

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-01050

**JENNIFER (GARY) LEAFORD CODNER,**

**NDI WILFRED TEMAH,**

**MADELINE (FLAVIO) TATIS BELLIARD,**

**SANELA HAMZIC,**

**RAFAEL SORIA MORA a/k/a BENIGNO  
VELASQUEZ ARENAS,**

**NAOMI (LESTHER RAFAEL) HERNANDEZ  
MORALES,**

**HEIDI NICOLE (NILSON SALMON)  
HIDALGO MENDOZA,**

**VIOLET (ADAN) PAZ ALVAREZ,**

**ALEXA (ALEXANDER) MARROQUIN  
GONZALEZ,**

**ALISON (MELVIN) MENDOZA MENDOZA,**

**IVIAN (JOSE ANGEL) MONTES  
HERNANDEZ,**

**MONSERRAT (RONY MOISES) RAMOS  
SIERRA,**

**ALEXANDRA (BENJAMIN ELISEO)  
OSORIO LINARES,**

and

**BRITANY (JOSE ANTONIO) RIVIERA  
CALERO,**

Petitioners-Plaintiffs,

v.

**JOHNNY CHOATE, IN HIS OFFICIAL  
CAPACITY AS WARDEN, , IN HIS OFFICIAL  
CAPACITY AS WARDEN OF THE AURORA  
CONTRACT DETENTION FACILITY OWNED  
AND OPERATED BY GEO GROUP INC.**

**JOHN FABBRICATORE, IN HIS OFFICIAL  
CAPACITY AS DENVER ICE ERO ACTING  
FIELD OFFICE DIRECTOR,**

**MATTHEW T. ALBENCE, IN HIS OFFICIAL  
CAPACITY AS DEPUTY DIRECTOR AND  
SENIOR OFFICIAL PERFORMING THE  
DUTIES OF THE DIRECTOR OF THE U.S.  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT, and**

**IMMIGRATION AND CUSTOMS  
ENFORCEMENT,**

Respondents-Defendants.

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

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## I. INTRODUCTION

1. This petition seeks the urgent release of fourteen individuals who are currently detained by Respondents-Defendants (“Respondents”) at the Aurora Contract Detention Facility (the “Aurora facility”) and who are at severe risk of serious health complications or death should they contract COVID-19, a deadly new disease sweeping its way across the globe.

2. The coronavirus has already begun to spread to detention centers across Colorado, with positive cases in jails, prisons and immigration detention facilities, including the Aurora facility. The Aurora facility holds people in civil immigration detention when they arrive to the United States to seek asylum as well as for alleged violations of U.S. immigration laws. At the Aurora facility, there have been multiple quarantines due to COVID-19 exposure.<sup>1</sup> At least two ICE employees that work in the Aurora facility, one of whom had contact with detained individuals, and three employees of the private prison company GEO Group, which runs the Aurora facility, have tested positive for the virus.<sup>2</sup> Moreover, a deputy at the nearby El Paso facility, where some detained individuals are held for 72 hours before being transferred to the

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<sup>1</sup> Sam Tabachnik, *Ten Detainees at Aurora’s ICE Detention Facility Isolated for Possible Exposure to Coronavirus*, Denver Post (Mar. 17, 2020), <https://www.denverpost.com/2020/03/17/coronavirus-ice-detention-geo-group-aurora-colorado/>; Conor McCormick-Cavanagh, *Nearly Eighty ICE Detainees in Aurora Quarantined*, Westword (Mar. 27, 2020) <https://www.westword.com/news/aurora-immigrant-detention-center-has-tested-77-detainees-for-covid-19-11676141>; *ICE Guidance on COVID-19*, U.S. Immigr. & Customs Enforcement (last updated Apr. 10, 2020) <https://www.ice.gov/coronavirus> (select tab “Confirmed Cases” and scroll to section “ICE EMPLOYEES AT DETENTION CENTERS”); Conor McCormick-Cavanagh, *Three More Employees at Aurora ICE Facility Test Positive for COVID-19*, Westword (Apr. 8, 2020), <https://www.westword.com/news/three-geo-group-staffers-at-ice-facility-in-aurora-test-positive-for-covid-19-11683722>.

<sup>2</sup> *Id.*

Aurora facility, recently died of COVID-19, and two other deputies at the El Paso facility have since tested positive for COVID-19.<sup>3</sup>

3. Since February, the Department of Homeland Security’s own medical experts have been warning ICE of the dangers of outbreaks at ICE detention facilities and advising that ICE needed to release medically vulnerable individuals in order to avoid a public health disaster. More than 3,000 medical health professionals have urgently requested that Immigration and Customs Enforcement (“ICE”) immediately release immigration-detained individuals in their custody, and two Department of Homeland Security medical experts have warned Congress that keeping immigrants detained poses “an ‘imminent risk to the health and safety of immigrant detainees’ and to the general public.”<sup>4</sup>

4. Yet today, Respondents continue to hold in detention approximately 527 individuals,<sup>5</sup> including Petitioners-Plaintiffs (“Petitioners”) in this action, each of whom is at severe risk of serious complications or death from COVID-19, despite the ready availability of community-based alternatives to detention such as release on conditions or on bond.

5. The global COVID-19 pandemic, caused by the novel coronavirus, has been

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<sup>3</sup> Lance Benzel, *3 Deputies at El Paso County Jail Have Tested Positive for COVID-19; Virus ‘Likely’ to Spread to Inmates, Sheriff’s Office Warns*, Gazette (Apr. 10, 2020), [https://gazette.com/news/3-deputies-at-el-paso-county-jail-have-tested-positive-for-covid-19-virus-likely/article\\_409db30c-75bf-11ea-a37c-334d20e5bf37.html](https://gazette.com/news/3-deputies-at-el-paso-county-jail-have-tested-positive-for-covid-19-virus-likely/article_409db30c-75bf-11ea-a37c-334d20e5bf37.html).

<sup>4</sup> Catherine E. Shoichet, *Doctors Warn of ‘Tinderbox Scenario’ If Coronavirus Spreads in ICE Detention*, CNN (Mar. 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

<sup>5</sup> ICE Aurora Contract Detention Center Accountability Report Electronic Request (Apr. 6, 2020), available at <https://crow.house.gov/sites/crow.house.gov/files/ICE%20Accountability%20Report%20Electronic%20Request%204-6%20FINAL%20%281%29.pdf>.

characterized as the worst disease outbreak the world has seen since 1918. To date, almost one million individuals worldwide have been diagnosed with COVID-19, and the United States is one of the worst-hit countries. States and countries around the world—including the State of Colorado—have put in place significant restrictions on public gatherings, and many have imposed “shelter-in-place” orders in an attempt to control the spread of the disease. Public health experts, including the Centers for Disease Control and Prevention (“CDC”), have instructed that the only effective way to reduce the risk of severe illness or death for medically vulnerable individuals is social distancing and improved hygiene.<sup>6</sup> Such distancing and hygiene measures are impossible to achieve in crowded detention centers.

6. It is impossible for people confined in prisons, jails, and detention centers, including the Aurora facility, to engage in the necessary social distancing and hygiene the CDC has instructed are the only effective prevention measures. At the Aurora facility, people eat, sleep and engage in activities in close proximity to each other, and basic supplies, such as soap and hand sanitizer, are often in short supply or completely unavailable.<sup>7</sup> Even with the measures ICE has

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<sup>6</sup> See *Coronavirus Disease 2019 (COVID-19): How to Protect Yourself & Others*, Ctrs. for Disease Control and Prevention (last updated Apr. 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>. See also Ctrs. for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities 8 (2020)* (“Both good hygiene practices and social distancing are critical in preventing . . . transmission.”), available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

<sup>7</sup> All exhibits cited herein are exhibits to Petitioners’ Motion for Preliminary Injunction, filed concurrently on April 14, 2020. See Decl. of C. Cowgill, Ex. B, ¶¶ 17, 20; Decl. of L. Jordan, Ex. C, ¶¶ 15, 17, 18; Decl. of J. Codner, Ex. D, ¶ 7; Decl. of N. Temah, Ex. E, ¶¶ 8–9; Decl. of S. Hamzic, Ex. G, ¶¶ 7–8; Decl. of R. Mora, Ex. H, ¶¶ 5, 9–10, 12; Decl. of A. Mendoza, Ex. I, ¶ 10; Decl. of N. Morales, Ex. J, ¶8; Decl. of H. Mendoza, Ex. K, ¶ 13; Decl. of V. Alvarez, Ex. L, ¶ 7; Decl. of B. Calero, Ex. M, ¶ 12; Decl. of A. Gonzalez, Ex. N, ¶¶ 7, 8; Decl. of I. Hernandez, Ex. O, ¶¶ 9–11; Decl. of M. Sierra, Ex. P, ¶¶ 6, 8; Decl. of A. Linares, Ex. Q, ¶11.

purported to take to prevent the spread of COVID-19 in its facilities, immigration detention centers are a hotbed for spread of the virus.<sup>8</sup>

7. Under these circumstances, release of individuals at high risk of major health consequences is the only meaningful way to mitigate the proliferation of the virus among those in immigration detention. For individuals who are at high risk for serious illness or death from COVID-19, protection from the virus is a matter of life or death. In Colorado, as of April 13, 2020, there are 7,691 confirmed cases, 1,493 individuals hospitalized and 308 deaths, and the numbers are rising exponentially.<sup>9</sup> In the United States, the most concentrated instances of death from the virus have happened in confined congregated spaces, such as nursing homes and cruise ships.<sup>10</sup>

8. Petitioners, who are detained in ICE custody at the Aurora facility, are particularly vulnerable to serious illness or death if infected by COVID-19. Petitioners have medical conditions that lead to a higher risk of serious COVID-19 infection. Colorado has seen a significant COVID-19 outbreak. The Governor has declared a State of Emergency and has put in place widespread social distancing measures, including shutting down nonessential businesses and all public gatherings. These measures are impossible to implement in a crowded detention center, and ICE

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<sup>8</sup> Shoichet, *supra* n.4.

<sup>9</sup> *Case Data*, Colo. Dep't of Pub. Health & Env't (Apr. 13, 2020, 7:35 PM), <https://covid19.colorado.gov/case-data>.

<sup>10</sup> See Jon Swaine & Maria Sacchetti, *As Washington Nursing Home Assumed It Faced Influenza Outbreak, Opportunities to Control Coronavirus Exposure Passed*, Wash. Post (Mar. 16, 2020), [https://www.washingtonpost.com/investigations/nursing-home-with-the-biggest-cluster-of-covid-19-deaths-to-date-in-the-us-thought-it-was-facing-an-influenza-outbreak-a-spokesman-says/2020/03/16/c256b0ee-6460-11ea-845d-e35b0234b136\\_story.html](https://www.washingtonpost.com/investigations/nursing-home-with-the-biggest-cluster-of-covid-19-deaths-to-date-in-the-us-thought-it-was-facing-an-influenza-outbreak-a-spokesman-says/2020/03/16/c256b0ee-6460-11ea-845d-e35b0234b136_story.html); Victoria Forster, *What Have Scientists Learned About COVID-19 and Coronavirus by Using Cruise Ship Data?*, Forbes (Mar. 22, 2020), <https://www.forbes.com/sites/victoriaforster/2020/03/22/what-have-scientists-learned-from-using-cruise-ship-data-to-learn-about-covid-19/>.

has taken no meaningful measures to curb the spread of the virus at the Aurora facility. Petitioners fear for their lives, and for good reason: they are trapped in a facility that can only be described as a breeding ground for the disease. The conditions and treatment at the facility have created a dangerous situation that threatens their lives, as well as the well-being of staff, others in the surrounding community and the general public.

9. There is no known treatment for or vaccine against COVID-19, and there is no known cure.<sup>11</sup> The only known effective measures to reduce the risk of COVID-19 are to prevent infection through social distancing and vigilant hygiene.<sup>12</sup> Yet “social distancing” is a meaningless term in the Aurora facility, where those who are detained are in constant close contact with each other and with facility staff. Increased and vigilant hygiene is similarly unavailable under the conditions at the facility.

10. As set forth below, the danger posed by Petitioners’ detention during the COVID-19 pandemic is “so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk” and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993). Without this Court’s intervention, the Petitioners continue to be at imminent risk of severe illness or death.

## **II. JURISDICTION AND VENUE**

11. This action arises under the Due Process Clause of the Fifth Amendment to the

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<sup>11</sup> Decl. of Dr. Franco-Paredes, Ex. A, ¶ 16.

<sup>12</sup> See Ctrs. for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities 8 (2020) (“Both good hygiene practices and social distancing are critical in preventing . . . transmission.”), available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

United States Constitution.

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

13. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 2241(d) and pursuant to 28 U.S.C. §§ 1391(b) and (e).

### **III. PARTIES**

14. Petitioners are 14 individuals currently detained at the Aurora facility, each of whom faces significant risk from COVID-19 due to age and/or underlying medical conditions.

15. Petitioner Jennifer Leaford Codner (“Ms. Codner”) (her legal first name is Gary) is a 54-year-old transgender woman from Jamaica who is currently detained in the Aurora facility and has been detained for approximately two years. Ms. Codner is applying for asylum, withholding of removal or protection under the Convention Against Torture. She was previously detained periodically in other facilities starting in September 2012. Ms. Codner has lived in the United States since 1997 and has two children who are U.S. citizens. Before her first detention in 2012, Ms. Codner was a hairdresser and owned her own hair salon. Detention has ruined her financially, and as a result, she could no longer support the four employees who worked for her at the salon. Ms. Codner suffers from hypertension and allergies. Since being detained at the Aurora facility, she has suffered from boils on her skin. Individuals between the ages of 50–59, like Ms. Codner, have a case fatality ratio of 1.25 percent, compared to a case fatality ratio of less than 0.3



percent among those under 50.<sup>13</sup> Irrespective of age, early reports estimate that the mortality rate from COVID-19 for people with hypertension, like Ms. Codner, is 8.4 percent.<sup>14</sup> Ms. Codner's age and medical history, therefore, place her at high risk of complications or death from COVID-19. A declaration from Ms. Codner is found at Exhibit D.

16. Petitioner Ndi Temah ("Mr. Temah") is a 23-year-old asylum seeker from Cameroon. He has been detained since his arrival in the United States on November 19, 2018. Mr. Temah suffers from several serious medical conditions, including hypertension, Mobitz Type I (also known as second-degree atrioventricular block, or Wenckebach, a disease of the electrical conduction system of the heart), post-traumatic stress disorder, depression and a severe anxiety disorder. Early reports estimate that, irrespective of age, the mortality rate from COVID-19 for someone like Mr. Temah with cardiovascular disease is 13.2 percent and for someone with hypertension is 8.4 percent.<sup>15</sup> These conditions, therefore, place Mr. Temah at high risk for complications or death from COVID-19. A declaration from Mr. Temah is found at Exhibit E.

17. Petitioner Madeline Tatis Belliard ("Ms. Belliard") (her legal first name is Flavio) is a 40-year-old transgender woman who immigrated from the Dominican Republic with her mother in 1991 when she was only twelve years old to escape the physical assaults and verbal abuse she was subjected to due to her gender identity. In 1993, through a family-based immigration

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<sup>13</sup> Robert Verity et al., *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis* 5 tbl.1, *Lancet* (Mar. 30, 2020), [https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099\(20\)30243-7.pdf](https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099(20)30243-7.pdf).

<sup>14</sup> World Health Org., Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19), at 12 (2020), *available at* <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

<sup>15</sup> *Id.*

petition, she became a U.S. permanent resident and maintained that status for 26 years. She intends on submitting an application for asylum and withholding of removal. Prior to being detained, she lived near her mother in New York City. Ms. Belliard has been diagnosed with multiple physical and mental health disorders, including HIV, asthma, schizoaffective disorder (depressive type), gender identity disorder and dysthymic disorder. Ms. Belliard's HIV diagnosis makes her very vulnerable to illnesses, and she requires consistent monitoring and treatment. Her asthma affects her ability to breathe properly. While she is currently isolated from the general population of other detained persons at the Aurora facility, she interacts with the officers multiple times per day. Reports estimate that the mortality rate from COVID-19 for someone like Ms. Belliard who suffers from asthma is 8.0 percent.<sup>16</sup> Ms. Belliard's medical conditions, including but not limited to her HIV diagnosis and asthma, therefore put her at high risk for complications or death from COVID-19. A declaration from Ms. Belliard is found at Exhibit F.

18. Petitioner Sanela Hamzic ("Ms. Hamzic") is 52 years old. She has applied for asylum and cancellation of removal for lawful permanent residents. Ms. Hamzic has two sons, one of whom is a U.S. citizen. Her mother, sister and two grandchildren are also U.S. citizens. Prior to detention, Ms. Hamzic worked at home helping to care for her mother, son and two grandchildren. She also assisted in supporting her son and grandchildren financially. Ms. Hamzic has several diagnosed chronic conditions, including diabetes, high blood pressure, asthma, attention deficit disorder, depression and PTSD. Ms. Hamzic was also previously diagnosed with cancer in her lungs and ovaries, resulting in the removal of one of her lungs and a hysterectomy. She also

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<sup>16</sup> *Id.*

recently received a mammogram, which detected lumps in her breast. Following the mammogram, a biopsy was performed, and it was recommended that Ms. Hamzic undergo surgery. Ms. Hamzic decided against the treatment because she was scared to undergo another surgery in detention. Reports estimate that the mortality rate from COVID-19 is 9.2 percent for someone with diabetes, 8.4 percent for someone with hypertension, 8.0 percent for someone with chronic respiratory disease, and 7.6 percent for someone with cancer.<sup>17</sup> Moreover, individuals between the ages of 50–59, like Ms. Hamzic, have a case fatality ratio of 1.25 percent, compared to a case fatality ratio of less than 0.3 percent among those under 50.<sup>18</sup> Ms. Hamzic’s age and ongoing chronic medical conditions therefore put her at high risk for complications or death from COVID-19. A declaration from Ms. Hamzic is found at Exhibit G.

19. Petitioner Rafael Soria Mora a.k.a Benigno Velasquez Arenas (“Mr. Soria Mora”) is a 47-year-old immigrant from Mexico. He is applying for cancellation of removal. He has lived in the United States since 1995, and his wife is a lawful permanent resident of the United States. He also has five stepchildren whom he has cared for since they were very young. Prior to detention, Mr. Soria Mora worked three jobs to support himself and his family. Mr. Soria Mora’s wife struggles with severe medical and mental health conditions, including high blood pressure, osteoporosis and past trauma from emotional and physical abuse she experienced in a prior marriage. Mr. Soria Mora also financially supports his two youngest sons, who are 21 and 18 years old and U.S. citizens. His 21-year-old son is apprenticing to be a plumber and electrician, and his

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<sup>17</sup> *Id.*

<sup>18</sup> Robert Verity et al., *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis* 5 tbl.1, *Lancet* (Mar. 30, 2020), [https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099\(20\)30243-7.pdf](https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099(20)30243-7.pdf).

18-year-old son has received scholarships to attend university next year and aspires to be a doctor. Finally, Mr. Soria Mora supports his mother who has an injured back and lives in Mexico. Mr. Soria Mora has chronic asthma, for which he uses an inhaler approximately 10–11 times a day. He was prescribed a nasal spray that assists with his respiratory problems, but the Aurora facility has recently been out of his prescribed medication, and the replacement medication the facility provides to him does not manage his symptoms as well as his prior medication. Additionally, Mr. Soria Mora suffers from hypertension and sleep apnea. As noted above, reports indicate that conditions like asthma and hypertension have mortality rates from COVID-19 of 8.0 percent and 8.4 percent, respectively.<sup>19</sup> Due to Mr. Soria Mora’ chronic conditions and the Aurora facility’s inability to properly treat his asthma, Mr. Soria Mora is therefore at high risk for complications or death from COVID-19. A declaration from Mr. Soria Mora is found at Exhibit H.

20. Petitioner Alison Mendoza (“Ms. Mendoza Mendoza”) (her legal first name is Melvin) is a 35-year-old transgender woman from El Salvador. Prior to detention, she cared for great-grandmother until her death in May 2018. She fled El Salvador following threats of violence and death from a gang, and is applying for asylum, withholding of removal or protection under the Convention Against Torture. Ms. Mendoza Mendoza has diabetes, high triglycerides, and high cholesterol for which she requires constant monitoring and treatment. As noted above, reports estimate that the mortality rate from COVID-19 is 9.2 percent for someone with diabetes.<sup>20</sup> She also suffers from depression, for which she is not receiving therapy or treatment. Ms. Mendoza

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<sup>19</sup> World Health Org., Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19), at 12 (2020), *available at* <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

<sup>20</sup> *Id.*

Mendoza's serious medical conditions put her at high risk for complications or death from COVID-19. A declaration from Ms. Mendoza Mendoza is found at Exhibit I.

21. Petitioner Naomi Hernandez Morales ("Ms. Hernandez Morales") (her legal first name is Lester Rafael) is a 36-year-old transgender woman from El Salvador. She is applying for asylum, withholding of removal or protection under the Convention Against Torture because she fears torture or persecution due to her transgender identity if she returns to El Salvador. Ms. Hernandez Morales learned that she was HIV-positive in 2008 and has been taking HIV medication for two years. Ms. Hernandez Morales' HIV diagnosis put her at high risk for complications or death from COVID-19. A declaration from Ms. Hernandez Morales is found at Exhibit J.

22. Petitioner Heidi Nicole Hidalgo Mendoza ("Ms. Hidalgo Mendoza") (her legal first name is Nilson Salmon) is a 22-year-old transgender woman from El Salvador. She is applying for asylum, withholding of removal or protection under the Convention Against Torture because she fears torture or persecution due to her transgender identity if she returns to El Salvador. Ms. Hidalgo Mendoza tested positive for HIV on April 2, 2020. She has received antiretrovirals on a daily basis since diagnosis, but not at a consistent time. She experiences nausea, vomiting, and dizziness associated with the antiretrovirals, and has lost significant weight while detained. Ms. Hidalgo Mendoza's HIV diagnosis put her at high risk for complications or death from COVID-19. A declaration from Ms. Hidalgo Mendoza is found at Exhibit K.

23. Petitioner Violet Paz Alvarez ("Ms. Paz Alvarez") (her legal first name is Adan) is a 50-year-old transgender woman from Honduras. She is applying for asylum, withholding of removal or protection under the Convention Against Torture because she fears torture or

persecution due to her transgender identity if she returns to Honduras, where she was a human rights defender and activist for HIV-positive people. Ms. Paz Alvarez has been HIV-positive for many years. She regularly takes antiretrovirals for her condition, but was unable to do so at two processing and detention centers prior to her transfer to Colorado. Upon Ms. Paz Alvarez's arrival at the Aurora facility, she did not receive antiretroviral treatment for approximately a week. She is now receiving daily treatment, but not at a consistent time. Ms. Paz Alvarez is fearful of contracting COVID-19 because her immune defenses are depressed due to the break in her HIV treatment. She has also been diagnosed with high triglyceride levels. A declaration from Ms. Paz Alvarez is found at Exhibit L.

24. Petitioner Brittany Riviera Calero ("Ms. Riviera Calero") (her legal first name is Jose Antonio) is a 22-year-old transgender woman from Honduras. She is applying for asylum, withholding of removal or protection under the Convention Against Torture because she fears torture or persecution due to her transgender identity if she returns to Honduras. Ms. Riviera Calero is HIV-positive, for which she requires a daily antiretroviral. Recently, the medical staff at the Aurora facility accidentally gave her a different medicine than her normal antiretroviral, which made her feel very sick for the entire day. Ms. Riviera Calero is fearful of contracting COVID-19 because her immune defenses are depressed due to her HIV diagnosis. A declaration from Ms. Riviera Calero is found at Exhibit M.

25. Petitioner Alexa Marroquin Gonzalez ("Ms. Marroquin Gonzalez") (her legal first name is Alexander) is a 30-year-old transgender woman from El Salvador. She was abused and discriminated against in El Salvador, and fled the country to save her life. Prior to detention, Ms. Marroquin Gonzalez worked in a blouse factory to financially support her mother. She is applying

for asylum, withholding of removal or protection under the Convention Against Torture. Ms. Marroquin Gonzalez is HIV-positive. She receives antiretrovirals on a daily basis at the Aurora facility, but not at a consistent time. A declaration from Ms. Marroquin Gonzalez is found at Exhibit N.

26. Petitioner Ivian Montes Hernandez (“Ms. Montes Hernandez”) (her legal first name is Jose Angel) is a 27-year-old transgender woman from El Salvador. Ms. Montes Hernandez is applying for asylum, withholding of removal or protection under the Convention Against Torture because she fears torture or persecution due to her transgender identity if she returns to El Salvador. Ms. Montes Hernandez is HIV-positive. She receives antiretrovirals on a daily basis at the Aurora facility, but not at a consistent time. Due to Ms. Montes Hernandez’s HIV diagnosis, she is at high risk for complications or death from COVID-19. A declaration from Ms. Montes Hernandez is found at Exhibit O.

27. Petitioner Monserrat Ramos Sierra (“Ms. Ramos Sierra”) (her legal first name is Rony Moises) a 31-year-old transgender woman from Honduras. Prior to detention in March 2020, Ms. Ramos Sierra studied accounting and also to be a chef. Ms. Ramos Sierra is HIV-positive, for which she requires consistent monitoring and treatment. She requires a daily antiretroviral, which she was not consistently receiving while detained prior to arriving at Aurora. Ms. Ramos Sierra also suffers from severe pain in her lungs, back, and stomach, for which she has received only minimal treatment and has not received a diagnosis. Ms. Ramos Sierra’s medical conditions, including but not limited to her HIV diagnosis, put her at high risk for complications or death from COVID-19. A declaration from Ms. Ramos Sierra is found at Exhibit P.

28. Petitioner Alexandra Osorio Linares (“Ms. Osorio Linares”) (her legal first name is

Benjamin Eliseo) is a 29-year-old transgender woman from El Salvador. Ms. Osorio Linares is HIV-positive. A declaration from Ms. Ramos Sierra is found at Exhibit Q.

29. Respondent Johnny Choate is the Warden of the Aurora facility, where Petitioners are detained. Defendant Choate is a legal custodian of Petitioners. He is sued in his official capacity.

30. Respondent John Fabbriatore is the ICE Denver Acting Field Office Director. The Denver Field Office is responsible for carrying out ICE's immigration detention operations at all of Colorado's detention centers that house immigration-detained individuals. Defendant Fabbriatore is a legal custodian of Petitioners. He is sued in his official capacity.

31. Respondent Matthew T. Albence is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Defendant Albence is responsible for ICE's policies, practices and procedures, including those relating to the detention of immigrants. Defendant Albence is a legal custodian of Petitioners. He is sued in his official capacity.

32. 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. Enforcement and Removal Operations ("ERO"), a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Petitioners.

#### **IV. FACTS**

##### **A. COVID-19 Poses Grave Risk of Harm, Including Serious Illness or Death, to Older Individuals and Those with Certain Underlying Medical Conditions.**

33. COVID-19 is a coronavirus that has reached pandemic status. As of April 12, 2020, over 1.6 million individuals worldwide have confirmed diagnoses, including nearly 500,000 in the



United States.<sup>21</sup> More than 100,000 individuals worldwide have died as a result of COVID-19, including more than 18,000 in the United States.<sup>22</sup> Those numbers are growing exponentially, with over 85,000 new cases worldwide from the prior day alone.<sup>23</sup> By the time the Court reads this complaint, there will be more diagnoses, and more death, with no end in sight.

34. 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.<sup>24</sup> It can be transmitted even when the person carrying the disease is not showing symptoms.<sup>25</sup>

35. COVID-19 can result in respiratory failure, multiorgan dysfunction, and death.<sup>26</sup> Infected individuals who do not die from the disease can face serious damage to the lungs, heart, other organs, resulting in prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity.<sup>27</sup>

36. People who are considered at high risk of severe illness and death should they be infected with the coronavirus include the following:

- People age 50 or older;
- People with a history of smoking; and
- Anyone diagnosed with cancer, autoimmune disease (including lupus,

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<sup>21</sup> World Health Org., Coronavirus Disease 2019 (COVID-19): Situation Report – 83, at 1, 4 (Apr. 12, 2020), *available at* [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200412-sitrep-83-covid-19.pdf?sfvrsn=697ce98d\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200412-sitrep-83-covid-19.pdf?sfvrsn=697ce98d_4).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 1.

<sup>24</sup> Decl. of Dr. Franco-Paredes, Ex. A, ¶ 15.

<sup>25</sup> *Id.* ¶¶ 8, 23.

<sup>26</sup> *Id.* ¶ 10.

<sup>27</sup> *Id.* ¶¶ 10, 12.

rheumatoid arthritis, psoriasis, Sjögren's, Crohn's), chronic lung disease (including asthma, COPD, bronchiectasis, idiopathic pulmonary fibrosis), history of cardiovascular disease, chronic arthritis (rheumatoid, psoriatic), chronic liver or kidney disease, diabetes, hypertension, heart failure, blood disorders, inherited metabolic disorders, HIV/AIDS, or those who take steroids to treat chronic conditions; and obesity.<sup>28</sup>

37. Complications from COVID-19 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.<sup>29</sup>

38. Even some younger and healthier individuals who contract COVID-19 may require supportive care.<sup>30</sup> 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.<sup>31</sup>

39. The need for care, including intensive care, and the likelihood of death are much higher with respect to COVID-19 infection than influenza.<sup>32</sup> According to recent estimates, the fatality of people infected with the coronavirus is about ten times higher than for a severe seasonal influenza, even in advanced countries with highly effective health care systems.<sup>33</sup>

40. Patients in high-risk categories who do not die from COVID-19 should expect a

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<sup>28</sup> *Id.* ¶ 13.

<sup>29</sup> *Id.* ¶ 10.

<sup>30</sup> *Id.* ¶ 14.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* ¶ 9.

<sup>33</sup> *Id.*

prolonged recovery, including extensive rehabilitation.<sup>34</sup>

41. There is no vaccine against COVID-19, nor is there any known medication to prevent or cure infection from the virus.<sup>35</sup>

42. The only known effective measure to reduce the risk of severe illness or death to vulnerable individuals is to prevent them from being infected with the coronavirus. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures to prevent infection.<sup>36</sup>

**B. The Aurora Facility Cannot Prevent Widespread Infections.**

43. The Aurora facility is located in Colorado, which is currently experiencing a serious coronavirus outbreak. As of April 13, 2020, there were 7,691 confirmed cases of COVID-19 in Colorado.<sup>37</sup> The number of infected people is rising exponentially. In Colorado, more than 1,400 individuals have been hospitalized, and 308 have died.<sup>38</sup> The Aurora facility is located in Arapahoe County, which currently has over 1,000 confirmed cases of COVID-19 and 39 deaths from the disease.<sup>39</sup>

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<sup>34</sup> *Id.* ¶ 12.

<sup>35</sup> *Id.* ¶ 16.

<sup>36</sup> See *Coronavirus Disease 2019 (COVID-19): How to Protect Yourself & Others*, Ctrs. for Disease Control and Prevention (last updated Apr. 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

<sup>37</sup> *Case Data*, Colo. Dep't of Pub. Health & Env't, (Apr. 14, 2020, 12:19 AM), <https://covid19.colorado.gov/case-data>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

44. Since the COVID-19 pandemic began, there have been multiple quarantines at the Aurora facility—indeed, there is currently an ongoing quarantine of 77 detained persons.<sup>40</sup> Given the shortage of COVID-19 tests, the Aurora facility cannot and has not conducted aggressive, widespread testing. Instead, it has tested only two detained individuals for COVID-19, both of whom tested negative.<sup>41</sup> There are no testing practices guiding isolation and quarantine within the Aurora facility.<sup>42</sup> This is particularly alarming given that the Aurora facility has undisputedly already been exposed to COVID-19—two ICE employees and three GEO Group employees who work in the Aurora facility, at least one of whom had direct contact with detained individuals, have tested positive for the virus.<sup>43</sup> Therefore, without widespread testing, there is an immediate and impending threat that the coronavirus could uncontrollably spread throughout the Aurora facility.<sup>44</sup>

45. Given the rapid spread of COVID-19 throughout Colorado, the conditions in the

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<sup>40</sup> U.S. Congress, ICE Aurora Contract Detention Center Accountability Report Electronic Request (Apr. 6, 2020), *available at* <https://crow.house.gov/sites/crow.house.gov/files/ICE%20Accountability%20Report%20Electronic%20Request%204-6%20FINAL%20%281%29.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> Decl. of Dr. Franco-Paredes, Ex. A, ¶ 50.

<sup>43</sup> Sam Tabachnik, *Ten Detainees at Aurora’s ICE Detention Facility Isolated for Possible Exposure to Coronavirus*, *Denv. Post* (Mar. 17, 2020), <https://www.denverpost.com/2020/03/17/coronavirus-ice-detention-geo-group-aurora-colorado/>; Conor McCormick-Cavanagh, *Nearly Eighty ICE Detainees in Aurora Quarantined*, *Westword* (Mar. 27, 2020), <https://www.westword.com/news/aurora-immigrant-detention-center-has-tested-77-detainees-for-covid-19-11676141>; *ICE Guidance on COVID-19*, U.S. Immigr. & Customs Enforcement (last updated Apr. 10, 2020), <https://www.ice.gov/coronavirus> (select tab “Confirmed Cases” and scroll to section “ICE EMPLOYEES AT DETENTION CENTERS”); Conor McCormick-Cavanagh, *Three More Employees at Aurora ICE Facility Test Positive for COVID-19*, *Westword* (Apr. 8, 2020), <https://www.westword.com/news/three-geo-group-staffers-at-ice-facility-in-aurora-test-positive-for-covid-19-11683722>.

<sup>44</sup> Decl. of Dr. Franco-Paredes, Ex. A, ¶¶ 37, 50.

Aurora facility and the fact that the Aurora facility has already been exposed to COVID-19, it is only a matter of time before the disease becomes widespread among the population of detained individuals.

46. The Aurora facility does not adequately provide the mitigation measures that public health experts and the CDC recommend, which makes the rapid spread of COVID-19 at the Aurora facility very likely. For example, it is impossible for individuals at the Aurora facility to comply with CDC's recommendation to remain six feet apart at all times.<sup>45</sup> Immigrants detained at this facility are housed together in groups. The dormitories house many individuals in close quarters, well under the distance of six feet apart that the CDC recommends.<sup>46</sup> Indeed, many detained persons report that they are being instructed to maintain three feet of distance from others because there is not enough room to maintain six feet of distance.<sup>47</sup> Detained persons use common spaces together, sharing tables, telephones and bathrooms.<sup>48</sup>

47. The Aurora facility also has not changed its cleanliness procedures in response to the COVID-19 pandemic.<sup>49</sup> Bathrooms are used by large numbers of people and are not sanitized

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<sup>45</sup> Decl. of C. Cowgill, Ex. B, ¶¶ 17, 20; Decl. of Dr. Franco-Paredes, Ex. A, ¶¶ 22, 47, 51.

<sup>46</sup> Decl. of C. Cowgill, Ex. B, ¶¶ 17, 20.

<sup>47</sup> *Id.* ¶ 20.

<sup>48</sup> Decl. of C. Cowgill, Ex. B, ¶ 17; Decl. of L. Jordan, Ex. C, ¶¶ 15, 17; Decl. of J. Codner, Ex. D, ¶ 7; Decl. of N. Temah, Ex. E, ¶¶ 8–9; Decl. of S. Hamzic, Ex. G, ¶¶ 7–8; Decl. of R. Mora, Ex. H, ¶¶ 9–10; Decl. of H. Mendoza, Ex. K, ¶ 13; Decl. of V. Alvarez, Ex. L, ¶ 7; Decl. of B. Calero, Ex. M, ¶ 12; Decl. of A. Gonzalez, Ex. N, ¶¶ 7, 8; Decl. of I. Hernandez, Ex. O, ¶¶ 9, 11; Decl. of M. Sierra, Ex. P, ¶¶ 6, 8; Decl. of A. Linares, Ex. Q, ¶ 11.

<sup>49</sup> Decl. of L. Jordan, Ex. C, ¶ 12; Decl. of J. Codner, Ex. D, ¶ 5; Decl. of M. Belliard, Ex. F, ¶ 5; Decl. of S. Hamzic, Ex. G, ¶ 6; Decl. of R. Mora, Ex. H, ¶ 7.

or disinfected after each use.<sup>50</sup> One detained person has recounted that he is sharing a single Kleenex among four people to try and sanitize their space.<sup>51</sup> Another has reported that there is no hand soap and that he has been using shampoo to wash his hands.<sup>52</sup> Detained persons are not being provided full personal protective equipment, such as masks and gloves.<sup>53</sup> Only some GEO and ICE staff wear masks and gloves, and others, including staff who have direct contact with the detained population, do not wear any protective equipment.<sup>54</sup>

48. Moreover, staff arrive and leave on a shift basis, and even asymptomatic staff could carry the infection into the facility.<sup>55</sup> The risk of transmission from staff to detained persons is extremely high at the Aurora facility—there are already five positive cases of COVID-19 among the Aurora facility staff.<sup>56</sup> This is particularly concerning in light of a recent CDC report that found any one person who carries COVID-19 typically infects more than five other people.<sup>57</sup> Because

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<sup>50</sup> Decl. of A. Mendoza, Ex. I, ¶ 10.

<sup>51</sup> Decl. of C. Cowgill, Ex. B, ¶ 19.

<sup>52</sup> Decl. of C. Cowgill, Ex. B, ¶ 19; *see also* Decl. of J. Codner, Ex. D, ¶ 5; Decl. of R. Mora, Ex. H, ¶ 10; Decl. of A. Mendoza, Ex. I, ¶ 10; Decl. of H. Mendoza, Ex. K, ¶ 14; Decl. of I. Hernandez, Ex. O, ¶ 10.

<sup>53</sup> Decl. of C. Cowgill, Ex. B, ¶ 19; Decl. of L. Jordan, Ex. C, ¶¶ 12, 14, 15, 18; Decl. of J. Codner, Ex. D, ¶ 5; Decl. of N. Temah, Ex. E, ¶¶ 8–9; Decl. of A. Mendoza, Ex. I, ¶ 9; Decl. of N. Morales, Ex. J, ¶ 8; Decl. of H. Mendoza, Ex. K, ¶ 14; Decl. of V. Alvarez, Ex. L, ¶¶ 6, 8; Decl. of B. Calero, Ex. M, ¶ 13; Decl. of A. Gonzalez, Ex. N, ¶ 9; Decl. of M. Sierra, Ex. P, ¶ 7; Decl. of A. Linares, Ex. Q, ¶ 10.

<sup>54</sup> Decl. of C. Cowgill, Ex. B, ¶¶ 21, 23; Decl. of L. Jordan, Ex. C, ¶¶ 12, 14, 15, 18; Decl. of J. Codner, Ex. D, ¶ 5; Decl. of A. Mendoza, Ex. I, ¶ 8; Decl. of H. Mendoza, Ex. K, ¶ 14; Decl. of V. Alvarez, Ex. L, ¶ 8; Decl. of B. Calero, Ex. M, ¶¶ 10, 14; Decl. of A. Gonzalez, Ex. N, ¶ 9; Decl. of I. Hernandez, Ex. O, ¶ 11; Decl. of M. Sierra, Ex. P, ¶¶ 5, 8; Decl. of A. Linares, Ex. Q, ¶ 13.

<sup>55</sup> *See* Decl. of Dr. Franco-Paredes, Ex. A, ¶¶ 8, 23.

<sup>56</sup> Conor McCormick-Cavanagh, *supra* n.1.

<sup>57</sup> *See* Steven Sanche et al., *High Contagiousness and Rapid Spread of Severe Acute Respiratory*

individuals at the Aurora facility cannot remain six feet apart or implement other CDC recommendations, as described above, the coronavirus can quickly spread among the dense detained-person cohort, including among individuals like Petitioners, who are at high risk of severe illness or death from COVID-19.

49. The Aurora facility is also continuing to allow transfers of newly detained persons who have been living in other areas where COVID-19 is raging without screening for COVID-19.<sup>58</sup> For example, several people have been transferred from California, Louisiana and Texas to Aurora.<sup>59</sup> This further increases the risk that vulnerable detained individuals will be exposed to the virus.<sup>60</sup>

50. Not only is the Aurora facility failing to take proper precautions to prevent the spread of COVID-19, it is also ill equipped to manage an infectious disease outbreak. The facility has limited high-level medical care and on-site medical facilities. For example, the facility has only one doctor on staff to serve the over 500 detained individuals currently residing there.<sup>61</sup> As a result, individuals at the facility are most frequently treated by nurses, who have a history of providing insufficient medical care.<sup>62</sup> Moreover, for individuals housed in the “Annex” or “Aurora

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*Syndrome Coronavirus 2*, 26 *Emerging Infectious Diseases* (July 2020), *available at* <https://doi.org/10.3201/eid2607.200282>.

<sup>58</sup> Decl. of L. Jordan, Ex. C, ¶¶ 11, 12, 16.

<sup>59</sup> Decl. of R. Mora, Ex. H, ¶ 9; *see also* Decl. of L. Jordan, Ex. C, ¶ 12.

<sup>60</sup> Decl. of Dr. Franco-Paredes, Ex. A, ¶ 23.

<sup>61</sup> Decl. of L. Jordan, Ex. C, ¶ 6 (citing U.S. Congress, ICE Aurora Contract Detention Center Accountability Report Electronic Request (2020), *available at* <https://crow.house.gov/sites/crow.house.gov/files/ICE%20Accountability%20Report%20Electronic%20Request%204-6%20FINAL%20%281%29.pdf>).

<sup>62</sup> Decl. of L. Jordan, Ex. C, ¶ 7; Decl. of C. Cowgill, Ex. B, ¶¶ 11, 16.

South,” there is no higher-level medical care available—there is only a nurses’ station.<sup>63</sup> Upon information and belief, there are no isolation cells or dedicated medical areas with proper infrastructure or equipment in Aurora South.<sup>64</sup>

51. The Aurora facility therefore remains unprepared and incapable of taking necessary precautions to protect people in custody against a life-threatening illness.<sup>65</sup>

52. That COVID-19 is likely to spread at the Aurora facility is further supported by the fact that COVID-19 has already spread quickly in Colorado’s jails and prisons. There have been positive COVID-19 cases among incarcerated persons and staff in Weld County, Jefferson County, El Paso County and downtown Denver jails.<sup>66</sup> Members of the Department of Corrections, public defenders and prosecutors have all also tested positive for the disease.<sup>67</sup> One deputy in charge of intake and release at the El Paso jail— where some detained individuals are held for 72 hours — has died of the disease, and now two other deputies at the El Paso jail have tested positive for COVID-19.<sup>68</sup>

53. The Governor of Colorado has recognized that the detained population is at an

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<sup>63</sup> Decl. of L. Jordan, Ex. C, ¶ 9.

<sup>64</sup> *Id.*

<sup>65</sup> *See* Decl. of Dr. Franco-Paredes, Ex. A, ¶¶ 30-31.

<sup>66</sup> Elise Schmelzer, *Colorado Defense Attorneys Petition State to Release Some Inmates as Coronavirus Spreads in Jails*, Denv. Post (Apr. 3, 2020), <https://www.denverpost.com/2020/04/03/colorado-coronavirus-jails-inmate-release-petition/>.

<sup>67</sup> *Id.*

<sup>68</sup> Lance Benzel, *3 Deputies at El Paso County Jail Have Tested Positive for COVID-19; Virus ‘Likely’ to Spread to Inmates, Sheriff’s Office Warns*, Gazette, last updated Apr. 10, 2020, [https://gazette.com/news/3-deputies-at-el-paso-county-jail-have-tested-positive-for-covid-19-virus-likely/article\\_409db30c-75bf-11ea-a37c-334d20e5bf37.html](https://gazette.com/news/3-deputies-at-el-paso-county-jail-have-tested-positive-for-covid-19-virus-likely/article_409db30c-75bf-11ea-a37c-334d20e5bf37.html).



increased risk during the pandemic. He accordingly issued guidance encouraging state law enforcement to issue citations and summons rather than arrests when possible to reduce the risk of outbreak in the state jail population.<sup>69</sup> Similarly, Congressman Jason Crow, the representative for the district in which the Aurora facility is located, along with several other congressional representatives, has recognized this same threat at detention facilities such as the Aurora facility. Congressman Crow requested that ICE “immediately grant humanitarian parole to all vulnerable individuals with pending immigration-related, non-violent charges or convictions in detention facilities operated or contracted with [ICE], evaluate all non-violent detainees for humanitarian parole—or other forms of parole they may be eligible for—who do not pose a public safety risk, and inform all detainees of their right to seek humanitarian release.”<sup>70</sup>

**C. ICE’s Response to COVID-19 is Insufficient to Prevent the Spread of this Life-Threatening Disease.**

54. COVID-19 has already reached the Aurora facility. Petitioners and others who are detained at the facility face inherent challenges to protect themselves from COVID-19 infection because they live, sleep, and use the bathroom in close proximity with others, and because “[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible.”<sup>71</sup>

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<sup>69</sup> John Herrick, *Gov. Jared Polis Calls on Law Enforcement to Reduce Arrests During Pandemic*, Colorado Independent (Mar. 25, 2020), <https://www.coloradoindependent.com/2020/03/25/polis-arrests-jail-covid-19/>.

<sup>70</sup> Letter to Matthew Albence, Acting Director of U.S. Immigration and Customs Enforcement (Mar. 27, 2020), <https://crow.house.gov/sites/crow.house.gov/files/Letter%20to%20Acting%20Director%20Albence%20Regarding%20Humanitarian%20Parole%20Due%20to%20COVID-19.pdf>.

<sup>71</sup> Keri Blakinger and Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, The Marshall Project (Mar. 6, 2020),

55. Similarly, it is impossible for people, including Petitioners, to take steps to protect themselves from infection, such as washing their hands with soap or distancing themselves from other individuals.

56. Given the general lack of available testing, it is equally impossible for detention facilities to consistently and adequately screen detained persons and staff for new, asymptomatic infection. The Aurora facility also does not have the capacity to truly isolate spread of the disease through airborne respiratory droplets.

57. ICE's official guidance on COVID-19 does not state under what conditions detainees would be tested. Instead, the only measure ICE has committed to taking is to isolate detained persons with fever and/or respiratory symptoms who meet CDC criteria for epidemiologic risk of exposure to the coronavirus for an unspecified amount of time.

58. ICE's official guidance also does not offer an effective way to determine who even has the virus. Since some COVID-19 carriers can be asymptomatic or not show symptoms for up to two weeks after exposure, "screening people based on observable symptoms is just a game of catch up." *In re. Extradition of Toledo Manrique*, No. 19-mj- 71055, 2020 WL 1307109, at \*1 (N.D. Cal. Mar. 19, 2020) (ordering release on bail in part because government's management plan did not "say anything about testing").

59. Although ICE has temporarily suspended social visitation in all detention facilities, staff, contractors, and vendors continue to arrive and leave the detention centers. In addition, people

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<https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus> (describing, for example, limited access to hand sanitizer and other precautionary measures).

are frequently transported to, from, and between facilities.

60. Neither ICE nor the Aurora facility have the resources necessary to engage in aggressive screening and testing of all detainees, staff, officials and other care and service providers who enter the facility, especially considering the shortage in available tests.

61. Immigration detention facilities have faced outbreaks of other infectious diseases in recent years due to overcrowding, poor hygiene measures, medical negligence, and poor access to resources and medical care. As recently as last year, ICE mishandled and failed to take adequate measures to protect detained immigrants against outbreaks of chicken pox and mumps.<sup>72</sup> And ICE has a long history of mishandling infectious and communicable diseases, struggling to contain them, and failing to follow nationally accepted standards. The Office of the Inspector General (“OIG”) of the Department of Homeland Security (“DHS”) even concluded in a 2019 report that ICE “does not adequately hold detention facility contractors accountable for not meeting performance standards,” “issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards,” and “does not adequately share information about ICE detention contracts with key officials.”<sup>73</sup>

62. 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

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<sup>72</sup> Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (Jun. 14, 2019), [https://www.vice.com/en\\_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox](https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox).

<sup>73</sup> See Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (Jan. 29, 2019) at 1, available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

inspections.”<sup>74</sup>

63. 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.<sup>75</sup> However, since the first quarantine began at the Aurora facility on March 12, 2020, ICE has detained at least 276 new people.<sup>76</sup> But the agency has failed to release many vulnerable individuals, including Petitioners who are still currently in custody.<sup>77</sup>

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

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<sup>74</sup> See Office of the Inspector General, ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements (June 26, 2018) at 1, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

<sup>75</sup> See Maria Sacchetti and Arelis R. Hernández, *ICE to Stop Most Immigration Enforcement Inside U.S., Will Focus on Criminals During Coronavirus Outbreak*, Wash. Post (Mar. 18, 2020), [https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab\\_story.html](https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab_story.html).

<sup>76</sup> ICE Aurora Contract Detention Center Accountability Report Electronic Requests (Mar. 25, Mar. 30, & Apr. 6, 2020), available at <https://crow.house.gov/about/ice-accountability-report>.

<sup>77</sup> See Noah Lanard, *ICE is Ignoring Recommendations to Release Immigrant Detainees to Slow the Spread of Coronavirus*, Mother Jones (Mar. 20, 2020), <https://www.motherjones.com/politics/2020/03/ice-is-ignoring-recommendations-to-release-immigrant-detainees-to-slow-the-spread-of-coronavirus/>.

**D. Individuals Most Vulnerable to COVID-19 Should Immediately Be Released.**

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

66. As early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts to the Department of Homeland Security, shared concerns about the specific risk to immigrant detained persons as a result of COVID-19 with the agency. These experts warned of the danger of rapid spread of the coronavirus in immigration detention facilities. In a whistleblower letter to Congress, Dr. Allen and Dr. Rich recommended that “[m]inimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases.”<sup>78</sup> 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.”<sup>79</sup>

67. According to Dr. Carlos Franco-Paredes, an Associate Professor of Medicine at the University of Colorado in the Department of Medicine, Division of Infectious Diseases and the Infectious Diseases Fellowship Program Director, reducing the number of detained individuals at the Aurora facility is necessary for effective infection control. He specifically recommends “releasing those in the high risk age groups and those with underlying medical conditions” in order to “lessen the impact of an outbreak of COVID-19 because these groups, should they fall ill, carry

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<sup>78</sup> Letter from Dr. Scott Allen & Dr. Josiah Rich to House Comm. on Homeland Sec. at 6 (Mar. 19, 2020), *available at* <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

<sup>79</sup> *Id.*

the highest concentration of virus in their respiratory secretions and act as human incubators of the virus.”<sup>80</sup>

68. ICE has the authority to release individuals from custody on medical grounds and has routinely exercised its authority to release particularly vulnerable detained persons like Petitioners. The former Acting Director of ICE, John Sandweg, has stated that “ICE can, and must, reduce the risk [COVID-19] poses to so many people, and the most effective way to do so is to drastically reduce the number of people it is currently holding.”<sup>81</sup> In fact, ICE has released some individuals from the Aurora facility,<sup>82</sup> but Petitioners, who all have serious medical conditions that render them especially susceptible to serious complications or death from COVID-19, continue to be detained.

69. Releasing the most vulnerable people, such as Petitioners, would also reduce the burden on regional hospitals and health centers. In case of an outbreak at a detention center, those institutions would bear the brunt of having to treat infected individuals from detention centers and have fewer medical resources available for the general population. To ensure that the release of Petitioners does not increase the spread of COVID-19, each of the Petitioners has post-release plans to take preventative measures and comply with CDC guidelines.<sup>83</sup>

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<sup>80</sup> Decl. of Dr. Franco-Paredes, Ex. A, ¶52.

<sup>81</sup> John Sandweg, *I Used to Run ICE. We Need to Release the Nonviolent Detainees.*, *The Atlantic Monthly* (Mar. 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>; *see also* Camilo Montoya-Galvez, “*Powder Kegs*”: *Calls Grow for ICE to Release Immigrants to Avoid Coronavirus Outbreak*, *CBS News* (Mar. 19, 2020), <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>.

<sup>82</sup> Kevin Beaty, *Immigrants Released from the Aurora Prison After COVID Case Confirmed*, *Denverite* (Mar. 27, 2020), <https://denverite.com/2020/03/27/immigrants-released-from-the-aurora-prison-after-covid-case-confirmed/>.

<sup>83</sup> *See generally* Exs. R-R5 (post-release plans created by social workers employed with the

70. Governments in the United States and worldwide have recognized the threat posed by COVID-19 spread among detained and incarcerated populations and have released detained individuals for that reason. For example, Iran temporarily released more than 80,000 people to curb the spread of the virus.<sup>84</sup> In the United States, several jurisdictions including New York, Los Angeles, Chicago, and Massachusetts have released detained individuals for the same reasons.<sup>85</sup>

**E. Petitioners Are Particularly Vulnerable to Serious Illness or Death if Infected by COVID-19 and Should Be Released from Custody.**

71. Petitioners in this case are individuals who are particularly vulnerable to serious illness or death if infected by COVID-19 and who are currently detained in the Aurora facility as they await adjudication of their immigration cases.

72. As described above, people at risk of serious illness or death from COVID-19 include: (a) people over age 50; (b) anyone diagnosed with cancer, autoimmune disease (including lupus, rheumatoid arthritis, psoriasis, Sjogren's, Crohn's), chronic lung disease (including asthma, COPD, bronchiectasis, idiopathic pulmonary fibrosis), history of cardiovascular disease, chronic arthritis (rheumatoid, psoriatic), chronic liver or kidney disease, diabetes, hypertension, heart failure, HIV, chronic steroids to treat chronic conditions; and (c) people with a history of

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Rocky Mountain Immigrant Advocacy Network).

<sup>84</sup> Parisa Hafezi, *Iran Temporarily Frees 85,000 From Jail Including Political Prisoners*, Reuters (Mar. 17, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-from-jail-including-political-prisoners-amid-coronavirus-idUSKBN21410M>.

<sup>85</sup> See Catherine Kim, *Why People Are Being Released From Jails and Prisons During the Pandemic*, Vox (Apr. 3, 2020), <https://www.vox.com/2020/4/3/21200832/jail-prison-early-release-coronavirus-covid-19-incarcerated>.

smoking.<sup>86</sup>

73. Each of the Petitioners have one or more of these risk factors, and are thus more susceptible to experiencing complications from infectious diseases than the population at large: (a) Ms. Codner is over the age of 50 and suffers from hypertension and allergies; (b) Mr. Temah suffers from several serious medical conditions, including hypertension, Mobitz Type 1 (also known as Second Degree Atrioventricular Block or Wenkebach, a disease of the electrical conduction system of the heart), Post-Traumatic Stress Disorder, depression, and severe anxiety disorder; (c) Ms. Belliard has been diagnosed with multiple physical and mental health disorders, including HIV, asthma, schizoaffective disorder (depressive type), gender identity disorder, and dysthymic disorder; (d) Ms. Hamzic is over age 50, was previously diagnosed with cancer in her lungs and ovaries, resulting in the removal of one lung and a hysterectomy, and may currently be suffering from breast cancer, in addition to several other diagnosed chronic conditions, including diabetes, high blood pressure, asthma, attention deficit disorder, depression, and PTSD; (e) Mr. Soria Mora has chronic asthma, high blood pressure, hypertension, and sleep apnea, for which he takes prescribed medication; (f) Ms. Mendoza Mendoza has diabetes, high triglycerides, and high cholesterol; and (g) Ms. Hidalgo Mendoza, Ms. Riviera Calero, Ms. Marroquin Gonzalez, Ms. Montes Hernandez, Ms. Ramos Sierra, Ms. Osorio Linares, and Ms. Paz Alvarez (who is age 50) are all HIV-positive with compromised immune systems.<sup>87</sup>

74. Infectious disease outbreaks such as COVID-19 can also exacerbate existing mental health conditions, from which several of the Petitioners suffer, and can contribute to the

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<sup>86</sup> Decl. of Dr. Franco-Paredes, Ex. A, ¶13.

<sup>87</sup> See Decls. at Exs. D-Q.



development of new mental health conditions. These conditions leave the Petitioners at high risk for complications or death from COVID-19.

## V. LEGAL FRAMEWORK

### A. Petitioners Have a Constitutional Right to Reasonable Safety in Detention.

75. The government has a duty to provide conditions of reasonable health and safety to individuals in their custody. As the Supreme Court has explained, “when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199–200 (1989). As a result, the government must provide those in its custody with “food, clothing, shelter, medical care, and reasonable safety.” *Id.* at 200. Failure to provide for those human needs “transgresses the substantive limits on state action” set by the Due Process Clause and Eighth Amendment. *Id.*; accord *Schwartz v. Booker*, 702 F.3d 573, 579-80 (10th Cir. 2012).

76. Because persons in immigration detention are not criminally detained, their constitutional protections are derived from the Fifth Amendment, which provides greater protections than the Eighth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The due process clause of the Fifth Amendment forbids the government from depriving a person of life, liberty, or property without due process of law. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. . . . the State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law.” *Ingraham v. Wright*,

430 U.S. 651, 671 n.40 (1977).

77. While the Eighth Amendment allows punishment as long as it is not cruel and unusual, the Fifth Amendment's due process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished."); *Peoples v. CCA Det. Ctrs.*, 422 F.3d 1090, 1106 (10th Cir. 2005). Therefore, persons in civil immigration detention are entitled to "more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982).

78. In order to establish that a particular condition of detention constitutes impermissible punishment, a detained person must show either an expressed intent to punish, or a lack of a reasonable relationship to a legitimate governmental purpose, from which an intent to punish may be inferred. *See Wolfish*, 441 U.S. at 538-39; *CCA Det. Ctrs.*, 422 F.3d at 1106.

79. An individual in civil detention can establish a due process violation by providing "evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Colbruno v. Kessler*, 928 F.3d 1155, 1163 (10th Cir. 2019) (citing *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015)); *see also Wolfish* 441 U.S. at 539 (holding that, if a condition of civil detention "is not reasonably related to a legitimate goal" or if it is "excessive" in relation to a legitimate goal, "a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.").

80. Even if government interests are nonpunitive and reasonably related to a legitimate goal, they can nevertheless be deemed excessive, particularly if viable alternatives exist. *Wolfish*, 441

U.S. at 539 n.20.

81. The due process rights of those in civil detention such as immigration detention “are *at least as great* as the Eighth Amendment protections available to a convicted prisoner.” *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) (emphasis added); *see also Zadvydas*, 533 U.S. at 690.

82. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment’s prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. *See Helling*, 509 U.S. at 33 (“It 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.”).

83. The Tenth Circuit has held that an individual in pretrial detention can establish a due process violation if he can “show deliberate indifference to his serious medical needs.” *McCowan v. Morales*, 945 F.3d 1276, 1290 (10th Cir. 2019) (citations omitted).

84. In order to show that defendants acted with deliberate indifference, first a plaintiff must show that the conditions were “sufficiently serious so as to deprive [detainees] of the minimal civilized measure of life’s necessities” or in the alternative that “a condition must be sufficiently serious so as [to] constitute a substantial risk of serious harm.” *Shannon v. Graves*, 257 F.3d 1164, 1168 (10th Cir. 2001) (citations omitted). Second, a plaintiff must establish that defendants knew of and disregarded that substantial risk to the plaintiff’s health or safety. *Farmer v. Brennan*, 511 U.S. 825, 837–38 (1994); *Burke v. Regalado*, 935 F.3d 960, 992 (10th Cir. 2019).

85. The Supreme Court has held that the government violates the Eighth Amendment when it crowds incarcerated people into cells with others who have “infectious maladies,” “even

though the possible infection might not affect all of those exposed.” *Helling*, 509 U.S. at 33 (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)).

86. The Tenth Circuit has held that a risk of contracting “infectious diseases such as Hepatitis A, shigella, and others” can satisfy the substantial risk of serious harm prong and “[t]here is no requirement that an inmate suffer serious medical problems before the condition is actionable.” *Shannon*, 257 F.3d at 1168. Where a risk is obvious, such as during a contagious disease outbreak, it is fair for a factfinder to assume that the government official was aware of the risk. *See, e.g., Farmer*, 511 U.S. at 842.

**B. This Court Has the Authority to Order Petitioners’ Release to Protect Their Constitutional Rights.**

87. A district court’s equitable powers to remedy constitutional violations is broad. *See Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

88. Although the Tenth Circuit has not had occasion to address this issue, courts in other circuits have exercised the authority to order release as a remedy for constitutional violations. *See, e.g., 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); *Inmates of Allegheny Cty. Jail v. Wecht*, 573 F. Supp. 454, 457 (W.D. Pa. 1983) (finding “no doubt of the inherent power of this Court to” order release of prisoners given unconstitutional conditions related to overcrowding).

89. The Supreme Court has also recognized that “[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).

90. In light of the severe threats posed by COVID-19, a growing number of courts have ordered the release of persons detained in immigration detention. *See e.g., Hope v. Doll*, 1:20-cv-00562-JEJ, Dkt. No. 11 (M.D. Pa. Apr. 7, 2020) (granting TRO releasing high-risk individuals in immigration detention due to the dangers of COVID-19); *Thakker v. Doll*, 1:20-cv-00480-JEJ, Dkt. No. 47 (M.D. Pa. Mar. 31, 2020) (ordering releases from two facilities in Pennsylvania lacking confirmed cases); *Coronel v. Decker*, 20-cv-2472-AJN, Dkt. No. 26 (S.D.N.Y. Mar. 27, 2020) (granting TRO releasing high-risk individuals); *Castillo v. Barr*, 20-cv-00605-TJH-AFM, Dkt. No. 32 (C.D. Cal. Mar. 27, 2020) (same); *Basank v. Decker*, 20-cv-2518-AT, Dkt. No. 11 (S.D.N.Y. Mar. 26, 2020) (same) (collectively, Ex. S).

91. Courts have similarly released numerous individuals held or incarcerated under the federal criminal system. *See e.g., United States v. Meekins*, No. 1:18-cr-222-APM, ECF No. 75 (D.D.C. Mar. 31, 2020) (post-plea, pre-sentence release order releasing defendant with three pending assault charges due to extraordinary danger COVID-19 poses to people in detention); *United States v. Muniz*, No. 4:09-cr-199, ECF No. 578, slip op. at 2 (S.D. Tex. Mar. 30, 2020) (releasing defendant serving 188-month sentence for drug conspiracy in light of vulnerability to COVID-19: “[W]hile the Court is aware of the measures taken by the Federal Bureau of Prisons, news reports of the virus’s spread in detention centers within the United States and beyond our borders in China and Iran demonstrate that individuals housed within our prison systems nonetheless remain particularly vulnerable to infection.”); *United States v. Grobman*, No. 18-cr-20989, ECF No. 397, slip op. at 2 (S.D. Fla. Mar. 29, 2020) (releasing defendant convicted after trial of fraud scheme in light of “extraordinary situation of a medically-compromised detainee being housed at a detention center where it is difficult, if not impossible, for [the defendant] and

others to practice the social distancing measures which government, public health and medical officials all advocate”); *United States v. Mclean*, No. 19-cr-380, ECF. No. 21, slip op. at 1 (D.D.C. Mar. 28, 2020) (“As counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to the community have not changed - with one exception. That one exception - COVID-19 - however, not only rebuts the statutory presumption of dangerousness, see 18 U.S.C. § 3142(e), but tilts the balance in favor of release.”); *United States v. Harris*, No. 19-cr-356, ECF No. 35, slip op. at 1 (D.D.C. Mar. 26, 2020) (“The Court is convinced that incarcerating Defendant while the current COVID-19 crisis continues to expand poses a far greater risk to community safety than the risk posed by Defendant’s release to home confinement on . . . strict conditions.”) (collectively, Ex. T); *see also In re Request to Commute or Suspend County Jail Sentences*, Docket No. 084230 (N.J. Mar. 22, 2020) (available at <https://www.njcourts.gov/notices/2020/n200323a.pdf> ) (releasing large class of defendants serving time in county jail “in light of the Public Health Emergency” caused by COVID-19).

92. The unprecedented coronavirus pandemic unquestionably calls for individuals’ release, as multiple health experts have opined that no other measures would be sufficient or appropriate, especially for individuals with special vulnerability to severe illness or death from COVID-19.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS (UNLAWFUL PUNISHMENT)**

93. Petitioners incorporate by reference the allegations of the preceding paragraphs.

94. The Fifth Amendment to the U.S. Constitution guarantees those in civil detention, including immigration detention, the right to be free from punitive conditions of confinement. 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.

95. Respondents have subjected 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 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.

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

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

98. Respondents' continued detention of Petitioners is punitive and therefore violates the Due Process Clause.

**SECOND CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT  
RIGHT TO SUBSTANTIVE DUE PROCESS (DELIBERATE INDIFFERENCE)**

99. The Fifth Amendment to the U.S. Constitution guarantees civil detainees, including immigration detainees, the right to be free from punitive conditions of confinement. The government violates this guarantee when it acts with deliberate indifference when failing to safeguard the health and safety of those in its custody.

100. The government acts with deliberate indifference when it exposes those who are detained to a substantial risk of serious harm, and when it knows of and disregards that substantial

risk to the health or safety of a detained person.

101. Defendants have subjected 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 render them especially vulnerable to severe illness or death if they were to contract COVID-19. Defendants are therefore subjecting Petitioners to a substantial risk of serious harm.

102. Respondents have known of or disregarded the substantial risk of harm to Petitioners' health and safety.

103. Respondents have acted with deliberate indifference to Petitioners' health and safety.

104. Respondents' continued detention of Petitioners violates the Due Process Clause.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Petitioners request 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, including all people over the age of 50 and persons of any age with underlying medical conditions that increase the risk of serious illness or death upon contracting COVID-19 violates the Due Process Clause;

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

e. Grant Petitioners any other and further relief this Court deems just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Timothy R. Macdonald, hereby certify that on April 14, 2020, I filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed a hard copy of the documents to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on April 14, 2020.

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