirillo's address is Essex County Correctional Facility, 354 Doremus Avenue, Newark, New Jersey 07105.

Petitioners

18. Petitioner **Melvin A [REDACTED] A [REDACTED]** is a 42-year-old man who is currently detained by ICE at EDC.⁸ Mr. **A [REDACTED] A [REDACTED]** was diagnosed with high blood pressure and has recently begun suffering from a sense of constriction in his chest, shortness of breath, headaches, and a scratchy throat.⁹

19. Petitioner **Guanglei J [REDACTED]** is a 42-year-old man who is currently detained by ICE at EDC.¹⁰ Mr. **J [REDACTED]** has suffered from high blood pressure for over

⁸ Ex. D, Certification of Anwen Hughes Regarding the Medical Conditions of Petitioner Melvin A [REDACTED] A [REDACTED] (hereinafter "A [REDACTED] A [REDACTED] Cert.").

⁹ *Id.*

¹⁰ Ex. E, Certification of Anwen Hughes Regarding the Medical Conditions of

10 years.¹¹ Mr. J [REDACTED] also suffers from severe back injuries that require him to use a walker.¹²

20. Petitioner **Jason Anthony W [REDACTED]** is a 28-year-old man who is currently detained by ICE at ECCF.¹³ He suffers from a large polyp in his left nostril, which obstructs his breathing passage.¹⁴ This polyp has grown and has occasionally gotten so large that it hangs from his nose.¹⁵ In addition to the respiratory problems this causes, the steroid that Mr. W [REDACTED] is prescribed may suppress his immune system.¹⁶

21. Petitioner **Jiaqiang X [REDACTED]** is a 34-year-old man who is currently detained by ICE at ECCF.¹⁷ Mr. X [REDACTED] has high blood pressure and cardiovascular disease.¹⁸

Petitioner Guanglei J [REDACTED] (hereinafter “J [REDACTED] Cert.”).

¹¹ *Id.*

¹² *Id.*

¹³ Ex. F, Certification of Ingrid D. Johnson Regarding the Medical Conditions of Petitioner Jason Anthony W [REDACTED] (hereinafter “W [REDACTED] Cert.”).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ex. P, Sugerman Cert. ¶ 10.

¹⁷ Ex. G, Certification of Rebecca Gendelman Regarding the Medical Conditions of Petitioner Jiaqiang X [REDACTED] (hereinafter “X [REDACTED] Cert.”).

¹⁸ *Id.*

He suffered a potentially fatal side effect from medication he has been prescribed for hypertension and needs proper medical care immediately.¹⁹

22. Petitioner **Juan F [REDACTED] S [REDACTED] L [REDACTED]** is a 40-year-old man who is currently detained by ICE at ECCF.²⁰ Mr. S [REDACTED] L [REDACTED] has been diagnosed with hypertension, which is exacerbated by the stress and limitations of detention.²¹ He also suffers from elevated glucose levels that suppress his immune system.²² Mr. S [REDACTED] L [REDACTED] currently has flu-like symptoms, including body pain and congestion.²³

23. Petitioner **Tieku A [REDACTED]** is a 41-year-old man who is currently detained by ICE at ECCF. Mr. A [REDACTED] has been diagnosed with hypertension.²⁴ Although he has been taking multiple medications for his illness, his condition has been exacerbated by the stress and limitations of being in detention.²⁵ Additionally, Mr. A [REDACTED] has been experiencing ongoing respiratory symptoms, including a cough and runny nose for nearly the past four months.²⁶

¹⁹ Ex. P, Sugarman Cert. ¶ 17.

²⁰ Ex. H, Certification of Leena Khandwala Regarding the Medical Conditions of Petitioner Juan F [REDACTED] S [REDACTED] L [REDACTED] (hereinafter “S [REDACTED] L [REDACTED] Cert.”).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Ex. O, Declaration of Leena Khandwala Regarding the Medical Conditions of Tieku A [REDACTED] ¶ 8 (hereinafter “A [REDACTED] Decl.”).

²⁵ *Id.*

²⁶ *Id.* ¶ 13.

24. Petitioner **Isaias N [REDACTED] C [REDACTED]** is a 24-year-old man currently detained at EDC.²⁷ He has suffered from severe stomach issues throughout his time in detention.²⁸ He was diagnosed with H. Pylori, a stomach bacteria that can lead to ulcers and stomach cancer. He was also diagnosed with abnormal liver function, including liver inflammation.²⁹ In addition, Mr. C [REDACTED] has suffered from breathing problems and tachycardia.³⁰

25. Petitioner **Nicolas M [REDACTED] M [REDACTED]** is a 37-year-old man currently detained at EDC.³¹ Mr. M [REDACTED] was diagnosed with bronchitis.³² His breathing problems have escalated over the past two weeks.³³ Mr. M [REDACTED] is also classified as obese, with a Body Mass Index of 33.28.³⁴

26. Petitioner **Nery A [REDACTED] C [REDACTED] M [REDACTED]** is a 35-year-old man who is currently detained by ICE at ECCF.³⁵ Mr. M [REDACTED] suffers from bronchitis, insomnia, and excruciating headaches. He has difficulty breathing due to bronchitis,

²⁷ Ex. K, Certification of Rebecca Gendelman Regarding the Medical Conditions of Isaias N [REDACTED] C [REDACTED] (hereinafter “C [REDACTED] Cert.”) ¶¶ 5, 7.

²⁸ *Id.* ¶ 10.

²⁹ *Id.*

³⁰ *Id.*

³¹ Ex. L, Certification of Rebecca Gendelman Regarding the Medical Conditions of Nicolas M [REDACTED] M [REDACTED] (hereinafter “M [REDACTED] Cert.”) ¶ 5.

³² *Id.* ¶ 11.

³³ *Id.*

³⁴ *Id.* ¶ 12.

³⁵ Ex. N, Certification of David J. Khawam Regarding the Medical Conditions of Nery A [REDACTED] C [REDACTED] M [REDACTED] (hereinafter “M [REDACTED] Cert.”).

as well as trauma he suffered from a serious accident that caused him to undergo five surgeries.³⁶ Mr. M [REDACTED] takes painkillers and medication for insomnia.³⁷

27. Petitioner Isaias R [REDACTED] A [REDACTED] is a 39-year-old man who is currently detained by ICE at EDC.³⁸ Mr. A [REDACTED] suffers from gastritis and has an infected foot.³⁹ He is currently suffering from a sore throat, prolonged headaches, and stomach problems that include nausea.⁴⁰

FACTS

A. COVID-19 Poses a Grave Risk of Harm, Including Serious Illness or Death, to Those with Certain Underlying Medical Conditions.

28. The novel coronavirus causing COVID-19 reached pandemic status on March 11, 2020.⁴¹

29. As of April 5, 2020, more than 1.1 million individuals worldwide have confirmed diagnoses, and more than 62,000 individuals worldwide have died as a result of COVID-19.⁴²

³⁶ *Id.*

³⁷ *Id.*

³⁸ Ex. M, Certification of Anwen Hughes regarding the Medical Conditions of Isaias R [REDACTED] A [REDACTED] (hereinafter “A [REDACTED] Cert.”).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Ex. J, Declaration of Dr. Dora Schiro (hereinafter “Schiro Decl.”), Apr. 2, 2020, at ¶ 15.

⁴² World Health Organization, *Coronavirus disease 2019 (COVID-19) Situation Report*, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports/>.

30. In the United States, COVID-19 is spreading at an exponential rate. On March 2, 2020, there were approximately 85 confirmed cases of, and two reported deaths from, COVID-19 in the United States.⁴³ As of April 6, 2020, there were 330,891 confirmed cases of, and 8,910 reported deaths from, COVID-19 in the United States.⁴⁴

31. The Centers for Disease Control and Prevention (“CDC”) projects that over 200 million individuals in the United States could be infected with COVID-19 over the course of the epidemic, resulting in as many as 1.7 million deaths, without effective public health intervention.⁴⁵

32. 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.⁴⁶

33. The virus that causes COVID-19 can spread through contaminated objects when people are unable to wash their hands with soap and water after

⁴³ Ex. A, Keller Decl. ¶ 11.

⁴⁴ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#2019coronavirus-summary> (accessed April 6, 2020).

⁴⁵ Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The New York Times (Mar. 18, 2020), available at <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html> (accessed Apr. 3, 2020).

⁴⁶ See Ex. B, Meyer Decl. ¶ 20.

touching shared objects.⁴⁷

34. 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.⁴⁸

35. Individuals with certain medical conditions are at increased risk of serious illness or death from COVID-19. The medical community identified several medical conditions that make an individual more likely to be infected, hospitalized, and die from COVID-19, including diabetes, asthma/lung conditions, heart disease, gastrointestinal disorders, upper respiratory infections, disabilities, and recent surgery.⁴⁹ Individuals at increased risk include those who are immunosuppressed, as well as those who have hypertension, diabetes, coronary artery disease, asthma, and chronic pulmonary conditions, including Chronic Obstructive Pulmonary Disease (“COPD”).⁵⁰ In addition, individuals who are “immunocompromised” are at high risk of severe illness, and this could include a large number of individuals, depending on the medication they are taking, their past drug/alcohol abuse, and other medical

⁴⁷ Ex. P, Sugarman Cert. ¶ 3.

⁴⁸ See Ex. I, Declaration of Dr. Carlos Franco-Paredes, *Frailhat v. U.S. Immigration and Customs Enforcement*, Case No. 19-cv-01546-JGB(SHKx) (Mar. 24, 2020) (hereinafter “Franco-Paredes Decl.”) at 4:19 – 6:9.

⁴⁹ Ex. P, Sugarman Cert. ¶ 4.

⁵⁰ Ex. A, Keller Decl. ¶ 22; see Ex. I, Franco-Paredes Decl. at 4:19–6:9.

conditions.⁵¹

36. COVID-19 can 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.⁵²

37. Even young and healthy individuals who contract COVID-19 often require supportive care. And those who develop serious complications will need advanced support—including highly specialized equipment that is in limited supply—and an entire team of care-providers, 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.⁵³

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

⁵¹ Ex. A, Keller Decl. ¶ 24.

⁵² See Ex. I, Franco-Paredes Decl. at 6:10 – 25.

⁵³ See *id.* at 6:26–7:25.

highly effective health care systems.⁵⁴ For people in the highest risk populations, the fatality rate of COVID-19 is about 15 percent.⁵⁵

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

39. 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 virus in the first place.

40. Physical separation from known or potentially infected individuals (“social distancing”), quarantine, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures to prevent infection.⁵⁷

41. Governments across the country and around the world have sought to make social distancing into public policy.

⁵⁴ *Top US health official says the coronavirus is 10 times ‘more lethal’ than the seasonal flu*, CNBC (March 11, 2020), <https://www.cnbc.com/2020/03/11/top-federal-health-official-says-coronavirus-outbreak-is-going-to-get-worse-in-the-us.html> (accessed Apr. 2, 2020).

⁵⁵ See Ex. I, Franco-Paredes Decl. at 2:9 – 4: 17.

⁵⁶ See Ex. B, Meyer Decl. ¶ 20; Ex. C, Venters Decl. ¶ 5.

⁵⁷ See Ex. J, Schriro Decl. ¶ 15; Ex. B, Meyer Decl. ¶ 23.

42. As of March 29, 2020, President Trump announced that social distancing guidelines would continue nationwide through at least April 30, 2020, to slow the spread of the virus.⁵⁸

B. New Jersey Is at the Epicenter of the COVID-19 Pandemic.

43. Petitioners are held at detention centers in New Jersey, which is experiencing a coronavirus outbreak.

44. In New Jersey, the first confirmed COVID-19 case was on March 5, 2020. Less than four weeks later, New Jersey is at the epicenter of the COVID-19 pandemic with the second most cases in the United States (only surpassed by New York).⁵⁹ The number of infected people is rising exponentially.⁶⁰

45. As of April 2, 2020, there were 22,255 confirmed COVID-19 cases and 355 deaths in New Jersey.⁶¹ These numbers are increasing rapidly every day. This past week, New Jersey's death toll from COVID-19 doubled within two days,

⁵⁸ See *Trump Announces Social Distancing Guidelines Extended to April 30*, CBS News, (Mar. 30, 2020), available at <https://www.cbsnews.com/news/coronavirus-pandemic-social-distancing-april-30-extend-covid-19/> (accessed Apr. 2, 2020).

⁵⁹ Ex. A, Keller Decl. ¶ 11; see Byron Manley and Henrik Pettersson, *Tracking Covid-19 cases in the US*, CNN (Apr. 3, 2020) available at <https://www.cnn.com/interactive/2020/health/coronavirus-us-maps-and-cases/> (accessed Apr., 3, 2020).

⁶⁰ *U.S. Sees Exponential Growth in Coronavirus Death Toll*, NPR (Mar. 29, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/29/823497607/u-s-sees-exponential-growth-in-coronavirus-death-toll> (accessed Apr. 4, 2020).

⁶¹ Ex. A, Keller Decl. ¶ 11.

with 182 new COVID-19 related deaths.⁶² According to some reports, New Jersey's number of COVID-19 cases is on the same trajectory as New York's.⁶³

46. Both Essex and Union Counties (where the ECCF and EDC facilities are located) have also witnessed the number of new infections skyrocket in a short time.⁶⁴

47. According to some projections, New Jersey's hospitals will see a greater need for hospital beds, ICU beds, and invasive ventilators than are available.⁶⁵ This surge is projected to occur within the next few weeks.⁶⁶

48. On account of the COVID-19 pandemic, the governor of New Jersey

⁶² Claire Hansen, *New Jersey Death Toll Doubles in 2 Days*, U.S. NEWS (Apr. 2, 2020), available at <https://www.usnews.com/news/national-news/articles/2020-04-02/new-jersey-coronavirus-death-toll-doubles-in-2-days> (accessed Apr. 2, 2020).

⁶³ Elise Young, *New Jersey's Surging Infections on Track to Match New York's*, Bloomberg, (Mar. 25, 2020), available at <https://www.bloomberg.com/news/articles/2020-03-25/new-jersey-reports-4-402-positive-coronavirus-cases-62-deaths> (accessed Apr. 2, 2020).

⁶⁴ Ex. A, Keller Decl. ¶ 11.

⁶⁵ See generally New Jersey Exec. Order 111, (Mar. 28, 2020), available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-111.pdf> (requiring certain reporting by health care facilities because “the current information reported by hospitals and other health care providers, done on a voluntary basis, is insufficient to meet the State's needs in developing and maintaining situational awareness of the health care system's capacity.”). For a list of decisions to release detained individuals across the country at the local and state levels, see Ex. J, Schiro Decl. ¶¶ 30–32.

⁶⁶ See *COVID-19 Projections Assuming Full Social Distancing through May 2020*, IHME, (Apr. 1, 2020), available at <https://covid19.healthdata.org/projections?sfns=mo> (accessed Apr. 2, 2020).

issued an executive order closing businesses and requiring residents to stay at home until further notice. He also imposed aggressive social distancing measures to mitigate the further spread of COVID-19 in the state, changed election procedures, halted evictions and foreclosures, suspended all elective surgeries, required childcare centers to close, and directed health care facilities to report data on a daily basis.⁶⁷

49. Because of the COVID-19 pandemic in New Jersey, the state attorney general and county prosecutors agreed, pursuant to a court consent order, to create an immediate presumption of release for every person serving a county jail sentence.⁶⁸

50. Because of the exigent circumstances created by the COVID-19 pandemic, the federal and state courts located in New Jersey responded with orders suspending most court proceedings.⁶⁹

⁶⁷ See New Jersey Exec. Orders 103 – 111 (Mar. 2020), *available at* https://nj.gov/infobank/eo/056murphy/approved/eo_archive.html (accessed Apr. 2, 2020).

⁶⁸ Consent Order, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (N.J. Mar. 22, 2020), *available at* <https://www.njcourts.gov/notices/2020/n200323a.pdf?c=mBD>; *see also* Ex. A, Keller Decl. ¶ 26.

⁶⁹ See Court Notices of the United States District Court of New Jersey, *available at* <https://www.njd.uscourts.gov/> (accessed Apr. 2, 2020); and Order and Notices to the Bar from the Supreme Court of New Jersey, *available at* <https://www.njcourts.gov/public/covid19.html> (accessed Apr. 2, 2020).

C. Immigrants Detained at EDC and ECCF Face an Elevated Risk of Contracting COVID-19.

51. The novel coronavirus has already reached EDC and ECCF,⁷⁰ and there is an immediate and impending threat that the coronavirus will spread uncontrollably at these facilities and in other detention settings. At the Rikers Island Prison Complex, for example, the rate of infection is more than eight times the infection rate in New York City.⁷¹

52. At the EDC and ECCF facilities, access to COVID-19 testing is currently extremely limited and, as such, many of the infected may go undetected. Furthermore, there is a substantial period of time when asymptomatic, but infected, individuals, shed the virus and are contagious. As such, the risk of spread among

⁷⁰ *Infra* ¶¶ 4 and 5.

⁷¹ <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (accessed Apr. 5, 2020); *see also* Ex. A, Keller Decl. ¶ 13. COVID-19 spread quickly in Italy's jails and led to riots, and, as of March 21, 2020, 17 employees and 21 detainees tested positive at the Rikers Correctional facility. *See 21 Inmates, 17 Employees Test Positive for COVID-19 on Rikers Island, Officials Confirmed over the Weekend*, NBC News New York (Mar. 21, 2020), *available at* <https://www.nbcnewyork.com/news/coronavirus/21-inmates-17-employees-test-positive-for-covid-19-on-rikers-island-officials/2338242/> (accessed Apr. 2, 2020); Angelo Amante and Stephen Jewkes, *Seven Dead as Coronavirus Measures Trigger Prison Riots Across Italy*, Reuters (Mar. 9, 2020), *available at* <https://www.reuters.com/article/us-health-coronavirus-italy-prisons/seven-dead-as-coronavirus-measures-trigger-prison-riots-across-italy-idUSKBN20W1JP> (accessed Apr. 2, 2020); *see also* <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (accessed Apr. 5, 2020).

guards, staff, and detainees is even greater.⁷²

53. In the absence of widespread testing, there is no way to be certain that COVID-19 is not already spreading in the New Jersey facilities.⁷³

54. Conditions in the New Jersey detention centers make rapid spread of COVID-19 very likely.⁷⁴ Immigration detention facilities are enclosed environments where contagious diseases can easily spread.⁷⁵ Detainees such as Petitioners face inherent challenges protecting themselves from COVID-19 infection because they live, sleep, eat, and use the bathroom in close proximity to others, and because “[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible.”⁷⁶

55. At the EDC and ECCF facilities, it is virtually impossible for immigrants to comply with CDC and White House guidance on social distancing.⁷⁷

⁷² Ex. A, Keller Decl. ¶ 15; *see generally* Ex. B, Meyer Decl. ¶ 15.

⁷³ *See* Ex. C, Venters Decl. ¶ 7 (noting, as of Mar. 24, 2020, “ICE will not be able to stop the entry of COVID-19 into ICE facilities, and the reality is that infection is likely inside multiple facilities already”).

⁷⁴ Ex. J, Schriro Decl. ¶ 24.

⁷⁵ *Id.* ¶ 16; Ex. C, Venters Decl. ¶¶ 9–12; Ex. B, Meyer Decl. ¶ 9 (“Congregate setting such as jails and prisons allow for rapid spread of infectious disease that are transmitted person to person . . .”).

⁷⁶ Keri Blakinger and 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> (accessed Apr. 2, 2020) (describing, for example, limited access to hand sanitizer and other precautionary measures).

⁷⁷ Ex. J, Schriro Decl. ¶ 16.

Both facilities are enclosed, prison-like facilities that put detainees in close contact around the clock.⁷⁸

56. In both detention centers, detainees are housed together in confined dormitory-like quarters with dozens of detainees.⁷⁹ And they sleep in close quarters.⁸⁰ Food preparation, food service, and recreation is communal, with little opportunity for disinfection.⁸¹

57. Staff arrive and leave on a routine basis, and even asymptomatic staff could carry the infection into the facility.⁸² They, as well as contractors and vendors, are at risk of unknowingly spreading the novel coronavirus that was acquired in the community, especially given the daily back and forth routines of staff, contractors, and vendors, multiple shift changes every day, and the lack of available tests.⁸³

58. Furthermore, the routine practice of transferring immigrant detainees, including to and from ECCF and EDC throughout the nationwide immigration detention network, increases the likelihood of COVID-19 spread and infection, both

⁷⁸ Ex. A, Keller Decl. ¶ 13; *see* Ex. B, Meyer Decl. at 23 (“Jails and prisons are unable to adequately provide social distancing or meet mitigation recommendations. . . .”).

⁷⁹ Ex. A, Keller Decl. ¶ 12.

⁸⁰ *See id.*

⁸¹ *See id.*

⁸² *See id.* ¶ 16; Ex. C, Venters Decl. ¶¶ 8 – 9.

⁸³ Ex. A, Keller Decl. ¶ 16; *see also* Ex. B, Meyer Decl. ¶ 8 (“Staff, visitors, contractors, and vendors pass between communities and facilities . . .”).

in the New Jersey facilities and throughout our nation. As such, both facilities not only pose a danger to the immigrant detainees housed there but also to detainees in immigration detention facilities throughout the U.S. Given such conditions and practices, one would be hard-pressed to think of a more effective means for the spread of COVID-19 infection than immigration detention.⁸⁴

59. Additionally, the New Jersey facilities do not adequately provide the mitigation measures that public health experts and the CDC recommend. Frequent handwashing with soap and water or use of alcohol-based sanitizers are generally impossible at the New Jersey facilities, and there are systemic inadequacies in hygiene and sanitation.⁸⁵ Objects with which many detainees come in frequent contact, such as phones, tables, chairs, books, recreation objects, and other high contact surfaces, are not sanitized or replaced routinely.⁸⁶ In general, tissues are not provided, handkerchiefs are unauthorized articles of clothing, and access to toilet paper and paper towels is limited, leaving detainees with nowhere to sneeze, cough, or wipe their noses other than their clothes, sheets, blankets, or towels—none of

⁸⁴ Ex. A, Keller Decl. ¶ 14.

⁸⁵ *See id.* ¶ 17; Ex. J, Schriro Decl. ¶ 17; *see also* Ex. B, Meyer Decl. ¶ 11 (“Jails and prisons are often under-resourced and ill-equipped with sufficient hand soap and alcohol-based sanitizers for people detained in and working in these settings.”).

⁸⁶ Ex. J, Schriro Decl. ¶ 19.

which are replaced daily.⁸⁷ These conclusions are supported by numerous governmental and nongovernmental investigative reports over the past decade that have found evidence of substandard medical care in immigration detention facilities, deficiencies in hygiene and sanitation, and a lack of oversight and accountability.⁸⁸

60. For example, the U.S. Government Accountability Office in 2016 reported that ICE lacked the tools to monitor medical care in detention facilities. Human Rights Watch, in a 2017 report, documented deaths in detention resulting at least in part from substandard care.

61. The DHS Office of the Inspector General documented unclean and unsanitary detention facilities that do not meet ICE standards.⁸⁹ A report of the DHS Office of the Inspector General documented mold and other unsanitary conditions at ECCF and expressed concern that these conditions could impact the health of immigration detainees.⁹⁰

⁸⁷ *See id.* ¶ 20.

⁸⁸ Ex. A, Keller Decl. ¶ 17.

⁸⁹ *See id.* ¶ 18.

⁹⁰ Ex. J, Schriro Decl. ¶ 18; Dep't of Homeland Security, Office of the Inspector General, *Issues Requiring Action at the Essex County Correctional Facility in Newark, New Jersey* at 7-8 (Feb. 13, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-20-Feb19.pdf> (accessed Apr. 2, 2020); *see also* Dep't of Homeland Security, Office of the Inspector General, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities* at 10 (June 3, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf> (accessed Apr. 2, 2020) (noting that at the time of report, detainees were not

62. ICE has established national detention standards that govern the facilities that the agency operates. ICE has rarely held its private and local-government detention providers, including ECCF and EDC, accountable when they fail to meet the performance standards, even when their failures have resulted in severe harm to detainees.⁹¹

63. Access to healthcare for chronic conditions, including HIV, hypertension, and other illnesses is challenging at both EDC and ECCF. This is in part because the jail-like facilities where immigrants are held are intended for short-term, rather than prolonged, detention. As a result, they are often geared toward providing temporary, short-term acute care rather than longer-term care and management of chronic health disorders. Thus, health conditions that may have been well controlled outside of detention, such as diabetes and hypertension, are likely not only exacerbated by detention, but also inadequately treated.⁹²

64. Infectious disease outbreaks such as COVID-19 can also exacerbate existing mental health conditions and can contribute to the development of new

provided with soap again after intake and could only obtain soap via commissary purchases).

⁹¹ Ex. A, Keller Decl. ¶ 20.

⁹² *Id.* ¶ 19; *see also* Ex. B, Meyer Decl. ¶ 13 (noting that people in congregate settings “are more susceptible to acquiring and experiencing complications from infectious diseases than the population in the community” is).

mental health conditions.⁹³

65. As a result of profound stress and helplessness, immigrant detainees are at risk of having suppressed immune systems, placing them at higher risk than the general population of contracting more serious infections.⁹⁴

66. Seemingly daily, new information regarding COVID-19 risk factors comes forth. Individuals at these facilities may have conditions that predispose them to complications from COVID-19 but that are not yet identified by the medical literature. For example, the CDC published a new list on March 22, 2020, expanding the previously identified groups of individuals especially vulnerable to the virus.⁹⁵

D. ICE’s Response to COVID-19 Is Insufficient to Prevent the Spread of This Life-Threatening Disease.

67. ICE has not specified what measures it has undertaken to protect detainees at its facilities or whether ICE is testing staff and detainees. Its response to the COVID-19 pandemic is “lacking” and “grossly deficient.”⁹⁶

68. The conditions at EDC and ECCF contravene all medical and public health directives for risk mitigation. People live in close quarters and cannot achieve

⁹³ See generally Ex. C, Venters Decl. ¶¶ 10, 17 (“ICE should not employ isolation in locked cells as a primary means to protect [detainees]” because “the level of monitoring is dramatically reduced” and “causes new health problems in the form of risk for suicide and self-harm.”).

⁹⁴ Ex. A, Keller Decl. ¶ 25.

⁹⁵ *Id.* ¶ 23.

⁹⁶ Ex. C, Venters Decl. ¶ 14.

the “social distancing” to effectively prevent the spread of COVID-19.⁹⁷ Nor is such social distancing a possible solution, given the crowding in the facilities and the limitations on space.

69. Shared use of common facilities generates further risk of infection. At ECCF, detainees are sometimes housed in dormitories that contain 50 or more detainees.⁹⁸ The detainees eat in a cafeteria-style setting where they sit no more than 18 inches from each other.⁹⁹ Food preparation, service, and clean-up are also conducted primarily by detainees.¹⁰⁰ Likewise, their beds are approximately 18 inches apart.¹⁰¹ EDC also utilizes close-quartered “dorms,” some of which have a capacity of 40 and currently hold close to 30 individuals.¹⁰² Detainees are in this same space for 23 hours a day.¹⁰³ The detainees eat, sleep, and go to the bathroom in these same places.¹⁰⁴ Individuals cannot practice social distancing because there is simply nowhere for them to go.

70. Poor sanitary conditions at EDC and ECCF provide another locus for infection. At ECCF, detainees do not have access to hand sanitizer and requests to

⁹⁷ Ex. G, X [REDACTED] Cert. ¶ 13; Ex. H, S [REDACTED] I [REDACTED] Decl. ¶ 10; Ex. F, W [REDACTED] Cert. ¶ 10.

⁹⁸ Ex. H, S [REDACTED] I [REDACTED] Decl. ¶ 9; Ex. F, W [REDACTED] Cert. ¶ 10.

⁹⁹ See W [REDACTED] Cert. ¶ 10.

¹⁰⁰ Ex. J, Schriro Decl. ¶ 21.

¹⁰¹ Ex. F, W [REDACTED] Cert. ¶ 10.

¹⁰² Ex. D, A [REDACTED] A [REDACTED] Cert. ¶ 5.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

provide them are denied.¹⁰⁵ Instead, detainees are told they should wash their hands. When detainees go to wash their hands, there is not enough water to do so.¹⁰⁶ The sanitary conditions at EDC are a breeding ground for infection. At one point during the COVID-19 crisis, detainees in one “dorm” were left for *three days without soap* to wash their hands.¹⁰⁷ Since then, soap continues to run out in the bathroom areas.¹⁰⁸

71. EDC and ECCF are also falling short in identifying and isolating potentially infected detainees.¹⁰⁹ The ICE detainee at ECCF who was confirmed to be suffering from COVID-19 was never tested for the condition at ECCF; it was only after he was taken to University Hospital in Newark for a different complaint that hospital staff, based on his symptoms, tested him and diagnosed him with COVID-19.¹¹⁰ ICE is not taking the temperature of detainees on a systematic basis or providing flu or COVID-19 testing to those individuals with symptoms consistent with those conditions.¹¹¹ Beyond caring for their current population, EDC continued to bring in new detainees, even after learning that one of its staff members tested

¹⁰⁵ Exhibit G, X [REDACTED] Decl. ¶¶ 8-9.

¹⁰⁶ *See id.* ¶¶ 8-9.

¹⁰⁷ Ex. D, A [REDACTED] A [REDACTED] Cert. ¶ 5.

¹⁰⁸ *Id.*

¹⁰⁹ Ex. H, L [REDACTED] Decl. ¶¶ 12-13.

¹¹⁰ <https://www.ice.gov/coronavirus>

¹¹¹ *Id.*

positive for COVID-19.¹¹²

72. ICE's official guidance also does not offer an effective way to determine who has the virus.¹¹³ Because some COVID-19 carriers can be asymptomatic, and others do not exhibit symptoms until 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 government's management plan did not "say anything about testing").

73. ICE's official guidance on COVID-19 does not state under what conditions detainees would be tested.¹¹⁴ Instead, the only measure that 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 those isolation rooms to the rest of the facility.¹¹⁵

74. ICE's official guidance on COVID-19 does not demonstrate that ICE facilities have undertaken measures to ensure adequate sanitation practices. The

¹¹² Ex. D, A [REDACTED] A [REDACTED] Cert. ¶ 6.

¹¹³ Ex. J, Schriro Decl. ¶¶ 21–23.

¹¹⁴ U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, available at <https://www.ice.gov/coronavirus> (accessed Apr. 2, 2020).

¹¹⁵ Ex. J, Schriro Decl. ¶ 24.

guidance also contains no budget provision for more sanitation items, such as soap, cleaning supplies, or the protective devices detainees in certain assignments should wear.¹¹⁶

75. Immigration detention facilities 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 detainees in Virginia against outbreaks of chicken pox and mumps.¹¹⁷ This was no aberration. ICE has a long history of mishandling infectious and communicable diseases, struggling to contain them, and failing to follow nationally accepted standards. The DHS Office of the Inspector General (“OIG”) 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,

¹¹⁶ See *id.* ¶¶ 22–23.

¹¹⁷ Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (June 14, 2019), available at https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox (accessed Apr. 2, 2020).

seeking to exempt them from complying with certain standards,” and “does not adequately share information about ICE detention contracts with key officials.”¹¹⁸

76. 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.”¹¹⁹

77. 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 people who are not already detained.¹²⁰

¹¹⁸ See Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, at 1 (Jan. 29, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf> (accessed Apr. 2, 2020).

¹¹⁹ See *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, Office of the Inspector General, at 1 (June 26, 2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf> (accessed April 2, 2020).

¹²⁰ 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 (accessed Apr. 2, 2020).

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

E. Individuals Most Vulnerable to COVID-19 Should Be Immediately Released from ICE Detention.

79. Given the rapid spread of COVID-19 throughout New Jersey, and conditions at the EDC and ECCF facilities, it is only a matter of time before the disease becomes widespread among the detainee population.¹²¹ Risk mitigation is the only viable public health strategy currently available in the United States to protect vulnerable groups from COVID-19. For this reason, doctors and public health experts with experience in immigration detention and correctional settings recommend the release of vulnerable detainees from custody.¹²²

80. Because the risk of infection is at its zenith in detention centers, where social distancing measures are impossible to implement, where people share common spaces that are not regularly sanitized, and where individuals are regularly exposed to potential vectors of infection, public health experts with experience in

¹²¹ See Ex. C, Venters Decl. ¶¶ 7–8.

¹²² Ex. A, Keller Decl. ¶ 28–29; Ex. J, Schriro Decl. ¶¶ 25, 27.

detention and correctional settings recommend the release of detainees from custody.

81. As early as February 25, 2020, Drs. Scott Allen and Josiah Rich, medical experts for DHS, shared concerns about the specific risk to immigrant detainees 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, Drs. Allen and Rich recommended that “at minimum, DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases.”¹²³ 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.” The doctors’ letter came a day after ICE informed Congress that a member of the staff at EDC tested positive for the novel coronavirus.

82. On April 1, 2020, after testing positive for COVID-19, Joseph DiVincenzo, Jr., Essex County executive, stated, “I implore everyone to practice social distancing . . . We are in the midst of a public health crisis. The

¹²³ See Emily Kassie, *CNN: Doctors Warn of the “Tinderbox Scenario” if Coronavirus Spreads in ICE Detention*, Government Accountability Project, Mar. 21, 2020, available at <https://whistleblower.org/in-the-news/cnn-doctors-warn-of-tinderbox-scenario-if-coronavirus-spreads-in-ice-detention/> (accessed Apr. 2, 2020).

prudent actions we take now will determine how severe the impacts of the Coronavirus will be later.”¹²⁴

83. ICE has the authority to release individuals from custody on medical grounds and has routinely exercised its authority to release particularly vulnerable detainees like Petitioners. The former Acting Director of ICE, John Sandweg, 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.”¹²⁵

84. ICE has a range of highly effective tools, including supervised release, at its disposal that are alternatives to detention and ensure that individuals report for court hearings and other appointments.¹²⁶ Compliance rates associated with supervised release are extremely high, which allows for effective management of immigration cases without unnecessary pretrial detention or risk to public safety.¹²⁷

For example, a recent Government Accountability Office report found that “that 99

¹²⁴ Ex. A, Keller Decl. ¶ 27.

¹²⁵ 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/> (accessed Apr. 2, 2020); Camilo Montoya-Galvez, “Powder kegs”: Call 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/> (accessed Apr. 2, 2020).

¹²⁶ Ex. J, Schriro Decl. ¶ 26.

¹²⁷ *Id.*

percent of immigrant participants in ICE’s alternative to detention program appeared at scheduled court hearings. ICE also operated a very successful Family Case Management Program until recently. According to the Inspector General report, overall compliance was 99 percent for ICE check-ins and appointments, and 100 percent for attendance in court hearings.”¹²⁸

85. The healthcare capacity at both EDC and ECCF will be overwhelmed by the COVID-19 pandemic. Additionally, this will pose great challenges for local community hospitals in New Jersey, which are already overburdened by the COVID-19 pandemic.¹²⁹ In case of an outbreak at a detention center, those local institutions would bear the brunt of treating infected individuals from detention centers, leaving fewer available medical resources. Therefore, releasing the most vulnerable people, such as Petitioners, would also reduce the burden on regional hospitals and health centers.¹³⁰

86. The Vera Institute of Justice and Community-Oriented Correctional

¹²⁸ *Id.* (citations omitted).

¹²⁹ Ex. A, Keller Decl. ¶ 21.

¹³⁰ *Id.*; *see* Ex. I, Franco-Paredes Decl. at 7:18–21 (noting that “preventing the occurrence of an outbreak within a detention facility would reduce the risk of overwhelming local healthcare systems [because] the number of detainees who will require transfer outside the facility for specialized care may exceed the capacity of local hospitals.”); Ex. B, Meyer Decl. at 16 (stating that outside healthcare facilities will not be able to provide care needed during an epidemic “as those outside facilities will likely be at or over capacity themselves”).

Health Services recommends that authorities in correctional and immigration detention settings “[u]se their authority to release as many people from their custody as possible.”¹³¹ Indeed, governments in the United States and worldwide recognize the threat posed by COVID-19 spread among detained and incarcerated populations, causing them to release detained individuals for that reason.¹³²

87. New Jersey decided to release approximately 1,000 inmates throughout the state from its jails.¹³³ This is the broadest effort in the nation to address the risks of COVID-19 spreading among incarcerated criminal offenders. From a public health and moral perspective, it is essential that the same steps be taken with detained immigrants, who are being held in civil, not criminal detention.¹³⁴

88. Iran temporarily released more than 80,000 people from its prisons to curb the spread of the virus.¹³⁵ Los Angeles and Chicago also released detained

¹³¹ Ex. J, Schriro Decl. ¶ 15.

¹³² *Id.* ¶¶ 30–32 (listing over twenty (20) decisions to release detained individuals at the local and state levels).

¹³³ *1,000 Inmates Will Be Released from N.J. Jails to Curb Coronavirus Risk*, The New York Times, (Mar. 23, 2020), available at <https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html>.

¹³⁴ Ex. A, Keller Decl. ¶ 26.

¹³⁵ Ex. B, Meyer Decl. ¶ 24; 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->

individuals for the same reasons.

89. The judiciary has also recognized that release from detention is the only way to protect vulnerable detainees from COVID-19. The Ninth Circuit recently ordered the release of an immigrant from ICE detention considering the dangers posed by the COVID-19 crisis. *See Xochihua-Jaimes v. Barr*, No. 18-71460 (9th Cir. Mar. 23, 2020) (Order) (“[I]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court *sua sponte* orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court.”). On March 31, 2020, a court within this Circuit granted a temporary restraining order and required the immediate release of certain ICE detainees vulnerable to COVID-19. *Thakker v. Doll*, No. 1:20-cv-480 (M.D. Pa. Mar. 31, 2020) (Order); *accord Coronel v. Decker*, No. 20-cv-2472 (S.D.N.Y. Mar. 27, 2020) (Order); *Basank v. Decker*, No. 20-cv-2518 (S.D.N.Y. Mar. 26, 2020) (Order).

F. Petitioners Are Particularly Vulnerable to Serious Illness or Death if Infected with the Coronavirus and Should Be Immediately Released from Custody.

temporarily-frees-85000-from-jail-including-political-prisoners-amid-coronavirus-idUSKBN21410M (accessed Apr. 2, 2020).

90. Petitioners in this case are all individuals who are especially vulnerable to serious illness and death if they become infected with COVID-19,¹³⁶ but ICE nonetheless persists with detaining them.

91. Petitioner Melvin A [REDACTED] A [REDACTED] is a 42-year-old man who is currently detained by ICE at EDC.¹³⁷ Mr. A [REDACTED] A [REDACTED] was diagnosed with hypertension and recently began suffering from a sense of constriction in his chest and shortness of breath.¹³⁸ After alerting the medical unit, he was given ibuprofen and allergy medicine, despite the fact that, as far as he is aware, he does not suffer from allergies.¹³⁹ He has begun experiencing headaches and a scratchy throat.¹⁴⁰ Mr. A [REDACTED] A [REDACTED] is at high risk of severe illness or death if he contracts COVID-19.¹⁴¹ According to Dr. Kate Sugarman, Mr. A [REDACTED] A [REDACTED]'s symptoms indicates that he has a presumed case of COVID-19.¹⁴²

92. Petitioner Guanglei J [REDACTED] is a 42-year-old man who is currently detained by ICE at EDC.¹⁴³ Mr. J [REDACTED] has suffered from high blood pressure for over 10

¹³⁶ Ex. P, Sugarman Cert. ¶¶ 10–20.

¹³⁷ Ex. D, A [REDACTED] A [REDACTED] Cert. ¶ 4.

¹³⁸ *Id.* ¶ 7.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Coronavirus and High Blood Pressure: What's the Link?*, WEBMD (Apr. 3, 2020) <https://www.webmd.com/lung/coronavirus-high-blood-pressure#1>.

¹⁴² Ex. P, Sugarman Cert. ¶ 11.

¹⁴³ Ex. E, J [REDACTED] Cert. ¶ 4.

years.¹⁴⁴ He has been taking medicine for his condition prior to and during his detention.¹⁴⁵ This requires him to go to the medical unit at EDC every day.¹⁴⁶ Mr. J ■■■ also suffers from severe back injuries that require him to use a walker.¹⁴⁷ He also takes medication for this condition.¹⁴⁸ Mr. J ■■■ is at high risk of severe illness or death if he contracts COVID-19.¹⁴⁹ According to Dr. Sugarman, “[a]s we have learned from the nursing homes in the State of Washington, any patient with disabilities—such as Mr. J ■■■’s back injury—and comorbid medical conditions—such as Mr. J ■■■’s hypertension—are at a significantly higher risk of dying from COVID-19.”¹⁵⁰

93. Petitioner Jason Anthony W ■■■ is a 28-year-old man who is currently detained by ICE at ECCF.¹⁵¹ Mr. W ■■■ has been in immigration detention at ECCF for nearly three years.¹⁵² He suffers from a large polyp in his left nostril, which obstructs his breathing passage.¹⁵³ This polyp has grown and has occasionally gotten

¹⁴⁴ *Id.* ¶ 7.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Coronavirus and High Blood Pressure: What’s the Link?*, WEBMD, (Apr. 3, 2020) <https://www.webmd.com/lung/coronavirus-high-blood-pressure#1>.

¹⁵⁰ Ex. P, Sugarman Cert. ¶ 13.

¹⁵¹ Ex. F, W ■■■ Cert.

¹⁵² *Id.*

¹⁵³ *Id.*

so large that it hangs from his nose. He currently uses a steroid spray to treat the polyp but doctors have recommended surgery.¹⁵⁴ Mr. W■■■■ also suffers significant digestive issues from gastritis, which causes severe digestive discomfort.¹⁵⁵ He is treated with daily medication to manage these symptoms but still experiences daily pain.¹⁵⁶ Mr. W■■■■ is at high risk of severe illness or death if he contracts COVID-19.¹⁵⁷ According to Dr. Sugarman, anyone with respiratory difficulties, such as Mr. W■■■■, “is at exceedingly high risk of dying from COVID-19.”¹⁵⁸

94. Petitioner Jiaqiang X■■ is a 34-year-old man who is currently detained by ICE at ECCF.¹⁵⁹ Mr. X■■ has high blood pressure, anxiety, and depression. He is also pre-diabetic.¹⁶⁰ Moreover, he has a history of severe chest pain.¹⁶¹ During detention in the past, his chest pain was so severe that he believed he was having a heart attack.¹⁶² Doctors observed that Mr. X■■ had very high blood pressure

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Patients with breathing, lung problems at highest risk with COVID-19 – study*, REUTERS, (Apr. 4, 2020), <https://www.reuters.com/article/us-health-coronavirus-breathing/patients-with-breathing-lung-problems-at-highest-risk-with-covid-19-study-idUSKBN2153ED>.

¹⁵⁸ Ex. P, Sugarman Cert. ¶ 10.

¹⁵⁹ Ex. G, X■■ Cert. ¶ 5.

¹⁶⁰ *Id.* ¶ 10.

¹⁶¹ *Id.*

¹⁶² *Id.*

following this incident.¹⁶³ He is currently on four medications for his illnesses: hydrochlorophiazide and metoprolol for high blood pressure and buspirone and fluoxetine for anxiety and depression.¹⁶⁴ Mr. X is at high risk of severe illness or death if he contracts COVID-19.¹⁶⁵ According to Dr. Sugarman, both Mr. X's "hypertension and cardiovascular disease put him at risk of dying from COVID-19."¹⁶⁶ Further, he is in immediate need of appropriate medical treatment even if he does not contract COVID-19.¹⁶⁷

95. Petitioner Juan F S L is a 40-year-old man who is currently detained by ICE at ECCF.¹⁶⁸ Mr. S L has been diagnosed with hypertension and high blood pressure, which are exacerbated by the stress and limitations of detention.¹⁶⁹ He has elevated glucose levels that suppress his immune

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Information for Healthcare Professionals: COVID-19 and Underlying Conditions*, CENTERS FOR DISEASE CONTROL, (Apr. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (listing, among other medical diagnoses, "moderate to severe asthma," "heart conditions," "immunocompromised," and "diabetes" as conditions that trigger higher risk of severe illness from COVID-19); *Coronavirus and High Blood Pressure: What's the Link?*, WEBMD, (Apr. 3, 2020), <https://www.webmd.com/lung/coronavirus-high-blood-pressure#1>.

¹⁶⁶ Ex. P, Sugarman Cert. ¶ 17.

¹⁶⁷ *Id.*

¹⁶⁸ Ex. H, S L Decl. ¶ 8.

¹⁶⁹ *Id.*

system.¹⁷⁰ Mr. S [REDACTED] L [REDACTED] currently has flu-like symptoms, including body pain and congestion.¹⁷¹ Despite this, Mr. S [REDACTED] L [REDACTED] has not been tested for the flu or COVID-19.¹⁷² Mr. S [REDACTED] L [REDACTED] is at high risk of severe illness or death if he contracts COVID-19.¹⁷³ In fact, [i]t is well documented that people with cardiovascular disease and severe hypertension are at higher risk for dying from COVID-19.”¹⁷⁴ According to Dr. Sugarman, due to Mr. S [REDACTED] L [REDACTED]’s health conditions, “which include hypertension/high blood pressure that is so severe that he requires medication, it is my conclusion that Mr. S [REDACTED] L [REDACTED] is at increased risk of dying from COVID-19.”¹⁷⁵

96. Petitioner Isaias N [REDACTED] C [REDACTED] is a 24-year-old man who is currently detained by ICE at EDC. Mr. C [REDACTED] suffers from severe stomach problems, which led to his hospitalization soon after he was taken into immigration custody in

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Information for Healthcare Professionals: COVID-19 and Underlying Conditions*, CENTERS FOR DISEASE CONTROL, (Apr. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (listing, among other medical diagnoses, “moderate to severe asthma,” “heart condition,” “immunocompromised,” and “diabetes” as conditions that trigger higher risk of severe illness from COVID-19); *Coronavirus and High Blood Pressure: What’s the Link?*, WEBMD, (Apr. 3, 2020), <https://www.webmd.com/lung/coronavirus-high-blood-pressure#1>.

¹⁷⁴ Ex. P, Sugarman Cert. ¶ 12.

¹⁷⁵ *Id.*

June 2019. He was recently diagnosed with H. Pylori, a stomach bacteria that can lead to ulcers and stomach cancer, according to medical records provided to Human Rights First by ICE.¹⁷⁶ Mr. C [REDACTED] takes daily medication from the same medical unit at ECD where a staff member fell sick with COVID-19.¹⁷⁷ He also suffers from liver inflammation and has suffered episodes of tachycardia and breathing problems. According to Dr. Sugarman, anyone with co-existing medical conditions, such as Mr. C [REDACTED], “is at a much higher risk of dying from COVID-19.”¹⁷⁸ Additionally, Mr. C [REDACTED] is likely to need “mechanical ventilation and/or die from COVID-19” because “there is evidence that COVID-19 affects the heart.”¹⁷⁹

97. Petitioner Nicolas M [REDACTED] M [REDACTED] is a 37-year-old man who is currently detained by ICE at EDC. Mr. M [REDACTED]’s health conditions put him at much greater risk for infection or death as a result of COVID-19. He suffers from bronchitis, which has worsened over the last two weeks.¹⁸⁰ He is breathing more heavily and can hear noise in his chest.¹⁸¹ When he exhales completely, he feels like there is still air remaining in his lungs.¹⁸² On March 30, 2020, his conditions required

¹⁷⁶ Ex. K, C [REDACTED] Decl. ¶ 10.

¹⁷⁷ *See id.* ¶ 11.

¹⁷⁸ Ex. P, Sugarman Cert. ¶ 14.

¹⁷⁹ *Id.*

¹⁸⁰ Ex. L, M [REDACTED] Decl. ¶ 11.

¹⁸¹ *See id.*

¹⁸² *See id.*

prescriptions for a nasal spray, Montelukast, and Cetirizine, and on April 1, 2020, he required treatment from a machine through which albuterol was administered.¹⁸³ According to Dr. Sugarman, Mr. M [REDACTED] is exhibiting “symptoms of asthma and bronchitis, both of which are pulmonary diseases that create a high-risk of infection or death from COVID-19.”¹⁸⁴ Additionally, because Mr. M [REDACTED] is on a nebulizer in detention, Dr. Sugarman recommends immediate release because “the use of nebulizers is putting detainees, staff members, and the family of staff members at risk of infection and dying.”¹⁸⁵

98. Petitioner Nery A [REDACTED] C [REDACTED] M [REDACTED] is a 35-year-old man who is currently detained by ICE at ECCF.¹⁸⁶ He struggles to breathe as a result of bronchitis, which causes him to become severely ill whenever he has an infection.¹⁸⁷ He develops a severe cough when he is ill.¹⁸⁸ He also suffers from insomnia and excruciating headaches. Mr. M [REDACTED] also suffered severe injuries after falling from scaffolding in 2014 while working in construction.¹⁸⁹ The scaffolding fell on top of him, leaving him with a broken skull, broken nose, broken shoulder, broken wrist,

¹⁸³ *See id.*

¹⁸⁴ Ex. P, Sugarman Cert. ¶ 15.

¹⁸⁵ *Id.*

¹⁸⁶ Ex. N, M [REDACTED] Cert.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

broken knee, and crushed lungs.¹⁹⁰ He almost died from his injuries and had to undergo five surgeries. His nose operation has made it difficult for Mr. M [REDACTED] to breathe.¹⁹¹ He takes painkillers and medication for insomnia. He suffers extreme pain from this accident and is still healing.¹⁹² The injuries and scars from his accident are physically apparent.¹⁹³ According to Dr. Sugarman, due to his breathing difficulties, Mr. M [REDACTED] is “at an even higher risk of being infected with and dying from COVID-19” because “[i]t is well documented that anyone with respiratory difficulties is at exceedingly high risk of dying from COVID-19.”¹⁹⁴ Additionally, because Mr. M [REDACTED] has disabilities and comorbid medical conditions, he is “at a significantly higher risk of dying from COVID-19.”¹⁹⁵

99. Petitioner Isaias R [REDACTED] A [REDACTED] is a 39-year-old man who is currently detained by ICE at EDC.¹⁹⁶ He is exhibiting symptoms of COVID-19, including a sore throat and some bleeding, and prolonged headaches. He went to the medical unit for headaches about a week and a half ago and was given allergy medication, as well as ibuprofen and acetaminophen.¹⁹⁷ His headaches persist. And he is now also

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Ex. P, Sugarman Cert. ¶ 18.

¹⁹⁵ *Id.*

¹⁹⁶ Exhibit M, A [REDACTED] Cert.

¹⁹⁷ *Id.*

sneezing. He also has an infected foot.¹⁹⁸ Mr. A [REDACTED] also was diagnosed with gastritis in 2008 when he had an endoscopy, from which he suffers renewed stomach problems over the last month that cause him to become nauseous when he eats.¹⁹⁹ He is supposed to be consuming a high fiber, low-fat, low-sodium diet for the gastritis, but the staff at the detention center appear to have mislaid the card confirming these restrictions. Lately, he receives a regular diet.²⁰⁰ According to Dr. Sugarman, it should be assumed, based on his symptoms, “that he has COVID-19 infection and cannot rely on testing,” especially because testing “can take as long as ten days to get results” and could produce false negatives.²⁰¹ Dr. Sugarman advises that keeping Mr. A [REDACTED] in detention “is putting other detainees and detention staff and their families at risk.” But cohorting, or segregation, will not effectively manage the risk nor is it appropriate treatment. Dr. Sugarman warns:

In confinement situations, *segregation or solitary confinement is not an effective disease containment strategy*. Beyond the known detrimental mental health effects of solitary confinement, isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death. Isolation of people who are ill using solitary confinement also is an ineffective way to prevent transmission of the virus through droplets to others because, except in specialized negative pressure rooms (rarely in medical units if available at all), air

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Ex. P, Sugarman Cert. ¶ 16.

continues to flow outward from rooms to the rest of the facility. The risk of exposure is thus increased to other people in prison and staff.²⁰²

100. Petitioner Tiekou A [REDACTED] is a 41-year-old-man who is currently detained by ICE at ECCF. Mr. A [REDACTED] has been diagnosed with hypertension, high cholesterol, hyperlipidemia, anemia, anxiety disorder, and acid reflux disease without esophagitis.²⁰³ Although he has been taking multiple medications for his illnesses, his condition has been exacerbated by the stress and limitations of being in detention.²⁰⁴ According to Dr. Sugarman, Mr. A [REDACTED]'s hypertension "is a known risk factor for COVID-19."²⁰⁵ Similarly, Mr. A [REDACTED]'s respiratory symptoms, including a cough and runny nose for nearly the past four months²⁰⁶ "make it more likely that he will be infected and die from COVID-19."²⁰⁷

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of the Fifth Amendment Right to Substantive Due Process (Unlawful Punishment; Objectively Unreasonable Risk to Health and Safety; Conditions of Confinement; and Freedom from Cruel Treatment)

101. All the foregoing allegations are repeated and realleged as though fully

²⁰² *Id.* ¶ 9, 16. (emphasis in original.)

²⁰³ Ex. O, A [REDACTED] Decl. ¶ 8.

²⁰⁴ *Id.*

²⁰⁵ Ex. P, Sugarman Cert. ¶ 19.

²⁰⁶ Ex. O, A [REDACTED] Decl. ¶ 13.

²⁰⁷ Ex. P, Sugarman Cert. ¶ 19.

set forth herein.

102. The Fifth Amendment to the U.S. Constitution guarantees civil detainees, including immigration detainees, the right to be free from punitive conditions of confinement. *See* U.S. Const. Amend V, XIV. The government violates this guarantee when conditions of confinement lack a reasonable relationship to any legitimate governmental purpose, *i.e.*, when a custodian's actions are excessive in relation to their purpose. The government violates this guarantee where a widespread outbreak of a contagious disease subjects detainees to inhumane, unsafe conditions without adequate protection.

103. Conditions of confinement lack a reasonable relationship to any legitimate governmental purpose when the government acts with deliberate indifference in failing to safeguard the health and safety of those in custody. The government acts with deliberate indifference when it exposes detainees to a substantial risk of serious harm, and when it knows of or disregards that substantial risk to the detainee's health or safety.

104. Respondents are subjecting Petitioners to conditions of confinement that increase their risk of contracting COVID-19, for which there is no known vaccine, treatment, or cure. Petitioners' underlying conditions—of which Respondents are or should be aware—render them especially vulnerable to severe illness or even death if they contract COVID-19. Respondents are therefore

subjecting Petitioners to an unreasonable risk of serious harm and punitive conditions, in violation of their rights under the Due Process Clause.

105. Because of the conditions inherent in the immigration detention facilities, Petitioners are not able to take steps to protect themselves—such as social distancing, washing their hands regularly with soap and water, or using hand sanitizer. COVID-19 has already reached ECCF and EDC, and due to their conditions of confinement, Petitioners are unable to protect themselves from the virus and the risk of serious illness or death.

106. Respondents' continued detention of Petitioners fails to adequately protect Petitioners from the risks of contracting COVID-19.

107. Petitioners' ongoing confinement lacks a reasonable relationship to any legitimate governmental purpose and is excessive in relation to any purpose.

108. Respondents are exposing Petitioners to a substantial risk of serious harm.

109. Respondents know of or choose to disregard the substantial risk of harm to Petitioners' health and safety.

110. Respondents act with deliberate indifference to Petitioners' health and safety.

111. Petitioners' medical needs place them at a heightened risk of developing COVID-19 and/or suffering serious medical harm, and even death.

Respondents are aware that failing to adequately protect Petitioners could have tragic results and yet have not taken necessary or appropriate precautions.

112. Likewise, the continued detention of Petitioners subjects them to cruel and unusual punishment because Respondents are acting with deliberate indifference to Petitioners' serious medical needs. Only releasing Petitioners from custody can adequately protect them from COVID-19. Respondents are both aware of the serious risk posed by COVID-19 and are failing to take the only action that can respond to Petitioners' medical needs, which is to release Petitioners.

113. Respondents' continued detention of Petitioners violates the Due Process Clause. The government's failure to provide Petitioners with reasonable safety and to adequately protect Petitioners from this substantial risk of serious harm constitutes an egregious violation of Petitioners' due process rights.

114. Since Respondents have unlawfully subjected Petitioners to punitive confinement and Respondents cannot now provide Petitioners with reasonable safety or protect Petitioners from serious harm, Petitioners must be immediately released from custody.

SECOND CAUSE OF ACTION

Violation of the Fifth Amendment Right to Substantive Due Process

115. All the foregoing allegations are repeated and realleged as though fully set forth herein.

116. Petitioners seek a declaratory judgment that their detention is in violation of the Fifth Amendment right to substantive due process, is unlawful punishment, is an objectively unreasonable risk to health and safety, imposes unconstitutional conditions of confinement, and fails to keep them free from cruel treatment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Issue a writ of habeas corpus and order Petitioners' 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;
- b. In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioners 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;
- c. Declare that Respondents' continued civil detention of individuals at increased risk for severe illness or death upon contracting COVID-19 violates the Due Process Clause;
- d. Enjoin Respondents from transferring Petitioners outside the jurisdiction of the District of New Jersey or outside the jurisdiction of the Newark ICE Field Office pending the Court's resolution of this Petition;
- e. Award Petitioners' counsel reasonable attorneys' fees under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412 and any other applicable statute or regulation; and

- f. Grant such further relief as the Court deems just, equitable, and appropriate.

Respectfully submitted,

Dated: April 6, 2020

By: /s/ Tracey Salmon-Smith, Esq.

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Forthcoming