

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

AARON HOPE; IWAN RAHARDJA
JESUS DE LA PENA; RAKIBU ADAM
DUC VIET LAM; YELENA MUKHINA
NAHOM GEBRETNISAE; ISMAIL
MUHAMMED; GLENN WEITHERS
KONSTANTIN BUGARENKO;
BRISIO BALDERAS-DOMINGUEZ;
VIVIANA CEBALLOS; WILDERS
PAUL; MARCOS JAVIER ORTIZ
MATOS; ALEXANDER ALVARENGA
ARMANDO AVECILLA; COSWIN
RICARDO MURRAY; EDWIN LUIS
CRISOSTOMO RODRIGUEZ; ELDON
BERNARD BRIETTE; DEMBO
SANNOH; JESUS ANGEL JUAREZ
PANTOJA; and ALGER FRANCOIS,

Petitioners-Plaintiffs,

vs.

CLAIR DOLL, in his official capacity as
Warden of York County Prison; CRAIG
A. LOWE, in his official capacity as
Warden of Pike County Correctional
Facility; SIMONA FLORES-LUND, in
her official capacity as Field Office
Director, Enforcement and Removal
Operations, U.S. Immigration and
Customs Enforcement; MATTHEW
ALBENCE, in his official capacity as
Acting Director, U.S. Immigration and
Customs Enforcement; and CHAD
WOLF, in his official capacity as Acting
Secretary, U.S. Department of Homeland
Security,

Respondents-Defendants.

Case No. _____

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

INTRODUCTION

Petitioners/Plaintiffs (hereafter “Petitioners”) are a diverse group of twenty-two individuals from around the world who are held in *civil detention* by Immigration and Customs Enforcement (ICE) at York County Prison and Pike County Correctional Facility while they await disposition of their immigration cases. They are united by the fact that they are over age 65 and/or adults who have a serious pre-existing medical condition, which the United States Centers for Disease Control has determined puts them at significantly higher risk of severe disease and death if they contract COVID-19. On March 31, this Court ordered ICE to release similarly-situated immigration detainees from these facilities because record evidence showed that, “adequate measures are not in place and cannot be taken to protect [such high-risk detainees] from COVID-19 in the [York, Clinton and Pike] detention facilities, and that [absent release] catastrophic results may ensue, both to Petitioners and to the communities surrounding the Facilities.” *See Thakker v. Doll*, No. 1:20-cv-00480-JEJ, at *19 (M.D. Pa. Mar. 31, 2020) (elipses added). *See also, id.* at *9 (“Based upon the nature of the virus, the allegations of current conditions in the prisons, and Petitioners’ specific medical

concerns, detailed below, we therefore find that Petitioners face a very real risk of serious, lasting illness or death. There can be no injury more irreparable.”¹

The precarious situation facing the medically-at-risk petitioners in this case is in all material respects indistinguishable from *Thakker*, with one difference: the impending irreparable harm is far greater because the situation at York and Pike has deteriorated significantly since March 31, with quarantines in effect and reports of positive COVID-19 test results at both facilities. “[T]he status quo of a mere few [days] ago no longer applies. Our world has been altered with lightning speed, and the results are both unprecedented and ghastly.” *Id.* at 24. In light of the deteriorating conditions bearing down on these medically vulnerable petitioners, they respectfully ask this Court to issue a temporary restraining order directing their release forthwith.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 2241 (habeas jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

¹ Filings in the *Thakker v. Doll*, Case No. 20-480 (M.D. Pa.) litigation will hereafter be referred to as *Thakker* Dkt. No. ___.

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

PARTIES

Petitioners

3. Petitioner **Aaron Hope** is a 32-year-old male native of Trinidad. Ex. 3 (Hope) at ¶ 1. He has been detained at York County Prison since September 15, 2019. *Id.* at ¶ 3. Mr. Hope has a series of respiratory problems—he has suffered from asthma since childhood, was hospitalized with pneumonia in 2012, and was diagnosed with sleep apnea in 2013—and was diagnosed with high blood pressure in 2017. *Id.* at ¶¶ 6-9. His underlying health conditions place him at high risk of severe illness or death if he contracts COVID-19.

4. Petitioner **Iwan Rahardja** is a 51-year-old a citizen of Indonesia who has lived in the U.S. for nearly 20 years. Ex. 4 (Rahardja) at ¶ 1. He has been detained by ICE at the York County Prison since February 27, 2020. *Id.* at ¶ 6. He

suffers from diabetes and hypertension. *Id.* at ¶¶ 4, 5. These conditions place him at high risk of severe illness or death if he contracts, COVID-19.

5. Petitioner **Jesus De La Pena** is a 37-year-old man from Mexico who has lived in this country since age 6. Ex. 5 (De La Pena) at ¶ 1. He has been detained by ICE for a year at Pike County Correctional Center. *Id.* at ¶ 3. He suffers from severe asthma, hypertension and is over-weight. *Id.* at ¶¶ 4-7. His medical condition places him at high risk of severe illness or death if he contracts COVID-19.

6. Petitioner **Rakibu Adam** is a 34-year-old man from Ghana who has lived in the United States for approximately six years. Ex. 6 (Adam) ¶ 1. He has been detained by ICE at the York County Prison since October 2019. *Id.* at ¶ 3. He suffers from asthma and high blood pressure. *Id.* at ¶ 6. His medical condition places him at high risk of severe illness or death if he contracts COVID-19.

7. Petitioner **Duc Viet Lam** is a 50-year-old man from Vietnam who has lived in the U.S. for 13 years. Ex. 7 (Viet Lam) at ¶ 1. He has been detained by ICE at the Pike County Correctional Center since January 2020. *Id.* at ¶ 3. He suffers from diabetes and high blood pressure. *Id.* at ¶ 4. His medical condition places him at high risk of severe illness or death if he contracts COVID-19.

8. Petitioner **Yelena Mukhina** is a 35-year-old woman from Ukraine. Ex. 8 (Mukhina) at ¶ 1. She has been detained at York County Prison since February 2020. Ms. Mukhina has asthma, a heart murmur, and hepatitis C. She has suffered

with blood clots in her heart and also suffers from seizures when she is stressed. *Id.* at ¶¶ 5-8. Her underlying health conditions place her at high risk of severe illness or death if she contracts COVID-19.

9. Petitioner **Nahom Gebretnisae** is a 28-year-old man from Eritrea who has lived in the U.S. for more than 20 years. Ex. 9 (Gebretnisae) at ¶¶ 1, 2. He has been detained by ICE since February 18 at York County Prison. *Id.* at ¶ 3. He has for the past 13 years suffered from Crohn's Disease and related arthritis and severe nerve and general pain, *id.* at ¶ 4, for which he takes many medications, *id.* at ¶¶ 5-11. His medical condition places him at high risk of severe illness or death if he contracts COVID-19.

10. Petitioner **Ismail Muhammed** is a 69-year-old man from Pakistan who has been in the U.S. since 2002. Ex. 10 (Ismael) at 1st un-numbered ¶ and ¶ 1. He has been held at the York County Prison since December 19, 2019. *Id.* at ¶ 1. He has recently lost about 25 pounds, suffered from asthma-type attacks, and is pre-diabetic. *Id.* at ¶¶ 3-8. His advanced age and medical condition place him at high risk of severe illness or death if he contracts COVID-19.

11. **Glenn Weithers** is a 59-year-old man from Guyana. He has lived in the United States for more than 32 years. Ex. 11 (Weithers) ¶ 1. He has been detained by ICE since January 2019. *Id.* at ¶ 4. Mr. Weithers suffers from emphysema and

chronic obstructive pulmonary disease (COPD). *Id.* at ¶ 7. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19.

12. Petitioner **Konstantin Bugarenko** is 49-year-old man from Ukraine. He has lived in the United States for nearly 24 years as a lawful permanent resident. Ex. 12 (Bugarenko) ¶ 1. He has been detained by ICE since October 2017. *Id.* at ¶ 5. Mr. Bugarenko suffers from prediabetes, high blood pressure, and diverticulitis. *Id.* He also suffers re-occurring and debilitating pain in his feet that renders him temporarily unable to walk. *Id.* at ¶ 5. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19.

13. Petitioner **Brisio Balderas-Dominguez** is a 47-year-old man from Mexico who came to this country in 1991 after cartel members murdered his father, a judge. Ex. 13 (Balderas-Dominguez) at ¶¶ 1, 3. He has been detained by ICE for nearly three years at the Pike County Correctional Center. *Id.* at ¶ 5. He suffers from diabetes, atrial fibrillation and high blood pressure. *Id.* at ¶¶ 8, 9. His medical condition places him at high risk of severe illness or death if he contracts COVID-19.

14. Petitioner **Viviana Ceballos** is a 56-year-old woman from Argentina who has lived in the United States for over 29 years. Ex. 14 (Ceballos) ¶ 1. She became a lawful permanent resident in 1994. *Id.* She has been detained by ICE at York County Prison since March 2019. *Id.* at ¶ 7. She suffers from high blood

pressure. *Id.* at ¶ 12. Her medical condition and age places her at a high risk of severe illness or death if she contracts COVID-19.

15. Petitioner **Wilders Paul** is a 32-yr old man from Haiti who has lived in the United States since he was three years old. Ex. 15 (Paul) ¶ 1. He is seeking adjustment of status through his wife. *Id.* He suffered a traumatic brain injury and suffers from seizures as well as headaches. *Id.* at ¶¶ 6,7. His medical condition places him at a high risk of severe illness or death if he contracts COVID-19.

16. Petitioner **Marco Javier Ortiz Matos** is a 32-year-old man from the Dominican Republic who has lived in this country for nearly 20 years. Ex. 16 (Ortiz Matos) at ¶¶ 1, 2. He has been detained by ICE since November 2019 at Pike County Correctional Center. *Id.* at ¶ 3. He suffers from diabetes. *Id.* at ¶¶ 4-7. His medical condition places him at high risk of severe illness or death if he contracts COVID-19.

17. Petitioner **Alexander Alvaregna** is a 46-year-old man from El Salvador. Ex. 17 (Alvaregna) at 1st unnumbered ¶ and ¶ 1. He has been detained at York County Prison since March 2, 2019. *Id.* at ¶ 5. He suffers from diabetes, high blood pressure, atrial fibrillation, high cholesterol, and partial physical disability due to a 2019 automobile accident. *Id.* at ¶¶ 7-11. His serious health conditions place him at high risk of severe illness or death if he contracts COVID-19.

18. Petitioner **Armando AVECILLA** is a 53-year-old native of Panama. Ex. 18 (Avecilla) at ¶ 1. He has been detained at Pike County Correctional Center since November 2019. *Id.* at ¶ 4. He suffers from diabetes. *Id.* at ¶ 6. His age and serious health conditions place him at high risk of severe illness or death if he contracts COVID-19.

19. Petitioner **Coswin Ricardo Murray** is a 45-year-old native of Barbados who has lived in this country for 33 years. Ex. 19 (Murray) at ¶¶ 1-2. His wife is suffering from advanced cancer. *Id.* at ¶ 2. He has been detained at Pike County Correctional Center since August 2019. *Id.* at ¶ 6. Mr. Murray suffers from asthma, for which Pike refuses to give him an inhaler. *Id.* at ¶¶ 7-8. His underlying medical condition places him at high risk of severe illness or death if he contracts COVID-19.

20. Petitioner **Edwin Luis Crisostomo Rodriguez** is a 31-year-old native of Dominican Republic who has lived in the U.S. since 2016. Ex. 20 (Rodriguez) ¶¶ 1,4. He has been detained since February 20, 2020, at the Pike County Correctional Center. *Id.* at ¶ 3. Mr. Crisostomo Rodriguez has suffered from asthma since childhood, *id.* at ¶ 7, which places him at high risk of severe illness or death if he contracts COVID-19.

21. Petitioner **Eldon Bernard Briette** is a 46-year-old man from Turks and Caicos who has lived in the U.S. for 35 years. Ex. 21 (Briette) at ¶ 1. He has been

detained at the Pike County Correctional Center by ICE since November 12, 2019. *Id.* at ¶ 5. He suffers from diabetes, high blood pressure, high cholesterol, depression and anxiety. *Id.* at ¶¶ 6-9. His medical condition places him at high risk of severe illness or death if he contracts COVID-19.

22. Petitioner **Dembo Sannoh** is a 41-year-old man from Sierra Leone. Ex. 22 (Sannoh) ¶ 1. He has been detained by ICE at York County Prison since August 2019. He has diabetes, Hepatitis B, and a heart issue. *Id.* at ¶ 6. His medical condition places him at high risk of severe illness or death if he contracts COVID-19.

23. Petitioner **Jesus Angel Juarez Pantoja** is a 36-year-old man from Mexico who has lived in the U.S. since age 6. Ex. 23 (Juarez Pantoja) at ¶ 1. He has been detained by ICE at York County Prison since November 2019. *Id.* at ¶ 2. He suffers from asthma, sleep apnea and high blood pressure. *Id.* at ¶¶ 3-6. These conditions place him at high risk of severe illness or death if he contracts COVID-19.

24. Petitioner **Duckens Max Alder Francois** is a 45-year-old man from Haiti. Ex. 24 (Francois) ¶ 1. He has been detained by ICE at Pike County Correctional Facility for six months. *Id.* at ¶ 2. He has hypertension, pain when he urinates, and swollen feet. *Id.* at ¶ 6. He also has latent tuberculosis. His body mass index qualifies him as obese. He has an intellectual disability. His cumulative

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

Respondents

25. Respondent Simona Flores-Lund is the Field Office Director for Enforcement and Removal Operations (“ERO”) in the Philadelphia Field Office of Immigration and Customs Enforcement (“ICE”), an agency within the U.S. Department of Homeland Security. ERO is a division of ICE that manages and oversees the immigration detention system. In her capacity as Field Director for ERO, Respondent Flores-Lund exercises control over and is a custodian of immigration detainees held at all of the correctional facilities in Pennsylvania that house ICE detainees, including the two at issue in this case, namely, the York County Prison and the Pike County Correctional Facility. At all times relevant to this Complaint, Respondent Flores-Lund was acting within the scope and course of her employment with ICE. She is sued in her official capacity.

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

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

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

29. Respondent Clair Doll is the Warden of the York County Prison in York, Pennsylvania, where Petitioners Aaron Hope, Iwan Rahardja, Rakibu Adam, Yelena Mukhina, Nahom Gebretnisae, Ismail Muhammed, Glenn Weithers, Konstantin Bugarenko, Viviana Ceballos, Wilders Paul, Alexander Alvarenga, Dembo Sannoh, and Jesus Angel Juarez Pantoja are detained. Respondent Doll is the immediate, physical custodian of these Petitioners. He is sued in his official capacity.

30. Respondent Craig A. Lowe is the Warden of the Pike County Correctional Facility in Lords Valley, Pennsylvania, where Petitioners Jesus De La

Pena, Duc Viet Lam, Brisio Balderas-Dominguez, Marcos Javier Ortiz Matos, Armando Avecilla, Coswin Ricardo Murray, Edwin Luis Crisostomo Rodriguez, Eldon Bernard Briette, and Alger Francois are detained. Respondent Lowe is the immediate, physical custodian of these Petitioners. He is sued in his official capacity.

STATEMENT OF FACTS

A. COVID-19 Poses A Grave and Elevated Risk of Harm, Including Serious Illness or Death, to Persons Age 65 and Over and Those with Certain Medical Conditions.

31. COVID-19 is a disease caused by coronavirus that has reached pandemic status. According to the World Health Organization, as of April 3, more than 932,166 people have been diagnosed with COVID-19 in 25 countries or territories around the world and 46,764 have died as a result. Ex. 1, Apr. 3, 2020 Amon Decl. (Amon 1) at ¶ 5.² The United States has the highest number of reported cases: 245,573 people have been diagnosed with the disease and 6,058 people have died thus far. *Id.* In Pennsylvania, there are at least 7,016 confirmed cases and 90 deaths. *Id.* The rates of infection are exponential, not linear, meaning that, for each person infected one day, the next day we should expect to see not one, but many more instances of infection. *Id.* Without effective public health interventions, CDC projections indicate about 200 million people in the United States could be infected

² Petitioners rely on two declarations from Dr. Amon. Ex. 1 has been prepared for this lawsuit and is dated April 3. They also rely on Ex. 2, his March 24, 2020, declaration in *Thakker*.

over the course of the pandemic, with as many as 1.5 million people dying from this infection. Ex. 3 (Golob) at ¶ 11.³ Outcomes from COVID-19 vary from asymptomatic infection to death. Individuals who are at low risk may experience mild symptoms, while high-risk individuals may suffer respiratory failure from the disease. Amon 1 at ¶ 6. In the highest risk populations, the fatality rate is about 15 percent, meaning that out of 100 vulnerable people infected, fifteen will die. Golob at ¶ 4. In other words, more than one in every seven people in this high-risk group are likely to die, and an even higher percentage will suffer serious illness.

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

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

34. Emerging evidence also suggests that COVID-19 can trigger an over-response of the immune system, further damaging tissues in a cytokine release

³ Dr. Golob's declaration was prepared for *Thakker v. Doll*, but is still relevant to provide medical background about the virus.

syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury. *Id.*

35. Individuals aged 65 and older and those of any age with serious underlying medical conditions are at the *highest risk* of severe disease and death if they are infected with COVID-19. Amon 1 ¶ 9. According to the Centers for Disease Control and Prevention (CDC), these underlying conditions include: blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders, including diabetes, metabolic disorders, heart and lung disease, neurological and neurodevelopmental conditions “including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability[,]” and current or recent pregnancy. *Id.* at ¶ 8. The CDC also identifies individuals with a body mass index (BMI) greater than 40 to be at higher risk for severe illness. *Id.*

36. There is no vaccine to prevent COVID-19. There is no known cure or anti-viral treatment for COVID-19 at this time. The only way to protect vulnerable people from serious health outcomes, including death, is to prevent them from being infected with the coronavirus. *Id.* at ¶ 6.

37. COVID-19 infects people who come into contact with respiratory droplets that contain the coronavirus. *Id.* at ¶ 33. Speech alone can produce these droplets. *Id.* at 34. Contact with particles that transmit the virus can occur at a

distance of six feet. *Id.* at ¶ 33. It is also possible that an individual can become infected by touching a surface with the virus and then touching their mouths. Thus, the only known means of minimizing the risk of infection are social distancing and increased sanitization. *Id.* at ¶ 35.

38. Increasingly, research shows that social distancing is the primary means of risk mitigation. Distancing must occur before individuals display symptoms, as they may be contagious before they are symptomatic. The CDC recommends a social distance of at least 6 feet to minimize the risk of spread. *Id.* at ¶¶ 33, 34; Golob at ¶ 10.

39. In response to this research, countries around the world have sought to make social distancing into public policy. In the United States, fifty states, seven territories, and the District of Columbia have all taken formal executive action to contain the outbreak. *Id.* at ¶ 36. These measures include stay at home orders that now cover at least 97 million people across the country. *Id.* On April 1, Governor Wolf extended the pre-existing county-by-county stay-at-home orders to cover the entire state of Pennsylvania. *Id.* The idea behind these actions is that, by “flattening the curve,” those most vulnerable will be least likely to become infected and, if they do, the numbers of infected individuals will be low enough that medical facilities will have enough beds, masks, and ventilators for those who need them. *Id.* at ¶ 26.

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

40. The conditions in Pennsylvania’s immigrant detention facilities contravene all medical and public health directives for risk mitigation. People live in close quarters and cannot achieve the “social distancing” needed to effectively prevent the spread of COVID-19. Nor is such social distancing a possible solution, given the crowding of the facilities and the limitations on space.

41. At York, individuals are crowded into dorms of around 60 people. Juarez Pantoja at ¶ 8. They sleep in bunk beds only about 2 feet apart. Muhammed at ¶ 10. Ventilation in the facility is poor. Paul at ¶ 12. Plaintiffs are forced to move within these spaces without attention to necessary social distancing. *Id.* at ¶ 10.

42. In Pike, individuals within blocks are forced into small cells that they share with two other people, with two people sleeping on a bunk bed and one person in a bed just two or three feet away. Avecilla at ¶ 8. A toilet and sink that the detained individuals must share further crowds the cell, making it impossible to maintain 6 feet of distance. *Id.*

43. Other aspects of detention also preclude the CDC-recommended social distancing, and increase transmission opportunities. Shared use of common facilities generates further opportunities for infection. Toilets, sinks, and showers are shared, without disinfection between use. Amon 1 ¶ 41. Mass food preparation and distribution across the facility presents a further locus for virus transmission. *Id.*

44. At York, detained individuals eat at communal tables for four so small that the edges of the trays touch the end of the table. Juarez Pantoja at ¶ 10. Social distancing is impossible in this small space.

45. Nor is there adequate space in bathrooms: there are four toilets and two urinals and six showers for a unit of nearly sixty. *Id.* at ¶ 8. Because sanitization supplies are not provided, detained individuals cannot maintain proper hygiene. Detainees are given only one bar of soap a week, which they must bring with them to the bathroom. Alvarenga at ¶ 15. They are not provided hand sanitizer. *Id.*; Rahardja at ¶ 12. They also must clean the bathrooms with a cleaning material that likely has no alcohol or bleach. Alvarenga at ¶ 15. When one individual asked for disinfectant, he was denied. Hope at ¶ 12. Detainees have limited access to running water, and must use bathroom sinks that are for hand washing and brushing teeth to access water for food they prepare in their dorms. Ruiz at ¶ 5.

46. Additional common surfaces, including phones and tablets, create potential sources of infection. Because there are a limited number of tablets and phones, the only means to communicate with loved ones and counsel is to share these devices. Hope at ¶ 10. Yet the facilities limit access to proper disinfecting products to clean them between use. *Id.* at ¶ 12. Detainees resort to using toilet paper and towels to try to keep themselves safe from infectious spread. Alvarenga at ¶ 15.

47. At Pike, an entire unit of around 50 people shares a set of four showers, with an average of 12 people sharing each shower when all showers are functional. *Avecilla* at ¶ 11. Ventilation in the facility is poor. *Id.* at ¶ 13; *Briette* at ¶ 14. As at York, phones and tablets at Pike are shared among many detained individuals within each block, yet the supplies allotted to clean are diluted and insufficient. *Briette* at ¶ 15.

48. While Pike has instituted a lockdown in response to COVID-19, it is still insufficient to protect detainees. Groups of 12 men are let out of their cells together for a short time every day and clamber to use the shared tablets and showers. *De La Pena* at ¶ 10. Detainees are still working, including Plaintiff *De La Pena*, who works nights cleaning the floors of the facility. *Id.*

49. These crowded conditions, in both sleeping and social areas prohibit effective social distancing necessary to protect against transmission. Shared objects (bathrooms, sinks, etc.) maximize the likelihood that COVID-19 will spread rapidly across the facilities. *Amon 1* at ¶ 48. These conditions create serious risk that vulnerable detainees will become infected.

50. Similar viral spread has already occurred at other detention facilities. In New York City, for example, where the testing began earlier than in Pennsylvania, jails have become an epicenter of infectious spread. As of Tuesday, March 31, 141 staff and 180 individuals in custody had tested positive at Riker's Island and city

jails in New York City. The Legal Aid Society in New York recently reported that the infection rate for COVID-19 at local jails is more than seven times higher than the rate citywide and 87 times higher than the country at large. Amon 1 ¶ 51.

51. There is growing evidence of contagion and inadequate medical care within the facilities where Plaintiffs are detained. Even before quarantines, plaintiffs from each facility reported having issues receiving adequate medical care. *See* Juarez Pantoja at ¶5. Rahardja at ¶ 8; Briette at ¶ 10.

52. Since COVID-19 has become a known public health threat, the facilities have failed to take precautions. Not only are detained individuals not provided with masks to protect themselves, but the workers who come in and out of units to serve food also do not wear masks. Alvarenga at ¶17; Matos at ¶¶ 12-13. Staff also move between units without masks. Juarez Pantoja at ¶ 11. Even medical workers sometimes do not wear masks. Avecilla at ¶ 14. These multiple points of contact provide multiple potential vectors for infection. Indeed, Plaintiffs are concerned that guards may be infected and may be spreading the illness through the facility. Avecilla at ¶17.

53. Even where measures are taken, they are insufficient to prevent spread across the facility. For example, at York, all individuals housed in a single unit are put on quarantine within the same dorms in which they are unable to practice social distancing. Mukhina at ¶ 11; Paul at ¶ 10. Because no one is tested to determine who

is actually infected and who is not, this kind of quarantine facilitates transmission to non-infected individuals within the unit. Paul at ¶ 12; Alvarenga at ¶ 19; *see also* Amon 1 ¶ 61. In one instance, an individual was removed, but his bunk was not cleaned and his bunk mate continues to sleep in this potentially contaminated space. Rahardja at ¶ 10. Temperature checks are infrequent, with one individual reporting a single test about a week and a half ago. Juarez Pantoja at ¶ 11; *see also* Alvarenga at ¶ 20. In the women's unit, multiple individuals under quarantine have reported symptoms, but those who are not are left without protection. Mukhina at ¶ 11. The women's unit has also been unable to access utilities like the laundry, which makes the space less hygienic. *Id.*

54. Access to medical treatment and medication has also been delayed or inconsistent at York, which is especially troubling for detainees who take medications that should be given at evenly spaced intervals. Paul at ¶¶ 11, 13. Detainees' quarantined blocks have also had their immigration hearings or custody reviews rescheduled, which may lengthen their detention. Mukhina at ¶ 12; Paul at ¶ 13; Ceballos at ¶ 9.

55. At Pike, two individuals reported COVID-19 symptoms, but were being left in the cell without care, risking their health and the health of others still in the unit. Avecilla at ¶ 15. Pike is also keeping quarantined detainees in the same block as other detainees, including the working block, which houses 67 men. De La

Pena at ¶ 14. Individuals in cells with others who were removed after presenting symptoms of COVID-19 report that the facility did not even test them. Crisostomo Rodriguez at ¶ 8. Detainees housed in the same block as those in quarantine are not provided masks. De La Pena ¶ 13. As at York, cohorting in this way could mean disease transmission will be facilitated rather than prevented. Amon 1 ¶ 61.

56. While some individuals have reported temperature checks, no plaintiffs have observed or heard word of medical staff administering tests to anyone reporting symptoms. De La Pena ¶13. In fact, Pike denied a Petitioner’s request to be tested after he his cellmates exhibited symptoms and were removed from his cell. Crisotomo Rodriguez at ¶ 8. Because of asymptomatic and pre-symptomatic transmission, temperature checks alone are insufficient to identify infected individuals who may be infected and infecting others. Amon 1 ¶ 50(a).

57. The failure to perform tests of staff who have ongoing community contacts presents a daily risk of introduction of the virus into the detention facility. *Id.* at ¶ 50(d). The entire state of Pennsylvania is reported to have “widespread” community transmission, and therefore all staff are potential vectors of the virus. *Id.* at ¶ 50(b). The possibility of asymptomatic transmission means that monitoring staff for fever is also inadequate for identifying all who may be infected and preventing transmission. *Id.* at ¶ 50(a). This is also true because not all individuals infected with COVID-19 report fever in early stages of infection. Ex. 2 (Amon Decl.) at ¶ 42.

58. A lack of proven cases of COVID-19 where there is little to no testing is functionally meaningless for determining if there is a risk for COVID-19 transmission in a community or institution. Golob at ¶ 7. In other jurisdictions where testing has been made available to correctional officers who enter and leave facilities regularly, the rates of infection are high. Amon 1 at ¶¶ 51, 52.

59. At Pike, one inmate has tested positive for COVID-19 and is currently hospitalized, and three staff members, and one contract employee have tested positive for COVID-19.⁴ Many others have witnessed cell mates and people in their unit exhibiting symptoms, sometimes without any attention from the correctional officers. Avecilla at ¶¶ 15, 16. York's quarantine suggests that the virus may have infected that facility as well.

60. Once introduced, it will be impossible to stop the spread of the virus within the facility, where social distancing measures are impossible. CDC guidance specifically recommends implementing social distancing strategies to increase the physical space between incarcerated and detained persons, "ideally 6 feet between all individuals, regardless of the presence of symptoms," but Respondents continue to hold Plaintiffs in conditions where they sleep an arm's reach away from each other

⁴ Coronavirus COVID-19 Updates from the Pike County Commissioners, April 2, 2020 Update, <https://news.pikepa.org/post/2020/03/09/COVID-19-Update> (last visited April 3, 2020)

in a room full of people with whom they share bathrooms and eating spaces. Weithers at ¶ 12; Alvarenga at ¶ 13; Avecilla at ¶ 8. *see also* Amon 1 at ¶¶ 42.

61. Even were the Respondents to implement the specific ICE guidance for cohorting stringently across the facilities—which they have not done—these actions will not prevent the introduction of the virus and its spread within the facility because of the potential for asymptomatic transmission from facility staff or other individuals in ICE custody. *Id.* at ¶¶ 61, 62. Moreover, the CDC guidance makes clear that cohorting must separate those suspected of having the virus from those who are not, a determination that can only be made with widespread testing. *Id.* at ¶¶ 59, 61. Yet Respondents fail to follow this protocol. There is no evidence that Respondents are conducting widespread testing. Without knowing who is infected, cohorts threaten to facilitate transmission. Amon 1 at ¶ 61. The size of the cohort that Respondents used at the Pike facility—a block of 48 men—threatens to expose many individuals to the virus. Avecilla at ¶¶ 8, 15, 16; Crisostomo Rodriguez at ¶¶ 10; 11; *see also* De La Pena at ¶ 9 (describing how his block has 67 men). York has a similar practice, “cohorting” the entire block, which is about 60 people. Alvarenga at ¶ 19; Mukhina at ¶ 11. Given that York’s housing is dormitory style and open, this practice puts the entire block is at risk of exposure.

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

62. Without a vaccine or cure for COVID-19, mitigating the risk of contracting virus is the only known way to protect those who are most vulnerable to serious harm from infection. Golob at ¶ 10; Amon 1 at ¶¶ 6, 35.

63. 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 detention and correctional settings have recommended release of vulnerable individuals from custody. Golob at ¶ 14; Amon 1 at ¶¶ 70, 73.

64. High risk individuals who become infected will not receive adequate treatment. Immigration detention facilities lack adequate medical care infrastructure to address the strain of an outbreak. Amon 1 at ¶¶ 54, 64, 65. As a result, detained individuals who are age 65 and over or are any age with medical conditions that put them at high risk of illness if infected by COVID-19 are at grave risk of severe illness and death and should be released.

65. If they are not released before the virus spreads through the prison, ill detainees will likely be unable to access necessary medical care, including positive pressure ventilation and, in extreme cases, extracorporeal mechanical oxygenation. *See* Golob at ¶ 8. This is because an outbreak among detainees and corrections staff

will strain the limited medical infrastructure in the rural counties in which these detention facilities are located. Once infection spreads throughout the detention center, the burden of caring for these individuals will shift to local medical facilities. The few facilities will likely not be able to provide care to all infected individuals with serious cases, increasing the likelihood that these individuals will die. Amon 1 at ¶ 65. Thus, high risk individuals should be released from detention centers before it is too late.

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

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

67. Plaintiff **Aaron Hope** is a 32-year-old male native of Trinidad. Hope at ¶ 1. He is eligible to adjust his status through his U.S. citizen wife. *Id.* at ¶ 2. One brother is also a citizen and his other brother and mother are legal permanent residents. *Id.* He has been detained at the York County Prison since September 15, 2019. *Id.* at ¶ 3.

68. Mr. Hope has suffered from asthma since childhood, was hospitalized with pneumonia in 2012, was diagnosed with sleep apnea in 2013, and was

diagnosed with high blood pressure in 2017. *Id.* at ¶¶ 6-9 His underlying health conditions place him at high risk of severe illness or death if he contracts COVID-19. Mr. Hope's serious health conditions place him at high risk of severe illness or death if he contracts COVID-19. *Amon 1* at ¶ 11.

69. On March 27, 2019, Mr. Hope joined in a hunger strike at York County Prison to protest the unhygienic conditions and lack of appropriate precautions to prevent the spread of COVID-19. *Id.* at ¶¶ 10-13. The next day, March 28, correctional officers told Mr. Hope that they believed he was a leader of the strike and therefore was being put into segregation. *Id.* at ¶ 14. In the process of being moved to segregation, unidentified officers severely assaulted him, stripped him naked, and left him naked, badly bruised and handcuffed on the floor of the segregation cell. *Id.* at ¶¶ 12-19. He was denied repeated requests for medical treatment until Tuesday, April 1, when the prison finally transported him to a local hospital emergency room. *Id.*

70. Plaintiff **Iwan Rahardja** is a 51-year-old a citizen of Indonesia who has lived in the U.S. for nearly 20 years. Rahardja ¶ 1. He is married to a U.S. citizen and has two daughters, who are legal permanent residents. *Id.* at ¶ 3. He was granted asylum, but the finding was overturned on appeal. *Id.* at ¶ 2. He has been attempting to adjust his status based on his marriage to a U.S. citizen wife. Mr. Rahardja has

been detained by ICE at the York County Prison since February 27, 2020. *Id.* at ¶ 6. He has no criminal record.

71. Mr. Rahardja suffers from diabetes and hypertension, for which he has been prescribed medications that he continues to take while in detention. *Id.* at ¶¶ 4. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 12.

72. Plaintiff **Jesus De La Pena** is a 37-year-old man from Mexico who has lived in this country since age 6. De La Pena at ¶ 1. He is married and has four children, ranging in age from 5 to 18. He has been detained for a year by ICE at Pike County Correctional Center. *Id.* at ¶ 3. He was granted non-lawful permanent resident cancellation of removal in October 2019, but remains detained pending ICE's appeal. *Id.*

73. Mr. De La Pena suffers from severe asthma and hypertension. *Id.* at ¶ 5. He is also over-weight, i.e., 5' 7" tall and 290 pounds. *Id.* He is prescribed about 12 pills per day. *Id.* at ¶ 7. Several months ago Pike took him to the hospital with bad chest pains and an abnormal EKG. *Id.* at ¶ 6. His immigration lawyer recently asked ICE to release him due to health issues, but on March 31 ICE officials refused. *Id.* at ¶ 8. His medical conditions and his obesity place him at high risk for severe disease and death if he contracts COVID-19. Amon 1 at ¶ 13.

74. Plaintiff **Rakibu Adam** is a 34-year-old man from Ghana who has lived in the United States since 2014. Adam ¶ 1. He is married with two U.S. citizen children (ages 2 and 5). He recently had his merits hearing and is awaiting a decision in his claim for asylum. Mr. Adam has been detained by ICE at York County Prison since October 2019. *Id.* at ¶ 3. ICE picked him up after his first court hearing for retail theft. *Id.* at ¶ 4.

75. Mr. Adam suffers from asthma and high blood pressure. *Id.* at ¶ 6. He takes daily medication for his high blood pressure and has recently had trouble breathing. *Id.* at ¶ 6. His medical condition places him at high risk of severe illness or death if he contracts COVID-19. *Amon 1* at ¶ 14.

76. Plaintiff **Duc Viet Lam** is a 50-year-old man from Vietnam who has lived in the U.S. for 13 years. Viet Lam at ¶¶ 1. He is married to a lawful permanent resident and has filed an 1-130 petition to adjust his status, thereby staying his deportation order. *Id.* at ¶ 2.

77. Mr. Viet Lam has been detained by ICE at the Pike County Correctional Center since January 2020. *Id.* at ¶ 3. ICE picked him up after he received probation for a disorderly conduct summary offense, for which he received probation. *Id.* at ¶ 2. That is his only offense. *Id.*

78. Mr. Viet Lam suffers from diabetes and high blood pressure, for which he receives medications. *Id.* at ¶ 4. Several years ago he was hospitalized for three

days because of the high blood pressure. *Id.* His medical condition places him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 15.

79. Plaintiff **Yelena Mukhina** is a 35-year-old woman from Ukraine who has been in this country for 14 years. Mukhina at ¶ 1. She is a lawful permanent resident and has a 10-year-old U.S. citizen daughter. *Id.* at ¶ 2. Her fiancé is also a U.S. citizen. *Id.* Ms. Mukhina has been detained by ICE at York County Prison since February 2020. *Id.* at ¶ 3. She is seeking Lawful Permanent Resident Cancellation of Removal. Because her block is on quarantine, her immigration hearing was rescheduled from April 1, 2020 to May 12, 2020. *Id.* at ¶ 13.

80. Ms. Mukhina has suffered from asthma since 2010. *Id.* at ¶ 5. She is unable to sleep because of how bad her breathing problems are. *Id.* at ¶ 9. She has hepatitis C, suffers from seizures, has suffered from blood clots in her heart, and has a heart murmur. *Id.* at ¶ 7-9. Her multiple health issues place her at high risk of severe illness or death if she contracts COVID-19. Amon 1 at ¶ 16.

81. Plaintiff **Nahom Gebretnisae** is a 28-year-old man from the Eritrea who has lived in the U.S. for more than 20 years. Gebretnisae at ¶¶ 1, 2. His entire family – elderly parents, ages 79 and 91 and four older siblings – arrived in 1998 and now are U.S. citizens. *Id.* at ¶ 2. He has been detained by ICE since February 18, 2020, at York County Prison. *Id.* at ¶ 3.

82. Mr. Gebretnisae has for the past 13 years suffered from Crohn's Disease and related arthritis and severe nerve and general pain. *Id.* at ¶ 4. He is prescribed many medications. *Id.* at ¶¶ 5-11. Mr. Gebretnisae cannot alleviate his symptoms with the limited food choices available in the prison, which has caused him to suffer severe cramps, diarrhea, arthritis and pain. *Id.* at ¶¶ 9-10. Because he taking immunosuppressants, he may be immunocompromised and at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 17.

83. Plaintiff **Ismail Muhammed** is a 69-year-old man from Pakistan who has been in the U.S. since 2002. Ismael at ¶¶ 1st un-numbered and 1. Mr. Ismael has been held at the York County Prison since December 19, 2019. *Id.* at ¶ 1.

84. Mr. Ismael has recently lost about 25 pounds, suffered from asthma-type attacks, and is pre-diabetic. *Id.* at ¶¶ 3-8. In recent months he has grown increasingly frail. *Id.* His advanced age puts him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 18. His prediabetes and breathing difficulties could also put him at increased risk and complicate treatment. *Id.*

85. Plaintiff **Glenn Weithers** is a 49-year-old man from Guyana who has lived in the United States for more than 32 years as a lawful permanent resident. Weithers at ¶ 1. His brother, sister, children, and grandchildren are all U.S. citizens. *Id.* at ¶ 2. Mr. Weithers has been detained by ICE at York County Prison since January 2019. *Id.* ¶ 4. He currently has a motion to reopen pending. *Id.*

86. Mr. Weithers has emphysema and chronic obstructive pulmonary disease. *Id.* at ¶ 7. He has had difficulty receiving adequate treatment and has recently been having breathing issues at night. *Id.* at ¶ 9. His lung-related illness places him at high risk of severe illness or death if he contracts COVID-19. *Amon 1* at ¶ 19.

87. Plaintiff **Konstantin Bugarenko** is a 49-year-old man from Ukraine. Bugarenko at ¶ 1. He has lived in the United States for nearly 24 years as a lawful permanent resident. *Id.* He is married to a U.S. citizen and they have five U.S. citizen children together. *Id.* at ¶ 2. Mr. Bugarenko has been detained by ICE at York County Prison since October 2017. *Id.* at ¶ 5. He is currently seeking a rehearing in his case before the U.S. Third Circuit Court of Appeals. *Id.* at ¶ 4.

88. Mr. Bugarenko suffers from prediabetes, high blood pressure, and diverticulitis. *Id.* at ¶ 5. He also suffers re-occurring and debilitating pain in his feet that renders him temporarily unable to walk. *Id.* at ¶ 5. His medical conditions could put him at a heightened risk of complications if he contracts COVID-19. *Amon 1* at ¶ 20.

89. Plaintiff **Brisio Balderas-Dominguez** is a 47-year-old man from Mexico who came to this country in 1991 after cartel members murdered his father, a judge. Balderas-Dominguez at ¶¶ 1, 3. He is married to a U.S. citizen woman and has four U.S. citizen children. *Id.* at ¶ 4. Mr. Balderas-Dominguez has been detained

by ICE for nearly three years at the Pike County Correctional Center. *Id.* at ¶ 5. His application for relief under the Convention Against Torture (“CAT”) is pending before the U.S. Third Circuit Court of Appeals, which issued an order staying his deportation. *Id.* at ¶ 6.

90. Mr. Balderas-Dominguez suffers from diabetes, atrial fibrillation, and high blood pressure, for which he takes many medications. *Id.* at ¶¶ 8, 9. His medical conditions place him at high risk of severe illness or death if he contracts COVID-19. *Amon 1* at ¶ 21.

91. Plaintiff **Viviana Ceballos** is a 56-year-old woman from Argentina who has lived in the United States for over 29 years. **Ceballos** ¶ 3. She became a lawful permanent resident in 1994. *Id.* She has been detained by ICE at York County Prison since March 2019. *Id.* at ¶ 7.

92. Ms. Cabellos is awaiting a decision from the Board of Immigration Appeals to reopen her case on the grounds that she is now eligible for Cancellation of Removal after vacating a conviction for stolen property under the Post Conviction Relief Act (PCRA). *Id.* at ¶¶ 5, 6. DHS has indicated they to not oppose her Motion to Reopen. *Id.* at 6.

93. On April 2, 2020, Ms. Cabellos’s attorney received an email from an ICE officer informing her that Ms. Cabello’s parole redetermination hearing was postponed because she is in a cohorted dorm. *Id.* at ¶ 7.

94. Ms. Cabellos has high blood pressure, for which she receives medication. *Id.* at ¶ 12. Her high blood pressure and age likely place her at a heightened risk of complications from s COVID-19. Amon 1 at ¶ 22.

95. Plaintiff **Wilders Paul** is a 32-year-old man from Haiti. Wilders at ¶ 1. He has lived in the United States since he was three years old. *Id.* at ¶ 1. He is married to a U.S. citizen and they have two children together—a son (age 13) and daughter (age 7). *Id.* He has been detained by ICE since December 28, 2019. *Id.* at ¶ 3. Mr. Paul is seeking adjustment of status through his U.S. citizen wife before EOIR. *Id.* His immigration lawyer recently asked ICE to release him due to health issues, but on March 31 they refused. *Id.* at ¶ 8.

96. As a result of a traumatic brain injury, Mr. Paul suffers from seizures and migraines. *Id.* at ¶¶ 6, 7. He takes the anti-seizure medication Keppra twice a day. *Id.* at ¶ 7. Prior to his detention, he also took migraine medication, but York is not providing him with this medication. *Id.* at ¶¶ 6, 7. His seizures likely put him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 23.

97. Plaintiff **Marco Javier Ortiz Matos** is a 32-year-old man from the Dominican Republic who has lived in this country for nearly 20 years. Ortiz Matos at ¶¶ 1, 2. He has been detained by ICE since November 2019 at Pike County Correctional Center. *Id.* at ¶ 3.

98. Mr. Ortiz Matos suffers from diabetes, for which he takes two medications. *Id.* at ¶¶ 4-7. He also has stomach ulcers. *Id.* His diabetes places him at high risk of severe illness or death if he contracts COVID-19. *Amon 1* at ¶ 24.

99. Plaintiff **Alexander Alvaregna** is a 46-year-old man from El Salvador. Alvaregna at 1st unnumbered ¶ and ¶ 1. He has lived in the U.S. since 1984, when he was age 9. *Id.* at ¶ 1. All of his siblings live in the U.S. *Id.* He has three children – age 13, 25 and 29 – all of whom are U.S. citizens. *Id.* at ¶¶ 1, 4. He is very close to all of the aforementioned family members. *Id.* at ¶ 4.

100. Mr. Alvaregna was granted Temporary Protected Status in 1991, which then adjusted to Lawful Permanent Resident status in 1993. *Id.* at ¶ 2. Mr. Alvaregna has been detained at York County Prison since March 2, 2019. *Id.* at ¶ 5. An appeal of his denial of relief under the Convention Against Torture is pending before the BIA. *Id.* at ¶ 6.

101. Mr. Alvaregna suffers from diabetes, high blood pressure, atrial fibrillation, high cholesterol, and partial physical disability due to a 2019 accident. *Id.* at ¶¶ 7-11. He is prescribed and takes medications for all of the foregoing medical conditions. *Id.* His serious health conditions place him at high risk of severe illness or death if he contracts COVID-19. *Amon 1* at ¶ 25.

102. Plaintiff **Armando AVECILLA** is a 53-year-old man from Panama. AVECILLA at ¶ 1. He fled Panama after he was shot multiple times in the head, which

put him into a coma for a month, blinded one eye, and injured his jaw so badly he has difficulty eating. *Id.* at ¶ 7. Mr. Avecila has been detained at Pike County Correctional Center since November 2019. *Id.* at ¶ 4. His appeal of his denial of asylum by the immigration court will be filed shortly by his immigration lawyer with the BIA. *Id.* at ¶ 2.

103. Mr. Avecilla has suffered from diabetes since 2010, for which he continues to receive daily medication. *Id.* at ¶ 6. He also suffers from partial disability caused by the gunshot wounds to his head. *Id.* at ¶ 7. His diabetes puts him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 26.

104. Plaintiff **Coswin Ricardo Murray** is a 45-year-old man from Barbados who has lived in this country for 33 years. Murray at ¶¶ 1-2. He is married and has four children, between the ages of 11 and 22, all of whom are U.S. citizens. *Id.* at ¶ 2. His wife is suffering from cancer—she has already had one kidney removed and the disease has spread to her bones—and he desperately wants to be with her. *Id.* at ¶¶ 2, 5, 6. ICE has detained Mr. Murray at Pike County Correctional Center since August 2019. *Id.* at ¶¶ 4, 6. Mr. Murray is in the process of trying to adjust his status based on his marriage to a U.S. citizen. *Id.* at ¶ 3.

105. Mr. Murray suffers from asthma, for which Pike refuses to give him an inhaler. *Id.* at ¶¶ 7-8. Mr. Murray's lung-related illness places him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 27.

106. Plaintiff **Edwin Luis Crisostomo Rodriguez** is a 31-year-old man from the Dominican Republic who has lived in the U.S. since 2016. Rodriguez at ¶¶ 1, 3. He is married to a lawful permanent resident, and has two step daughters. *Id.* at ¶ 4. Mr. Crisostomo Rodriguez has been detained since February 20, 2020, at the Pike County Correctional Center. *Id.* at ¶ 3.

107. Mr. Crisostomo Rodriguez has suffered from asthma since childhood, *id.* at ¶ 7, which places him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 28.

108. Plaintiff **Eldon Bernard Briette** is a 46-year-old man from Turks and Caicos who has lived in the U.S. for 35 years, since age 12. Briette at ¶¶ 1, 4. He is engaged to a U.S. citizen and has two U.S. citizen children. *Id.* at ¶ 4. Mr. Briette has been detained at the Pike County Correctional Center by ICE since November 12, 2019. *Id.* at ¶ 5. His case seeking withholding of removal is pending before the BIA. *Id.* at ¶ 2.

109. Mr. Briette suffers from diabetes, high blood pressure, high cholesterol, depression and anxiety. *Id.* at ¶¶ 6-9. He takes medications for all of these conditions, probably 8-9 pills a day, including now at Pike. *Id.* For the past two months, he has coughed heavily and fever-related symptoms. *Id.* at ¶ 10. His medical condition likely put him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 29.

110. Plaintiff **Dembo Sannoh** is a 41-year-old man from Sierra Leone. Sannoh at ¶ 1. He fled Sierra Leone after his parents were killed during the civil war and arrived to the United States in 2002. *Id.* at ¶ 2. He was granted asylum and in 2013 became a lawful permanent resident. *Id.* at ¶ 3. Mr. Sannoh has been detained by ICE at York County Prison since August 2019. His case is currently before the Board of Immigration Appeals (BIA). *Id.* at ¶ 3.

111. He has diabetes, hepatitis C, and an unidentified heart condition. *Id.* at ¶ 6. His medical condition places him at high risk of severe illness or death if he contracts COVID-19. *Amon 1* at ¶ 30.

112. Plaintiff **Jesus Angel Juarez Pantoja** is a 36-year-old man from Mexico who has lived in the U.S. since age 6. Juarez Pantoja at ¶ 1. He is married and has three children, ages 8, 10 and 19, as well as a 3-month-old grandson. *Id.* One of his daughters suffers from depression, which has been exacerbated by his detention. *Id.* at 16. Mr. Juarez Pantoja has been detained by ICE at York County Prison since November 2019. *Id.* at ¶ 2. His immigration appeal is pending before the BIA. *Id.* at ¶ 14.

113. He suffers from asthma, sleep apnea and high blood pressure. *Id.* at ¶¶ 3-6. He is prescribed an inhaler for the asthma, but York does not allow him to keep it; rather he needs to let a correctional officer know he needs it and they will bring him to the medical unit to use the inhaler. *Id.* at ¶ 3. York recently placed him in

disciplinary status for suspected organizing activity around a hunger strike to protest conditions and treatment involving COVID-19, *id.* at ¶ 7, but being alone in a cell raises increased health concerns because he may not be able to summon help in the event he experiences asthma-related breathing problems, *id.* at ¶ 15. His asthma puts him at high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 31. His other health issues, including high blood pressure and obesity, also put him at risk for possible complications in his treatment should he contract COVID-19. *Id.*

114. Plaintiff **Duckens Max Adler Francois** 45-year-old man from Haiti who has lived in the United States for 30 years. Francois at ¶ 1. Mr. Francois has been detained by ICE at Pike County Correctional Facility for six months. *Id.* at ¶ 2. He is seeking Lawful Permanent Resident Cancellation of Removal and is awaiting his merits hearing. Hubbard at ¶ 4.

115. Mr. Francois has hypertension, pain when he urinates, and swollen feet. Francois at ¶ 6. He is awaiting a medical appointment for further testing and diagnosis. *Id.* He also has an intellectual disability and is obese. Hubbard at ¶ 5. He also has latent tuberculosis. *Id.* His medical conditions likely puts him at a high risk of severe illness or death if he contracts COVID-19. Amon 1 at ¶ 32.

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

116. Public health measures across the country, including in Pennsylvania, demonstrate the widespread recognition that the only clinically recommended course of action to protect individuals who have medical conditions that make them vulnerable to serious illness or death from COVID-19 is to practice social distancing and increased hygiene. Only these practices mitigate the risk of contracting this novel virus that has no cure. Golob at ¶ 10; Amon 1 at ¶¶ 6, 35.

117. CDC guidance for detention centers and prisons specifically recommends implementing social distancing strategies to increase the physical space between people, “ideally 6 feet between all individuals, regardless of the presence of symptoms.” *Id.* at ¶ 42.

118. None of the ICE facilities are following CDC guidance in relation to social distancing, putting all detainees, and especially those at high risk of severe disease and death, in jeopardy. *Id.* at ¶ 48. Plaintiffs are forced to sleep in crowded dorms that do not allow six feet of distance from each other, Juarez Pantoja at ¶ 8; Muhammed at ¶ 10,⁵ or are housed three to an eight-foot-by-

⁵ See also *Thakker* Dkt. 2-10 (Pratt Decl.) at ¶ 7; *Thakker* Dkt. 2-4 (Idowu Decl.) at ¶ 11; *Thakker* Dkt. 2-11 (Augustin Decl.) at ¶ 16.

twelve-foot cell, with two people sharing a bunk bed, and with a shared toilet and sink between all three. *Avecilla* at ¶ 8.⁶

119. Nor will the policy of “cohorting” prevent the spread of the virus to Plaintiffs. Contrary to CDC recommendations to cohort individually, ICE cohorts many people together, between 30 to 50 to a room or triple celled at Pike and 60 to a room at York. Even if ICE is to implement this policy at the facilities, asymptomatic transmission will allow individuals to infect others before showing the signs that would trigger the cohorting measures, and will force non-infected individual into small cohorted spaces with infected individuals. *Amon 1* at ¶ 61.

120. CDC guidance on correctional and detention facilities emphasizes that there are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including from staff and transfer of incarcerated/detained persons. *Amon 1* at ¶ 66. ICE claims to be following CDC guidance at its facilities. *Id.* However, the ICE action plan only provides for verbal screening and temperature checks. But asymptomatic transmission of the virus means that monitoring fever of staff or detainees is inadequate for identifying all who may be infected and preventing transmission. *Id.* at ¶

⁶ See also *Thakker* Dkt. 2-3 (Thakker Decl.) at ¶ 11

50(b). Given the shortage of COVID-19 testing in the United States, it is likely that detention facilities are and will continue to be unable to conduct aggressive, widespread testing to identify all positive cases of COVID-19. *Id.* at 50(d).

121. Respondents also have failed to implement their own alleged protocol for isolation. The protocol states: “ICE places detainees with fever and/or respiratory symptoms in a single medical housing room, or in a medical airborne infection isolation room specifically designed to contain biological agents, such as COVID-19.” *Id.* at ¶ 60. Plaintiffs’ declarations make clear that these procedures are not being implemented. But even if they were, they would be insufficient to address infectious spread. Given the rate of spread in detention facilities, there will be many more than people with COVID-19 than there are isolation rooms. *Id.* Limited infrastructure will thus mean that ICE will not be able to comply with this protocol and will therefore expose non-infected individuals held in quarantine with infected individuals.

122. Respondents also expose Plaintiffs to unsanitary conditions that increase the risk of infection and spread. They must use common toilets and showers, *Avecilla* at ¶ 8, which individual detainees clean for a dollar a day. They have no control over their soap rations or access to other sanitization products. *Alvarenga* at ¶ 15.

123. Respondents have been aware of the serious hygiene issues at their facilities, including York. Stakeholders sent a detailed letter to Ms. Flores-Lund and Warden Doll in July 2019 detailing various deficiencies in hygiene, sanitation and medical care, and thus these officials are or should have been aware of these serious problems at York County Prison. See *Thakker* Dkt. 2-19 (Ruiz Decl.) at ¶ 3. To date, York Country Prison has not implemented any changes. *Id.* at ¶ 12; Ruiz at ¶ 12.

124. On March 13, 2020, as infection rates began to increase in Pennsylvania at an alarming rate, the American Civil Liberties Foundation (ACLU) of Pennsylvania sent a letter to Defendant Flores-Lund, and other agency officials, alerting them to the high risk of COVID-19 infection in detention facilities and the dangerous health outcomes of an infection for vulnerable individuals. *Thakker* Dkt. 2-20.

125. Neither Ms. Flores-Lund nor any other agency official has responded to the letter.

126. CDC guidance recognizes that incarcerated/detained persons are at “heightened” risk for COVID-19 infection once the virus is introduced. Amon 1 at ¶ 66. All of the risks are present here, where Plaintiffs cannot practice social distancing, share common spaces and touch common surfaces, and where new individuals and staff come into the facility each day.

127. Yet ICE continues to detain Plaintiffs, and many other medically vulnerable people, in contradiction of medical advice. Even if ICE has implemented the screening measures the agency claims to be implementing, which they have not, these measures are insufficient to prevent introduction of the virus into a setting where it will spread like wildfire.

128. Respondents do not have the capability to put out this fire with the scarcity of tests and the limited physical infrastructure in which they can neither isolate nor distance individuals from each other.

LEGAL FRAMEWORK

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

129. Immigrant detainees, even those with prior criminal convictions, are civil detainees entitled to the same Fifth and Fourteenth Amendment due process protections as any other pretrial detainee. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *E. D. v. Sharkey*, 928 F.3d 299, 306–07 (3d Cir. 2019).⁷

130. Due process rights for civil detainees mean that they are “entitled to more considerate treatment and conditions of confinement than criminals

⁷ The Fifth Amendment requires the federal Respondent-Respondents to provide due process protections to Plaintiffs. The Fourteenth Amendment requires the state Respondent-Respondents to provide the same due process.

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

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

132. The government has an affirmative duty to provide conditions of reasonable health and safety to the people it holds in its custody, and violates the constitution when it “fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety” for those in custody. *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189,

199-200 (1989); *see also Union County Jail Inmates v. Di Buono*, 713 F.2d 984, 999, 1008 (3d Cir. 1983) (explaining that conditions are cruel and unusual when they “deprive inmates of the minimal civilized measure of life’s necessities,” such as the “necessity” of “habitable shelter,” as measured under “contemporary standards of decency”).

133. Courts in this Circuit have repeatedly found such “unsanitary, unsafe, or otherwise inadequate conditions” sufficient to state a Due Process claim. *Petty v. Nutter*, No. 15-3430, 2016 WL 7018538, at *2 (E.D. Pa. Nov. 30, 2016); *see Grohs v. Lanigan*, No. 16-7083, 2019 WL 150061, at *11 (D.N.J. Apr. 5, 2019) (allegations of exposure to “extreme heat combined with lack of potable water, as well as generally unsanitary conditions” sufficient to state a conditions-of-confinement claim under the Fourteenth Amendment).

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

135. To prevail on a claim that conditions of confinement violate the Eighth Amendment, Petitioners must meet two requirements: (1) the deprivation alleged must be, objectively, “sufficiently serious,” and (2) the “prison official must have a sufficiently culpable state of mind,” such as deliberate indifference to the detainee’s health or safety. *See Thomas v. Tice*, 948 F.3d 133, 138 (3d Cir. 2020) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)).

136. The Supreme Court has recognized that it violates the Eighth Amendment to crowd prisoners into cells with others who have “infectious maladies,” “even though the possible infection might not affect all of those exposed.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)); *see also Stewart v. Kelchner*, No. 06-2463, 2007 WL 9718681, at *13 (M.D. Pa. May 11, 2017), *report and recommendation adopted*, 2007 WL 9718672 (M.D. Pa. June 1, 2017).

137. Petitioners can establish deliberate indifference based on circumstantial evidence that the risk is obvious. The obviousness of the risk the Petitioners face, by itself, is enough to allow a factfinder to conclude that Respondents know of the risk. *Phillips v. Superintendent Chester SCI*, 739 F. App’x 125, 129 n.7 (3d Cir. 2018) (citing *Farmer v. Brennan*, 511 U.S. 825, 842 (1994)). Put another way, deliberate indifference may be shown through circumstantial

evidence. *Farmer*, 511 U.S. at 842 (explaining that “[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence”).

138. Due process rights may be violated even before a detainee is exposed to disease. Because the Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which is ‘reasonable safety[,]’” *Helling v. McKinney*, 509 U.S. at 33. (quoting *DeShaney*, 489 U.S. at 200), “[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them[.]” *Id.*

B.Respondents Are Violating Petitioner’s Constitutional Due Process Rights.

139. The conditions at the ICE Facilities described above, *supra* ¶¶ 40-61, are sufficient to demonstrate that Petitioners’ constitutional due process rights are being violated. Keeping at-risk Petitioners detained in such close proximity to one another and without the sanitation necessary to combat the spread of the virus serves no legitimate purpose. Nor is detention under these circumstances rationally related to the enforcement of immigration laws.

140. Petitioners’ due process rights are also being violated because their conditions of confinement place them at serious risk of being infected with

COVID-19 and Respondents are being deliberately indifferent to this critical safety concern.

141. There is no question that COVID-19 poses a serious risk to Petitioners. COVID-19 is highly contagious, and can cause severe illness and death. *See supra*, Statement of Facts § A. Petitioners are at a heightened risk because of their age and/or underlying health conditions. *See supra* ¶¶ 66, 68, 71, 73, 75, 78, 80, 82, 84, 86, 88, 90, 94, 96, 98, 101, 103, 105, 107, 109, 111, 113, 115.

142. Respondents are aware of and have completely disregarded the serious risk that COVID-19 poses to Petitioners. *See supra* ¶ 124 (ACLU March 13, 2020 letter).

143. The risk that COVID-19 poses to Petitioners is also obvious, including to Respondents. Medical experts for the Department of Homeland Security have also identified the risk of COVID-19 spreading to ICE detention centers.⁸ John Sandweg, a former acting director of ICE, has written publicly about the need to release nonviolent detainees because ICE detention centers “are extremely susceptible to outbreaks of infectious diseases” and

⁸ *See* March 19, 2020 letter from Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH to House and Senate Committees on Homeland Security, available at <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>.

“preventing the virus from being introduced into these facilities is impossible.”⁹ Prisons and jails around the country are *already* releasing non-violent detainees because the risk of contagion is overwhelming.¹⁰

144. The circumstances of this case make clear that release is the only means to ensure compliance with Petitioners’ due process rights. Public health information makes clear that the only way to prevent infection is through social distancing and increased hygiene, and that these measures are most imperative to protect individuals with underlying medical conditions. *See supra* ¶¶ 38, 63, 116. The only course of action that can remedy these unlawful conditions is release from the detention centers where risk mitigation is impossible.

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

145. ICE has a longstanding practice of prosecutorial discretion, which demonstrates that the agency understands that its authority extends to— and

⁹ *See* John Sandweg, “I Used to Run ICE. We Need to Release the Nonviolent Detainees.” *The Atlantic* (March 22, 2020), available at <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>.

¹⁰ *See* Order, Supreme Court of New Jersey, Docket No. 084230 (March 22, 2020) (ordering release of most county jail detainees), available at <https://njcourts.gov/notices/2020/n200323a.pdf?c=4EF>; *United States v. Stephens*, No. 15-cr-95, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (concluding that the “unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic” constituted compelling circumstances to adjust a Respondent’s bail conditions and release him, even though there was “not yet a known outbreak among the jail and prison populations” when the order was issued).

includes— humanitarian releases from custody. The agency has routinely exercised its authority to release particularly vulnerable detainees. As former Deputy Assistant Director for Custody Programs in ICE Enforcement and Removal Operations Andrew Lorenzen-Strait explains, “ICE has exercised and still exercises discretion for purposes of releasing individuals with serious medical conditions from detention.” *See Thakker* Dkt. 2-17 (Strait Decl.) at ¶ 3.

146. ICE has a range of highly effective tools at its disposal to ensure that individuals report for court hearings and other appointments, including conditions of supervision. For example, ICE’s conditional supervision program, called ISAP (Intensive Supervision Appearance Program), relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. A government-contracted evaluation of this program reported a 99% attendance rate at all immigration court hearings and a 95% attendance rate at final hearings. *See Thakker* Dkt. 2-17 (Lorenzen-Strait Decl.) ¶ 15.

147. This exercise of discretion comes from a long line of agency directives explicitly instructing officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating

against detention. *See Thakker* Dkt. 2-17 (Strait Decl.) at ¶¶ 10-14. For example, under 8 C.F.R. § 212.5(b)(1), ICE has routinely exercised its discretion to release particularly vulnerable detainees. *Id.* at 4-11.

148. ICE’s discretion applies regardless of the statutory basis for a noncitizen’s detention. *See Thakker* Dkt. 2-17 (Strait Decl.) at ¶ 11.

149. While ICE officers may be exercising discretion less frequently in recent years, the statutory and regulatory authority underlying the use of prosecutorial discretion in custodial determinations remains in effect. *See Thakker* Dkt. 2-17 (Straight Decl.) at ¶ 13.

150. Consistent with the Due Process clause of the Fifth Amendment to the U.S. Constitution, ICE must release detainees where civil detention has become punitive and where release is the only remedy to prevent this impermissible punishment. The fact that ICE has the authority to release immigrants from custody and has exercised this authority in the past indicates that the remedy Petitioners request is neither unprecedented nor unmanageable for the agency.

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

151. Courts have broad power to fashion equitable remedies to address constitutional violations in prisons, *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978), and “[w]hen necessary to ensure compliance with a constitutional

mandate, courts may enter orders placing limits on a prison's population.”

Brown v. Plata, 563 U.S. 493, 511 (2011).

152. This authority extends to “placing limits on a prison’s population” when necessary to ensure compliance with the Constitution. *Brown v. Plata*, 563 U.S. 493, 511 (2011); *see also Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

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

CLAIM FOR RELIEF

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

154. The forgoing allegations are re-alleged and incorporated herein.
155. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it fails to satisfy its affirmative duty to provide conditions of reasonable health and safety to the people it holds in its custody, and violates the constitution when it fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety for those in custody. The federal government also violates substantive due process when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment.
156. By detaining Petitioners in the ICE Facilities, Respondents are subjecting Petitioners to a heightened risk of contracting COVID-19, for which there is no vaccine and no cure. Petitioners are particularly vulnerable to serious medical complications from COVID-19 infection and are risk of illness and death as long as they are held in detention. By subjecting Petitioners to this risk Respondents are maintaining detention conditions that amount to

punishment and fail to ensure safety and health in violation of Petitioners' due process rights.

157. Likewise, Respondents' continued detention of Petitioners at the ICE Facilities is deliberately indifferent to Petitioners' serious medical needs because 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.

PRAYER FOR RELIEF

WHEREFORE Petitioners request that the Court grant the following relief:

- a. Issue a Writ of Habeas Corpus on the ground that their continued detention violates the Due Process Clause and order Petitioners' immediate release, with appropriate precautionary public health measures;
- b. In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioners, with appropriate precautionary public health measures, on the grounds that their continued detention violates Petitioners' constitutional due process rights;
- c. Issue a declaration that Respondents' continued detention in civil immigration custody of individuals at increased risk for severe illness, including all people ages 65 and older and persons of any age with

underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;

- d. Award Petitioners their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that this Court may deem just and proper.

Dated: April 3, 2020

Respectfully Submitted,

/s/ Will W. Sachse

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