

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROMAN [REDACTED],
GEORGINA [REDACTED], LUIS [REDACTED]
[REDACTED], and BASSAM [REDACTED],

Petitioners-Plaintiffs,

and

MARIA [REDACTED]
PHILLIP [REDACTED], CHENGHUI [REDACTED],
and YANEYSI [REDACTED],

Petitioners-Plaintiffs, on
behalf of themselves and
others similarly situated,

v.

Case No. 4:20-cv-01241-KPE

CHAD WOLF, in his official capacity as Acting
Secretary, U.S. Department of Homeland
Security; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; MATTHEW
ALBENCE, in his official capacity as Deputy
Director and Senior Official Performing the
Duties of the Director, U.S. Immigration and
Customs Enforcement; PATRICK
CONTRERAS, in his official
capacity as Field Office Director,
Enforcement and Removal Operations,
Houston Field Office, U.S. Immigration and
Customs Enforcement; and
RANDY TATE, in his official
capacity as Warden of the Montgomery
Processing Center,

Respondents-Defendants.

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

CLASS ACTION

INTRODUCTION

1. This case challenges the current and future detention of individuals who are highly vulnerable to serious illness and death from COVID-19 due to their underlying medical conditions, as recognized by the CDC and medical experts, and/or age at the Montgomery Processing Center (“MPC”) by Immigration and Customs Enforcement (“ICE”). There are at least seven confirmed cases of COVID-19 associated with MPC. Yet ICE continues to hold such individuals there—where they cannot follow basic public-health directives, like social distancing—even though they urgently need protection from the pandemic.

2. Petitioners-Plaintiffs (“Plaintiffs”) and the proposed class are currently or will be held in civil detention at MPC while they await disposition of their immigration cases or deportation—or, in four instances, were previously held in civil detention at MPC and remain subject to ICE supervision or redetention or remain detained in ICE custody at a different facility.¹

3. On March 23, ICE learned that an employee at MPC tested positive for COVID-19. When this case was originally filed, that was the only publicly known case of COVID-19 connected to MPC. Now, three weeks later, ICE and its contractor have publicly confirmed six additional cases of COVID-19 at the facility: three detainees and three more employees. A study

¹ Plaintiffs Roman ██████████, Georgina ██████, Luis ██████████, and Bassam ██████ are not currently detained at MPC. *See infra* ¶¶ 74, 82, 88, 95. Plaintiff ██████ has been released from civil detention at MPC pursuant to this Court’s grant of a temporary restraining order as a preliminary injunction on April 17, 2020. Dkt. 41.

released on April 27 by the School of Public Health at Brown University projects that, over a 90-day time horizon, absent intervention measures such as release, between 72% and 100% of ICE detainees will be infected in best-case and worst-case scenarios, respectively.² Modeling specific to MPC shows that, over the same 90-day period, more than 500 and up to 811 detainees—out of MPC’s average daily population of 855—will be infected.³ As this Court observed in its April 17 order, “[t]he question of COVID-19 spreading in MPC, specifically, is not one of if, but when.” Dkt. 41 at 14.

4. Detainees at MPC live in extremely close quarters and cannot engage in risk mitigation as instructed by public health authorities. Nevertheless, ICE continues to hold the newly named Plaintiffs and the members of the proposed class in custody at MPC despite the growing number of cases of COVID-19 at MPC, the enormous risk that the disease poses to vulnerable people’s health and safety, and the impossibility for those detained at MPC to follow the instructions of public health authorities to protect themselves from infection.

5. The continued detention of medically vulnerable people at MPC in light of the imminent threat of COVID creates not only a humanitarian crisis but also a constitutional one. The Constitution forbids the government from holding civil detainees squarely in the path of a lethal pandemic that poses, for them, a high risk of serious illness or death: Respondents-Defendants (“Defendants”) cannot “[r]equir[e] medically vulnerable individuals to remain in a detention facility where they cannot properly protect themselves from transmission of a highly contagious virus with no known cure.” Dkt. 41 at 11-12. The nature of the pandemic and the

² Michael Irvine and Daniel Coombs, et. al, *Modeling COVID-19 and impacts on U.S. Immigration and Enforcement (ICE) detention facilities, 2020*, Journal of Urban Health 2020 (in press) 2 (Apr. 27, 2020) (Montiel Decl., Ex. A).

³ “Modeling COVID-19 and Impacts on ICE detention facilities in the US, 2020: Montgomery ICE Processing Center,” <http://icecovidmodel.org> (Montiel Decl., Ex. B).

conditions of confinement at MPC make it impossible for Defendants to protect vulnerable individuals from risk of infection. That risk of harm is “so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk.” *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

6. All Plaintiffs and the proposed class are at high risk of severe illness and death from COVID-19. All are particularly vulnerable to serious complications or death from COVID-19 due to their age and/or underlying medical conditions identified by the U.S. Centers for Disease Control and Prevention and public health experts as risk factors for disease—conditions such as diabetes, asthma, high blood pressure, severe obesity, and chronic respiratory conditions. *See* Ex. 1 (Venters Supp. Decl.) ¶ 9; Ex. 2 (Amon Supp. Decl.) ¶¶ 5-9. It is impossible for them to adequately socially distance or take the necessary hygiene measures to prevent contracting COVID-19 at MPC. Further, MPC does not have the capacity to provide adequate medical care.

7. This Court has the authority and the obligation to order Defendants to comply with the Fifth Amendment and release Plaintiffs and the members of the proposed class from civil detention. This Court has already ordered the release, on a preliminary basis, of one Plaintiff from MPC, recognizing that her medical vulnerability to COVID-19 meant that for her “the threat of a mass outbreak is one that portends a high likelihood of serious illness or death, and is one that MPC cannot take sufficient steps to prevent.” Dkt. 41 at 13. Courts across the country have issued similar orders, requiring the immediate release of medically vulnerable individuals like Plaintiffs from ICE detention facilities in light of the potentially fatal consequences of the continuing constitutional violation. This Court has recognized, for another detainee at MPC, the “especially important” need for “timely release . . . now during the

COVID-19 pandemic.” *Ali v. Dep’t of Homeland Sec.*, No. 4:20-cv-00140, Dkt. No. 37 (S.D. Tex. Apr. 2, 2020).

8. For the reasons discussed below, this Court should require Defendants to release the detained Plaintiffs and the proposed class from custody, which is the only means for them to avoid infection by a lethal virus with no vaccine or cure.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 1343 (original jurisdiction), 28 U.S.C. § 2241 (habeas jurisdiction), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

10. Venue lies in the United States District Court for the Southern District of Texas because Plaintiffs are detained or are subject to redetention by Defendants at ICE’s Montgomery Processing Center, which is located within the Southern District of Texas. 28 U.S.C. § 2242. Venue is proper in the Southern District of Texas because a substantial portion of the relevant events occurred in the District and because multiple Defendants reside in the District. 28 U.S.C. § 1391(b), (e)(1).

PARTIES

Petitioners-Plaintiffs

11. Petitioner-Plaintiff Roman [REDACTED] is a 58-year-old man originally from Mexico and first detained by ICE at MPC in February 2020. Mr. [REDACTED] suffers from diabetes, asthma, sleep apnea, and low blood oxygen levels. He also is at high risk of blood clots and takes blood thinners on a daily basis. Following his detention at MPC in February 2020, Mr. [REDACTED] became ill and was taken to an emergency room in Conroe, Texas, where he

was diagnosed with pneumonia. As a consequence of his health conditions and age, Mr. [REDACTED] has a high risk of serious illness or death if he contracts COVID-19. On April 11, ICE released Mr. [REDACTED] from custody on parole, subject to conditions of supervision. Dkt. 13.

12. Petitioner-Plaintiff Georgina [REDACTED] is a 28-year-old woman originally from Guatemala and first detained by ICE at MPC in November 2019. Ms. [REDACTED] has a body mass index of 48.3, which exceeds the CDC's threshold of 40 for elevated risk from COVID-19. As a consequence of her health condition, Ms. [REDACTED] has a high risk of serious illness or death if she contracts COVID-19. Ms. [REDACTED] was released from ICE custody, subject to conditions of supervision, as a result of this Court's Order on April 17. Dkt. 41.

13. Petitioner-Plaintiff Luis [REDACTED] is a 34-year-old man originally from Guatemala and first detained by ICE at MPC in March 2020. Mr. [REDACTED] lungs are underdeveloped due to premature birth, and, as a result, he suffers from chronic respiratory illness. Four years ago, Mr. [REDACTED] was bedridden with the flu for several weeks; he has become ill from the flu every winter for the past ten years. As a consequence of his health conditions, Mr. [REDACTED] has a high risk of serious illness or death if he contracts COVID-19. Mr. [REDACTED] posted bond and was released from detention on April 16. Dkt. 40.

14. Petitioner-Plaintiff Bassam [REDACTED] is a 37-year-old man originally from Jordan and first detained by ICE at MPC in August 2019. Mr. [REDACTED] has respiratory issues and frequently experiences difficulty breathing and chest pain; he experiences shortness of breath if he attempts to walk for more than a few minutes. He suffers from high blood pressure and is on a restricted diet. As a consequence of his health conditions, Mr. [REDACTED] has a high risk of serious illness or death if he contracts COVID-19. This Court declined to order Mr. [REDACTED] release on April 17.

He has since been briefly released into the custody of Harris County Jail, taken into ICE custody again pursuant to an ICE detainer, and detained by ICE at IAH Secure Adult Detention Center in Livingston, Texas. Dkt. 43.

15. Petitioner-Plaintiff Maria [REDACTED] is a 58-year-old woman originally from Venezuela who has been detained by ICE at MPC since March 2020. Ms. [REDACTED] has only one kidney, due to a donation to her brother, and is on a restricted diet as a result. She also suffers from high blood pressure. As a consequence of her age and health conditions, Ms. [REDACTED] has a high risk of serious illness or death if she contracts COVID-19.

16. Petitioner-Plaintiff Phillip [REDACTED] is a 41-year-old man originally from Zimbabwe who has been detained by ICE at MPC since November 2019. Mr. [REDACTED] suffers from severe hypertension and is currently taking three medications daily, two at the maximum dosage, for the condition. As a consequence of his health condition, Mr. [REDACTED] has a high risk of serious illness or death if he contracts COVID-19.

17. Petitioner-Plaintiff Chenghui [REDACTED] is a 58-year-old woman originally from China who has been detained by ICE at MPC since February 2020. Ms. [REDACTED] suffers from high blood pressure. As a consequence of her age and health condition, Ms. [REDACTED] has a high risk of serious illness or death if she contracts COVID-19.

18. Petitioner-Plaintiff Yaneyssi [REDACTED] is a 41-year-old woman originally from Cuba who has been detained at MPC since March 9, 2020. Ms. [REDACTED] has a history of arterial heart obstruction and high blood pressure. Since being detained at MPC, Ms. [REDACTED] has had three allergic reactions that required administration of an epinephrine shot. As a

result of Ms [REDACTED] health conditions, she has a high risk of serious illness or death if she contracts COVID-19.

Respondents-Defendants

19. Respondent-Defendant Chad Wolf is 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 Plaintiffs. 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 Plaintiffs. He is sued in his official capacity.

20. Respondent-Defendant ICE is a federal law enforcement agency within the Department of Homeland Security (“DHS”). 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. Defendant ICE is a legal custodian of Plaintiffs.

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

22. Respondent-Defendant Patrick Contreras is the Field Office Director for Enforcement and Removal Operations (“ERO”) in the Houston Field Office of 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 his capacity as Field Office Director for ERO, Defendant Contreras exercises control over and is a custodian of immigration detainees held at all of the Southeast Texas facilities that house ICE detainees, including the Montgomery Processing Center. At all times relevant to this Complaint, Defendant Contreras was acting within the scope and course of his employment with ICE. He is sued in his official capacity.

23. Respondent-Defendant Randy Tate is Warden of the Montgomery Processing Center in Montgomery County, where all Plaintiffs are detained. Respondent-Defendant Tate is the immediate, physical custodian of Plaintiffs. He is named in his official capacity.

STATEMENT OF FACTS

I. COVID-19 Poses a Grave Risk of Harm, Including Serious Illness or Death, to Older Adults and Persons with Certain Medical Conditions.

24. In the United States, at least 957,875 people have already tested positive for the virus, and at least 53,922 have died. The United States now has more reported cases than any other country in the world. In Texas, there are at least 25,197 confirmed cases and 663 known deaths.

25. COVID-19 infects people who come into contact with respiratory droplets that contain the coronavirus, such as those produced when an infected person coughs or sneezes. Such droplets can spread between people at a distance of up to six feet. The virus that causes COVID-19 is highly contagious and can survive for long periods on inanimate surfaces, making the disease's spread within a community inevitable once, as at MPC, it has appeared.

26. There is no vaccine to prevent COVID-19. There is no known cure or FDA-approved treatment for COVID-19 at this time. The only known means of minimizing the risk of infection—and therefore the risk of grave illness or death from COVID-19—are maintaining a distance of at least six feet from other people, a practice known as “social distancing,” and

increased sanitization, including frequent hand- and face-washing and sanitization of commonly used surfaces.

27. Outcomes from COVID-19 vary from a mild upper respiratory infection to pneumonia, sepsis, and death. Individuals with serious underlying medical conditions are at the highest risk of severe disease and death if they are infected with COVID-19.

28. 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. COVID-19 may also cause inflammation of the heart muscle, known as myocarditis. It 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.

29. Emerging evidence also suggests that COVID-19 can trigger an over-response of the immune system, further damaging tissue and potentially resulting in widespread damage to the body's organs, including permanent injury to the kidneys and neurologic injury.

30. These complications can develop at an alarming pace. Patients can show the first symptoms of infection within two days of exposure, and their condition can seriously deteriorate in five days or sooner.

31. People in higher-risk categories who contract COVID-19 are more likely to need advanced support. This level of supportive care requires 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.

32. The extensive degree of support that COVID-19 patients need can quickly exceed local healthcare resources, requiring doctors and public health authorities to allocate scarce

resources and decide who receives care. By far the best way to avoid further burdening an already over-taxed healthcare system is to enable individuals, particularly those who are highly vulnerable to serious complications from COVID-19, to avoid infection in the first place.

33. According to recent estimates, the fatality rate of COVID-19 is about ten times higher than a severe seasonal influenza. For people in the highest-risk populations, the fatality rate of COVID-19 is about fifteen percent—or one in seven.

34. The only way to protect vulnerable people from serious health outcomes, including death, is to prevent them from being infected with the coronavirus.

II. Conditions at the Montgomery Processing Center Increase the Risk of COVID-19 Infection.

35. The conditions at MPC place immigrant detainees at serious risk of infection with COVID-19.

36. In the past two weeks, MPC has seen an alarmingly rapid increase in the number of confirmed positive COVID-19 cases, including three confirmed cases of COVID-19 among detainees. On March 23, 2020, ICE learned that a GEO Group employee working at the Montgomery Processing Center tested positive for COVID-19. GEO Group released a statement stating that the employee had tested positive, that three additional employees had been advised to self-quarantine, and that “one detainee has been isolated from the general population in the medical area of the facility.” Dkt. 12-2, Ex. D. When this Court issued its order for Plaintiff Rojas’s immediate release from custody, 12 days ago, that was still the only publicly confirmed positive case associated with MPC. Dkt. 41 at 2; *see also* Dkt. 22 at 11. Now, three detainees and four MPC staffers have tested positive for COVID-19.⁴ Neither ICE nor GEO Group has

⁴ Elizabeth Trovall, *Texas Immigrant Detention Facilities Report Surge In COVID-19 Cases*, Houston Public Media, April 22, 2020,

provided any further public update on suspected or confirmed COVID-19 cases among MPC GEO Group staff, or on suspected cases among detainees or ICE officers at MPC. As of April 13, only 3 of MPC's more than 800 detainees had been tested for COVID-19. Dkt. 22-5 ¶ 18.

37. COVID-19 is spreading rapidly through ICE detention centers throughout the country, as the quickly increasing number of confirmed cases of COVID-19 indicate. As of the date of this filing, there are 449 confirmed cases among people detained by ICE, out of 995 total detainees tested, and 36 confirmed cases among ICE employees at detention centers. Montiel Decl., Ex. D. These numbers do not include positive COVID-19 tests among employees of third-party contractors working at ICE facilities, such as the GEO Group staffers at MPC, because ICE takes the position that it need not release that information.⁵ Moreover, in the absence of comprehensive testing, it is impossible to know just how widespread COVID-19 is throughout the immigration detention system.

38. MPC is an enclosed environment in which contagious diseases easily spread. People live in close quarters and are subject to security measures that make the social distancing that is needed to effectively prevent the spread of COVID-19 impossible. Further, while people are held in this facility, they are unable to follow the relevant directives promulgated by medical and public health officials for mitigating the spread of COVID-19.

<https://www.houstonpublicmedia.org/articles/news/health-science/coronavirus/2020/04/22/367591/texas-immigrant-detention-facilities-report-surge-in-covid-19-cases/> (Montiel Decl., Ex. C); *ICE Guidance on COVID-19*, ICE, <https://www.ice.gov/coronavirus> (last viewed Apr. 29, 2020) (Montiel Decl., Ex. D).

⁵ Acacia Coronado, *At Least Seven Texas Detention Center Employees Who Tested Positive for COVID-19 Were Not Officially Reported by ICE*, Texas Observer, April 16, 2020, available at <https://www.texasobserver.org/ice-immigrant-detention-centers-coronavirus-positive/> (Montiel Decl., Ex. E).

39. This presents ideal incubation conditions for the rapid spread of COVID-19 once it has been introduced into the facility. Enclosed group environments, like cruise ships or nursing homes, have become the sites for the most severe outbreaks of COVID-19. *See* Dkt. 1-1 (Golob Decl.) ¶¶ 12 & 13. The virus is also spreading at an alarmingly high rate at jails and prisons. At Rikers Island Jail in New York, at least 379 prisoners have tested positive for the disease.⁶ At Federal Correctional Institution Oakdale I in Louisiana, since March 28, 7 of the approximately 970 prisoners have *died* of COVID-19.⁷ As of April 29, 2020, over 200 prisoners have died in jails throughout the country.⁸ Eight of the top ten largest outbreaks in the United States are connected to jails or prisons.⁹

40. To halt the spread of COVID-19, CDC guidance instructs all people to maintain six feet of distance between themselves. Dkt. 12-2, Ex. E (CDC, *Social Distancing, Quarantine, and Isolation* (April 10, 2020)). The same guidance applies to those who are incarcerated or detained. *See id.* The CDC emphasizes that this guidance “is especially important for people who are at higher risk of getting very sick.” *Id.*

41. The nature of their detention at MPC denies people the opportunity to follow these directives. *See* Dkt. 1-2 (Amon Decl.) ¶¶ 31, 33, 34, 43; Venters Decl. ¶¶ 7-13. Social

⁶ *COVID-19 Infection Tracking in NYC Jails*, Legal Aid Society, available at <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (Montiel Decl., Ex. F).

⁷ *Seventh Inmate Death From COVID-19 Reported at FCI Oakdale*, KALB, Apr. 15, 2020, available at <https://www.kalb.com/content/news/Seventh-inmate-death-from-COVID-19-reported-at-FCI-Oakdale-I-569679741.html> (Montiel Decl., Ex. G).

⁸ Grace DiLaura and Kalind Parish, *Covid-19 Jail/Prison Confirmed Cases & Deaths*, UCLA Covid-19 Behind Bars Data Project, available at https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1197647409 (last viewed Apr. 29, 2020) (Montiel Decl., Ex. H).

⁹ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times, available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#hotspots> (last viewed Apr. 29, 2020) (Montiel Decl., Ex. I).

distancing is physically impossible. *See* Amon Decl. ¶¶ 31, 33, 34, 42, 43, 57; Venters Decl. ¶ 9. MPC and other immigration detention facilities are not structurally designed to allow for the necessary physical distancing. *See* Amon Decl. ¶¶ 31, 33, 34, 43; Venters Decl. ¶¶ 7-13; Ex. 3 (Schriro Decl.) ¶¶ 27-28.

42. At MPC, many immigration detainees live in dormitories that hold up to 90 detainees at a time. Dkt. 1-3 (██████ Decl.) ¶ 12; Dkt. 1-4 (██████ Decl.) ¶ 15; Ex. 4 (██████) ¶ 21. Several Plaintiffs live in dormitories that hold roughly fifty people. Ex. 5 (██████ Decl.) ¶ 14; Ex. 6 (██████ Decl.) ¶ 15. In these dormitories, detainees must share one large room for sleeping, eating, and socializing. Dkt. 1-5 (██████ Decl.) ¶ 11; ██████ Decl. ¶ 15; ██████ Decl. ¶ 14; *see also* Ex. 7 (██████ Decl.) ¶ 12. Their beds, typically bunk beds, are close together, as little as one to two feet apart. ██████ Decl. ¶ 15; Dkt. 1-6 (██████ Decl.) ¶ 15; ██████ Decl. ¶ 15; ██████ Decl. ¶¶ 14, 15. Detainees share communal tables. ██████ Decl. ¶ 15; ██████ Decl. ¶ 15; ██████ Decl. ¶ 15.

43. In these larger cells—again, which may hold up to 90 people—detainees are forced to share a communal bathroom, with a small number of sinks, toilets, urinals, and showers. ██████ Decl. ¶ 16; ██████ Decl. ¶ 15; ██████ Decl. ¶ 14.

44. These crowded conditions and shared common spaces and objects, such as bathrooms and sinks, maximize the likelihood that COVID-19 will spread rapidly across the facility, infecting vulnerable detainees. Dkt. 1-7 (Venters Decl.) ¶ 23; Amon Decl. ¶¶ 42, 57; Venters Supp. Decl. ¶ 6 (“Now that COVID-19 is inside MPC, ICE will be unable to stop the spread of the virus throughout the facility.”).

45. Even detainees who do not live in these larger dormitories are in close proximity to both other detainees and facility staff. *See* Dkt. 1-8 (██████ Decl.) ¶ 6; ██████ Decl. ¶¶

11, 13; ██████████ Decl. ¶ 22 (describing interactions with facility staff). Detainees who share a cell are in close proximity to their cell mate at all times, and they must interact with facility staff in close physical proximity. *See* ██████████ Decl. ¶ 11. They also interact with other detainees during recreation time, when people share a common outdoor space. *Id.* ¶ 13. In an eight-person cell, detainees share a single shower. ██████████ Decl. ¶ 11.

46. The sole current exception to these shared arrangements is Plaintiff ██████████ ██████████, previously held in a shared dormitory but currently held in isolation, in the medical area, because MPC has repeatedly exposed her to allergens. ██████████ Decl. ¶¶ 14, 21-22. She too currently regularly interacts with facility staff, including a staffer who serves food both to her and to detainees in medical isolation due to COVID-19. *Id.* ¶ 22. Prior to her current placement in the medical area, Ms. ██████████ was held in a dormitory with more than 70 others and with beds a few feet apart. *Id.* ¶ 21.

47. Tellingly, the ICE guidance acknowledges that the options to safeguard vulnerable detainees “depend on available space.” CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (April 10, 2020), Dkt. 12-2, Ex. F. As the facility structure and daily routines of MPC demonstrate, immigration detention facilities like MPC simply do not have sufficient space to enable social distancing and therefore are incapable of protecting Plaintiffs and other detainees from the risks of COVID-19. *See* Amon Decl. ¶¶ 31, 33, 34, 43.

48. CDC guidance also instructs everyone—including people who are incarcerated or detained—to wash hands often with soap and water for at least 20 seconds and, absent soap and water, to use a hand sanitizer of at least 60% alcohol. Dkt. 12-2, Ex. F. CDC guidance directs that detention centers provide detainees with no-cost access to soap, running water, hand dryers

or disposable paper towels, and, where possible, hand sanitizer. *Id.* It also directs that those incarcerated or detained, like all others, cover their mouth and nose with a disposable tissue when coughing or sneezing. *Id.*

49. Facility staff at MPC have failed to provide detainees with even basic information about COVID-19. ██████████ Decl. ¶ 10; ██████████ Decl. ¶ 9; ██████████ Decl. ¶ 17. Detainees have not been told by detention staff about the signs and symptoms of COVID-19. ██████████ Decl. ¶ 10; ██████████ Decl. ¶¶ 9, 10. Detainees have not been given guidance on personal protective measures, such as recommended respiratory etiquette or social distancing. ██████████ Decl. ¶ 10; ██████████ Decl. ¶ 9. The only direction or explanation about social distancing that Plaintiff Bakasa has received, for example, is instruction from MPC staff to those in his dormitory to remain behind a strip of tape six feet away from a podium where an MPC staff member sits—not any explanation or instruction regarding his contact with other detainees. ██████████ Decl. ¶ 18.

50. MPC fails to provide sufficient resources for detainees to maintain hygiene as the CDC recommends. Multiple Plaintiffs have not been provided with adequate access to soap or paper towels during detention at MPC. ██████████ Decl. ¶ 7; ██████████ Decl. ¶ 14; ██████████ Decl. ¶ 15; ██████████ Decl. ¶ 16; *see* ██████████ Decl. ¶ 21; *see also* ██████████ Decl. ¶ 19 (describing pre-COVID-19 interviews with MPC detainees in which detainees expressed concern over a lack of communal soap for handwashing in bathrooms); Schriro Decl. ¶ 36. MPC does not provide detainees hand sanitizer, ██████████ Decl. ¶ 8; ██████████ Decl. ¶ 15, or facial tissue. ██████████ Decl. ¶ 17; Yaneyssi Decl. ¶ 21; ██████████ Decl. ¶ 16; *see also* Schriro Decl. ¶ 36.

51. CDC guidance instructs everyone—including people incarcerated or detained, and staff at detention facilities—to wear face masks in settings where social distancing is not

feasible. CDC, *Recommendation Regarding the Use of Cloth Face Coverings* (April 10, 2020), Dkt. 12-2, Ex. G. CDC guidance further provides that those detained must wear personal protective equipment, including masks and gloves, while cleaning in an area where a person with a confirmed or suspected case of COVID-19 has been present. *Id.*

52. ICE officers regularly do not use masks when they interact with detainees at MPC. Dkt. 1-9 (██████████ Decl.) ¶¶ 4, 10; ██████████ Decl. ¶ 14; ██████████ Decl. ¶ 21; ██████████ Decl. ¶ 22; ██████████ Decl. ¶ 18; ██████████ Decl. ¶ 10. At times they wear masks around their necks, rather than over their mouths as required to mitigate the risk of spread of COVID-19 ██████████ Decl. ¶ 14; ██████████ Decl. ¶ 21; ██████████ Decl. ¶ 18. This failure to properly wear personal protective equipment further increases detainees' risk of exposure to COVID-19.

53. While MPC has recently provided detainees with a single mask each, it has specifically instructed them to wear the masks only *outside* of the dormitory. ██████████ Decl. ¶ 10; ██████████ Decl. ¶ 17; ██████████ Decl. ¶ 20.

54. Moreover, as described *infra*, some of the Plaintiffs have already received inadequate medical care at MPC. ██████████ Decl. ¶¶ 10, 13; ██████████ Decl. ¶ 8; ██████████ Decl. ¶¶ 10-12; ██████████ Decl. ¶¶ 12-17; ██████████ Decl. ¶ 8; ██████████ Decl. ¶¶ 6, 7, 9. One immunocompromised detainee has reported that a guard refused to take him to the medical clinic when he requested a visit after developing a cough, a symptom of COVID-19, and that the guard instead informed him that he did not have coronavirus. Dkt. 1-10 (██████████ Decl.) ¶ 4. Detainees described concerns about inadequate medical care at MPC, including lack of follow-up regarding medical issues, problems with medications, and concerns as to the attentiveness of medical care, prior to the COVID-19 pandemic in March 2019. Obser Decl. ¶ 18; ██████████ Decl. ¶¶ 10-12; ██████████ Decl. ¶¶ 12-17; ██████████ Decl. ¶ 8; ██████████ Decl. ¶¶ 6, 7, 9.

55. ICE guidance states that “[d]etainees who do not have fever or symptoms, but meet CDC criteria for epidemiologic risk, are housed separately in a single cell, or as a group.” Montiel Decl., Ex. D. However, experts have concluded that cohorting vulnerable detainees together *increases* their risk of becoming infected with COVID-19. Venters Decl. ¶¶ 14(e), (f), 18; Amon Decl. ¶¶ 31, 49(c).

56. CDC guidance for detention facilities directs that facilities separate detainees with symptoms of COVID-19 from others. Dkt. 12-2, Ex. F. It instructs that each individual with a confirmed or suspected case of COVID-19 should be assigned their own room and bathroom. *Id.* CDC guidance provides that as a last resort, “if there are no other available options,” multiple *laboratory-confirmed* COVID-19 cases—not suspected COVID-19 cases—may be placed together. *Id.*

57. MPC’s failure to separate detainees with COVID-19 symptoms in a manner consistent with best medical practices exposes other detainees to possible COVID-19 infection. Despite exhibiting symptoms consistent with COVID-19, including a diagnosis of pneumonia, Plaintiff ██████████ was not to his knowledge tested for COVID-19 prior to the filing of this litigation, despite being hospitalized for pneumonia; it is possible he was subsequently tested. *See* ██████████ Decl. ¶ 12. Plaintiff ██████████ was confined in a medical observation room with three other individuals and then transferred to a dormitory with roughly 80 people. *Id.* ¶¶ 11, 15. After his transfer to the dormitory, he continued to feel fatigued, was unable to walk long distances, and was sweating profusely. *Id.* ¶ 14.

58. Other detainees at MPC have not received adequate medical care for symptoms of COVID-19 and have remained in environments with dozens of other detainees while symptomatic. Detainees have not been moved out of the dormitories and instead have remained

there while exhibiting symptoms consistent with COVID-19, such as fever, coughing, and body aches. ██████████ Decl. ¶ 15; ██████████ Decl. ¶ 6; ██████████ Decl. ¶ 24; ██████████ Decl. ¶ 9. For example, one person with asthma remained in his dormitory with symptoms. ██████████ Decl. ¶ 6. This person became ill with flu-like symptoms, body aches, and a cough within two weeks of coming into contact with someone in his dormitory who had twice been hospitalized with pneumonia and was exhibiting flu-like symptoms. *Id.*

59. MPC has cohorted detainees exposed or possibly exposed to COVID-19 together, which will not prevent the spread of the virus. ██████████ Decl. ¶¶ 20, 25. “Cohorting,” the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, is likely to facilitate rather than prevent disease transmission in a detention facility like MPC. *See Amon Decl. ¶ 31; Venters Decl. ¶¶ 14(e), 18.*

60. Failure to regularly test staff and detainees presents a daily risk of spread of the virus throughout the facility. *See Amon Decl. ¶¶ 22, 49(a), (e), 57.* The possibility of asymptomatic transmission means that monitoring staff or detainees for fever is also inadequate to identify all who may be infected and prevent transmission. *Id.* ¶¶ 11, 12, 44, 49(a), (e), 57. This is also true because not all individuals infected with COVID-19 have a fever in early stages of infection. *Id.* ¶ 11.

61. It is impossible to stop the spread of the virus within MPC, where social distancing and necessary hygiene measures are not feasible. *See Amon Decl. ¶¶ 53, 55, 57.* But Defendants continue to hold Plaintiffs in conditions where they cannot protect themselves.

III. 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 the virus is the only known way to protect those who are most vulnerable to serious harm from infection. Golob Decl. ¶ 10; Amon Decl. ¶¶ 6, 11, 13.

63. Because the risk of infection is at its zenith in detention centers, public health experts with experience in detention and correctional settings have recommended release of vulnerable individuals from custody. Amon Decl. ¶¶ 17, 49(j), 55, 58; Venters Decl. ¶¶ 7, 24. Indeed, two medical experts for the Department of Homeland Security have concluded that COVID-19 poses an “imminent risk to the health and safety of immigration detainees,” in light of the nature of detention facilities and have recommended release of vulnerable people, both to mitigate their risk and to lessen the strain on local healthcare systems. Dkt. 12-2, Ex. H. Immigration detention facilities lack adequate medical care infrastructure to address the strain of a COVID-19 outbreak. Amon Decl. ¶¶ 20, 31, 33, 34, 43. As a result, individuals who due to their age or medical conditions are at particularly grave risk of severe illness and death while detained should be released.

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

64. 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 detained or continues to detain them at MPC while they await the adjudication of their immigration cases during the COVID-19 global pandemic.

65. **Roman** [REDACTED]. Mr. [REDACTED] is a 58-year-old man originally from Mexico. He was detained by ICE at MPC for roughly one month. [REDACTED] Decl. ¶¶ 1, 4.

66. Mr. ██████████ came to the United States in 1988 and has lived here since that time as a legal permanent resident. Mr. ██████████ wife and five children are United States citizens. *Id.* ¶ 3.

67. Mr. ██████████ has significant health problems. He suffers from diabetes, asthma, sleep apnea, and high cholesterol. He currently has dangerously low blood oxygen levels. He takes medication daily for diabetes, asthma, low blood oxygen levels, and high risk of blood clots. In summer 2019, Mr. ██████████ was hospitalized for roughly two weeks due to complications from his asthma, diabetes, and high cholesterol. Following discharge, he used oxygen tanks for roughly two months. Since September 2019, Mr. ██████████ has used a continuous positive airway pressure (CPAP) machine to sleep. *Id.* ¶¶ 6-9.

68. While detained at MPC, Mr. ██████████ became very ill and was taken to the emergency room, where he was diagnosed with pneumonia. He was held in a medical observation room for roughly two weeks and then returned to the general population. Mr. ██████████ health declined over the course of his detention at MPC: he was sweating profusely, he experienced severe fatigue, and he was unable to walk long distances. *Id.* ¶¶ 11, 14.

69. To Mr. ██████████ knowledge, he was not been tested for COVID-19 while detained at MPC. *Id.* ¶ 12.

70. MPC did not provided Mr. ██████████ with a CPAP machine while he has been detained. He was falling asleep randomly. Mr. ██████████ fell off his top bunk onto a concrete floor after suddenly falling asleep, injuring his tailbone. When he sought medical attention at MPC for this injury, staff provided topical cream and did not perform an x-ray; Mr. ██████████ is still in pain. *Id.* ¶ 10.

71. Mr. ██████ uses a nebulizer every day for his asthma. Following his transfer from a medical observation room to the general population, he was not provided with a nebulizer for roughly two weeks. *Id.* ¶ 13.

72. Mr. ██████ was held in a dormitory at MPC with roughly 80 people, in which the bunks are roughly 1 to 2 feet apart. As of April 4, 2020, there were at least two other people in his dormitory who were exhibiting symptoms of illness, including coughing. *Id.* ¶ 15.

73. Mr. ██████ is at high risk of severe illness or death from COVID-19 due to his significant health problem. Venters Decl. ¶ 20(a).

74. ICE did not release Mr. ██████ from custody until April 11, 2020, after this case was filed. Mr. ██████ was released on parole, subject to conditions of supervision. Dkt. 13.

75. **Georgina** ██████ Ms. ██████ is a 28-year-old woman who was born in Guatemala and whose nationality is recorded by ICE as Nicaraguan. She was detained by ICE at MPC for roughly five months. ██████ Decl. ¶¶ 1, 3.

76. Ms. ██████ has lived in the United States since she was brought here 25 years ago at the age of three. She has two children, ages seven and nine, who are U.S. citizens. Ms. ██████' mother is also a U.S. citizen. *Id.* ¶ 4.

77. Ms. ██████ has significant health problems. She is 5'5" and weighs 290 pounds, meaning that she has a body mass index of 48.1. As a result of a back injury from a serious car accident, in which she was ejected from the vehicle, Ms. ██████ has a pinched nerve and experiences chronic back pain. Due to the same accident, she also experiences chronic headaches. Ms. ██████ has a history of smoking: she began at age 16. By the time she quit smoking a year and a half ago, she was smoking five to six cigarettes a day. ██████ Decl. ¶¶ 6-8.

78. After being detained, Ms. █████ sought medical treatment for her chronic back pain resulting from the car accident. However, ICE did not provided comparable medication to the medication that she was taking before being detained, and Ms. █████ remained in pain. Instead of a combination of muscle relaxants and non-prescription pain medication, she was provided with only non-prescription pain medication. She was given ibuprofen, which did not provide sufficient relief. *Id.* ¶ 8.

79. Ms. █████ was unable to socially distance at MPC. She was consistently two to three feet away from her cell mate and regularly interacted in close proximity with ICE officers and facility staff. Additionally, she and other detainees were exposed to each other during recreation. *Id.* ¶¶ 11, 13.

80. Ms. █████ did not have access to hand sanitizer and had only limited access to paper towels to dry her hands at MPC. *Id.* ¶ 15.

81. Ms. █████ is at high risk of severe illness or death from COVID-19 due to her significant health problems. Venters Decl. ¶ 20(a).

82. Ms. █████ was released from ICE pursuant to this Court's Order on April 17, 2020. Dkt. 41.

83. **Luis █████**. Mr. █████ is a 34-year-old man originally from Guatemala. He was detained by ICE at MPC beginning in March 2020. █████ Decl. ¶ 2.

84. Mr. █████ has significant health problems. He was born prematurely and doctors have told him that his lungs never fully developed. As a result, he is extremely susceptible to respiratory illnesses. Every winter for the past ten years, he has become bedridden

with the flu. Four years ago, he suffered a particularly severe case of influenza and almost died. He had to stay in bed for several weeks to recover. *Id.* ¶ 4.

85. Mr. ██████ was unable to socially distance at MPC: for example, his bed was in close proximity to others'. *Id.* ¶ 6.

86. Mr. ██████ did not have access to hand sanitizer at MPC. *Id.* ¶ 8.

87. Mr. ██████ is at high risk of severe illness or death from COVID-19 due to his significant health problems. Venters Decl. ¶ 20(a).

88. After this lawsuit was filed, an immigration judge granted Mr. ██████ bond. He posted bond and was released from detention on April 16, 2020. Dkt. 40.

89. **Bassam** ██████. Mr. ██████ is a 37-year-old man originally from Jordan. He has been detained by ICE at MPC for roughly eight months. ██████ Decl. ¶¶ 1, 3.

90. Mr. ██████ has lived in the United States for 13 years, previously as a lawful permanent resident. He has two children, ages three and six, who are U.S. citizens. *Id.* ¶ 4.

91. Mr. ██████ has significant health problems. Mr. ██████ frequently experiences difficulty breathing and chest pain; he experiences shortness of breath if he attempts to walk for more than a few minutes. He suffers from high blood pressure and is on a restricted diet. His father has had two heart attacks. *Id.* ¶¶ 6-8.

92. Mr. ██████ is unable to socially distance at MPC. He lives in a dormitory room with 56 others. The dormitory has only eight showers, which are shared. The living area is also shared, with a few communal tables at which people gather. *Id.* ¶¶ 10-11.

93. Mr. ██████ does not have sufficient access to soap and does not have access to hand sanitizer at MPC. *Id.* ¶ 14.

94. Mr. ██████ is at high risk of severe illness or death from COVID-19 due to his significant health problems. Venters Decl. ¶ 20(a).

95. This Court declined to order Mr. ██████ release on April 17, 2020, Dkt. 41, and he remains in ICE custody. Mr. ██████ is currently detained at IAH Secure Adult Detention Facility in Livingston, Texas. Dkt. 43.

96. **Maria** ██████. Ms. ██████ is a 58-year-old woman originally from Venezuela. She has been detained at MPC since March 15, 2020. ██████ Decl. ¶ 2.

97. Ms. ██████ has significant health problems. She has only one kidney, after donating her other kidney to her brother in 1997. She is on a restricted diet to preserve her kidney function but is unable to follow this diet at MPC. She also suffers from high blood pressure. ██████ Decl. ¶¶ 6-8.

98. Ms. ██████ has experienced multiple bouts of illness during the month she has been detained at MPC. Her symptoms have included fever, “constant pain” in her bones, diarrhea, dizziness, and changes in the color of her tongue. ██████ Decl. ¶¶ 6-8.

99. Ms. ██████ is unable to socially distance at MPC. She lives in a dormitory. Some facility staff who enter the dormitory do not wear masks or gloves. ██████ Decl. ¶¶ 11-12.

100. Ms. ██████ is at high risk of severe illness or death from COVID-19 due to her age and significant health problems. Venters Supp. Decl. ¶ 11(a).

101. **Phillip** ██████. Mr. ██████ is a 41-year-old man originally from Zimbabwe. He has been detained by ICE at MPC for roughly five months, since November 2019. ██████ Decl. ¶ 2. He has had a final order of removal since August 2019 and originally had a scheduled

departure date in November 2019. More than two months ago, an embassy representative from the Zimbabwean embassy requested Mr. ██████'s identity card for Zimbabwe. Mr. ██████ remains detained by ICE more than eight months after his order of removal became final. To his knowledge, he has no scheduled departure date. Ex. 8 ██████ Supp. Decl.) ¶¶ 1, 4-5, 9-11.

102. Mr. ██████ has lived in the United States for 19 years. His wife is a U.S. citizen. His nine-year-old son and his 23-month-old daughter are also U.S. citizens. ██████ Decl. ¶ 27.

103. Mr. ██████ has severe hypertension, first diagnosed roughly a decade ago. He is currently taking three different medications daily for his hypertension and is on the maximum dosage for two of those three medications. MPC medical staff have adjusted his blood pressure medication approximately three or four times in the five months he has been detained at MPC: most recently, in the last month medical staff increased his intake of amlodipine to the maximum dosage. If Mr. ██████ does not take blood pressure medication, he experiences severe symptoms: he has difficulty breathing, he cannot move, his head and eyes hurt, and his skin feels as if it is burning to the touch. In 2015, he was hospitalized overnight because of severe high blood pressure when his medication stopped working. He has also been diagnosed with sleep apnea. Mr. ██████ has a family history of heart disease: his mother passed away from this condition during his childhood. Additionally, from 2015 to 2017, Mr. ██████ smoked roughly four packs of cigarettes a week. ██████ Decl. ¶¶ 7-15.

104. Mr. ██████ is unable to socially distance at MPC. He lives in a dormitory with more than 50 other people, with bunk beds that are roughly three to four feet apart. There are two shared restrooms, with a total of eight sinks, five toilets, and ten showers. ██████ Decl. ¶ 15.

105. Mr. ██████ does not have access to hand sanitizer at MPC. ██████ Decl. ¶ 17.

106. MPC staff have given Mr. █████ a single mask and have instructed him to wear it only outside of the dormitory. Facility staff have told him that this is because no one in the dormitory has COVID-19. Mr. █████ has never been tested for COVID-19, and he is not aware of any other person in his dormitory who has been tested for COVID-19. █████ Decl. ¶¶ 22-23.

107. Detainees ill with fever and a cough, symptoms of COVID-19, have remained in Mr. █████'s dormitory for several days and up to two months. █████ Decl. ¶¶ 24-25.

108. Mr. █████ is at high risk of severe illness or death from COVID-19 due to his significant health problems. Venters Supp. Decl. ¶ 11(b).

109. **Chenghui** █████ Ms. █████ is a 58-year-old woman originally from China. She has been detained at MPC for roughly two months. █████ Decl. ¶ 2.

110. Ms. █████ came to the United States in 2007 and has lived here since that time as a legal permanent resident. █████ Decl. ¶ 4.

111. Ms. █████ has significant health problems. She has been diagnosed with high cholesterol and is currently taking medication for that condition; she also experiences high blood pressure. Ms. █████ was prescribed daily aspirin by MPC medical staff but has stopped taking it following a reaction to the medication. Four years ago, Ms. █████ was diagnosed with hepatitis B. █████ Decl. ¶¶ 7-10.

112. Ms. █████ is unable to socially distance at MPC. There are 40 to 50 people in her dormitory, and she sleeps in a bunk bed close to other people. The dormitory has a shared restroom with ten or fewer toilets, sinks, and showers. █████ Decl. ¶¶ 14-15.

113. Ms. █████ does not have access to hand sanitizer or tissues at MPC. █████ Decl. ¶ 16.

114. Ms. █████ is at high risk of severe illness or death from COVID-19 due to her age and significant health problems. Venters Supp. Decl. ¶ 11(c).

115. Yaneysi ██████████. Ms. ██████████ is a 41-year-old woman originally from Cuba. She has been detained by ICE at MPC for almost two months. ██████████ Decl. ¶¶ 2, 4.

116. Ms. ██████████ came to the United States to seek asylum with her now five-year-old son on or about September 17, 2018. She was released on her own recognizance and previously lived with her brother, who is a legal permanent resident, her common law husband, who is also an asylum seeker, and her son in Cypress, Texas. ██████████ Decl. ¶ 5.

117. Ms. ██████████ suffers from significant health problems. In 2018, while still in Cuba, she was diagnosed with an arterial heart obstruction and high blood pressure and has received treatment and medication for both issues. She is currently taking two prescription medications to treat her high blood pressure. Also, Ms. ██████████ has suffered from a severe allergy to seafood since childhood that can send her into anaphylactic shock. It is so severe that she is unable to enter a room where seafood is prepared. ██████████ Decl. ¶¶ 9-11.

118. Ms. ██████████'s life has been endangered by MPC staff's repeated failure to provide even a base level of care for her allergies. Since the start of her detention at MPC on March 9, 2020, Ms. ██████████ has been served seafood four times, each of which triggered an allergic reaction, three of them so severe as to require an epinephrine shot. Within the span of just two weeks, Ms. ██████████ was given an epinephrine shot three times—March 13, 22, and 27—and each time she struggled to “stop my body from shaking” because her blood pressure skyrocketed from the shots. ██████████ Decl. ¶¶ 12-16.

119. Moreover, MPC staff failed to provide adequate medical care for Ms. ██████████'s allergies even after serving her food that caused an allergic reaction. For example, on March 27, it took MPC staff almost an hour from the time Ms. ██████████ notified guards she

was having anaphylactic shock to administer the epinephrine shot and further medical aid. As another example, on each occasion that Ms. [REDACTED] received an epinephrine shot for her severe allergic reactions, MPC did not take her to a hospital or an emergency room. [REDACTED]

[REDACTED] Decl. ¶¶ 14, 16.

120. Instead, after her reaction on March 27, MPC isolated Ms. [REDACTED] in a dorm with a 6-person capacity inside the medical area of the facility because “the guards are not complying with orders not to serve [her] seafood.” Nevertheless, in early April 2020, after this isolation in the medical area, Ms. [REDACTED] was served seafood for a fourth time; fortunately, she did not have a reaction severe enough to require an epinephrine shot. [REDACTED]

[REDACTED] Decl. ¶¶ 14-15.

121. Ms. [REDACTED] fears having another allergic reaction that requires epinephrine shots because it compounds her existing medical conditions, namely her high blood pressure and history of arterial heart obstruction, and increases her risk of suffering a heart attack. *Id.* ¶¶ 12, 16.

122. Ms. [REDACTED] is being held in the medical area where individuals in isolation, including those with COVID-19, share a phone. One officer serves all of them their meals. She is only given small bottles of shampoo that lasts her three days at most to wash herself and her hands. [REDACTED] Decl. ¶¶ 21-22.

123. Ms. [REDACTED] is at high risk of severe illness or death from COVID-19 due to her significant health problems. Venters Supp. Decl. ¶ 11(c).

124. Ms. [REDACTED], Mr. [REDACTED] Ms. [REDACTED], and Ms. [REDACTED] remain detained at MPC despite their vulnerability and despite the confirmed presence of COVID-19 at MPC.

CLASS ALLEGATIONS

125. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and all other persons similarly situated. The proposed class is defined as follows:

All persons who are now, or will in the future be, detained in ICE custody at the Montgomery Processing Center, and who have been diagnosed with, or are receiving treatment for, an underlying medical condition and/or are over the age of 50.

Those underlying medical conditions are:

1. Chronic kidney disease (e.g., receiving dialysis);
2. Chronic liver disease (e.g., cirrhosis and chronic hepatitis);
3. Endocrine disorders (e.g., diabetes mellitus);
4. Compromised immune system (immunosuppression) (e.g., receiving treatment such as chemotherapy or radiation, received an organ or bone marrow transplant and is taking immunosuppressant medications, taking high doses of corticosteroids or other immunosuppressant medications, HIV or AIDS);
5. Metabolic disorders (e.g., inherited metabolic disorders and mitochondrial disorders);
6. Heart disease (e.g., congenital heart disease, congestive heart failure and coronary artery disease);
7. Lung disease (e.g., asthma, chronic obstructive pulmonary disease (chronic bronchitis or emphysema), or other chronic conditions associated with impaired lung function or that require home oxygen);
8. Neurological and neurologic and neurodevelopment conditions (including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury);
9. Current or recent pregnancy (in the last two weeks);
10. Body mass index (BMI) greater than 40; and
11. Hypertension.

See Amon Supp. Decl. ¶¶ 5-8 (listing medical conditions that the CDC has identified as placing individuals at heightened risk for serious illness and death from COVID-19, including all of the above); Venters Supp. Decl. ¶ 9 (same, and identifying minimum age for heightened risk for individuals within the proposed class for serious illness and death from COVID-19 as age 50).

126. The class is so numerous that joinder of all members is impracticable. MPC has an average daily population of 855 in FY2020.¹⁰ As of April 17, there were roughly 833 detainees at MPC. Dkt. 41 at 2. A significant proportion of these individuals have serious medical conditions and/or are over the age of 50.¹¹ Nine individuals currently or recently detained at MPC are the Plaintiffs in this case. It is reasonable to infer that there are dozens more who are detained at MPC who fit the class definition.

127. The lawfulness of the proposed class members' detention presents common questions of fact and law. All class members are similarly situated as a result of their increased risk of serious medical complications or death from contracting COVID-19. All class members are similarly situated in that conditions at MPC make social distancing and other protective measures impossible. They all share the common question of whether their continued detention at MPC violates the Due Process Clause.

128. The claims of the proposed class representatives are typical of the claims of the proposed class. All proposed class representatives face a grave risk of serious illness or death from COVID-19 due to their age and/or an underlying medical condition, and all raise the same due process challenge to their detention. The proposed class representatives' legal challenges to their detention are identical to those of the proposed class.

¹⁰ *Dedicated and Non-Dedicated Facility List*, ICE, <https://www.ice.gov/facility-inspections> (viewed Apr. 28, 2020) (Montiel Decl., Ex. J) (FY2020 average daily population of 855 at MPC).

¹¹ A U.S. Department of Justice study found that 43.9% of people detained in prisons and jails nationwide had "a current chronic medical condition" that approximately correlates with those identified by the CDC for COVID-19. See Laura M. Marushack et al., *Medical Problems of State and Federal Prisoners and Jail Inmates*, at *3, 2011-12, U.S. Dep't of Justice (updated Oct. 2016) (Montiel Decl., Ex. K). Between 26% and 30% of detainees have high blood pressure, and 14% to 21% suffer from tuberculosis, Hepatitis B or C, or a sexually transmitted disease. *Id.* 62% to 74% range from overweight to morbidly obese. *Id.*

129. The proposed class representatives are adequate representatives because they seek the same relief as the other members of the class: declaratory relief that their ongoing custody violates the Due Process Clause, and injunctive relief and a writ of habeas corpus requiring their release. The proposed class representatives do not have any interests adverse to those of the class as a whole.

130. The proposed class would be represented by counsel from the ACLU Foundation of Texas, the ACLU Foundation, and Weil, Gotshal & Manges LLP. Counsel have extensive experience litigating class action lawsuits, including lawsuits on behalf of incarcerated people generally and immigration detainees in particular.

131. Defendants have acted on grounds generally applicable to the class by continuing to detain them in circumstances where they are likely to suffer serious medical complications and/or die from COVID-19. Thus, injunctive and declaratory relief is appropriate with respect to the class as a whole.

LEGAL FRAMEWORK

I. Immigrant Detainees Are Entitled to Due Process Protections from Exposure to Serious Illness and Potential Death.

132. Immigrant detainees are civil detainees entitled to at least the same Fifth and Fourteenth Amendment due process protections as pretrial detainees. *See* Dkt. 41 at 10; *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“government detention violates th[e] [Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections . . . or, in certain special and ‘narrow’ nonpunitive ‘circumstances’” not present here) (emphasis in original); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000) (“We consider a person detained for deportation to be the equivalent of a pretrial detainee; a

pretrial detainee's constitutional claims are considered under the due process clause instead of the Eighth Amendment.”) (citing *Ortega v. Rowe*, 796 F.2d 765, 767 (5th Cir. 1986)).

133. Under the Due Process Clause, “the State cannot punish a pretrial detainee.” *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir. 1996). *See also* Dkt. 41 at 10; *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Therefore, civil detainees, including those held in federal 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); *In re Kumar*, 402 F. Supp. 3d 377, 384 (W.D. Tex. 2019).

134. The government violates the due process rights of a person in civil detention when the conditions of his or her confinement “amount to punishment.” *Garza v. City of Donna*, 922 F.3d 626, 632 (5th Cir. 2019), *cert. denied sub nom. Garza v. City of Donna, Texas*, 140 S. Ct. 651 (2019). “If ‘the condition of confinement is not reasonably related to a legitimate, non-punitive governmental objective,’ it is assumed that ‘by the [defendant’s] very promulgation and maintenance of the complained-of condition, that it intended to cause the alleged constitutional deprivation.’” *Cadena v. El Paso Cty.*, 946 F.3d 717, 727 (5th Cir. 2020) (quoting *Scott v. Moore*, 114 F.3d 51, 53 (5th Cir. 1997)).

135. To establish that the challenged conditions of confinement amount to punishment, the detainee need not demonstrate an official’s “actual intent to punish because . . . intent may be inferred from the decision to expose a detainee to an unconstitutional condition.” *Shepherd v. Dallas Cty.*, 591 F.3d 445, 452 (5th Cir. 2009). “[E]ven where a State may not want to subject a detainee to inhumane conditions of confinement or abusive jail practices, its intent to do so is nevertheless presumed when it incarcerates the detainee in the face of such known conditions and practices.” *Hare*, 74 F.3d at 644. “[A] pervasive pattern of serious deficiencies” that subjects

a detainee to the risk of serious injury, illness, or death “amounts to punishment.” *Shepherd*, 591 F.3d at 454. Such a pattern is evidenced by, for example, continuing to house detainees in conditions that expose them to a known risk of serious infectious disease. *Duvall v. Dallas Cty., Tex.*, 631 F.3d 203, 208 (5th Cir. 2011).

136. In addition, it is cruel and unusual punishment under the Eighth Amendment, and therefore necessarily a violation of civil detainees’ rights under the Fifth Amendment’s Due Process Clause, for a federal official to show “deliberate indifference to a substantial risk of serious harm” to a detainee. *Doe v. Robertson*, 751 F.3d 383, 385 (5th Cir. 2014) (citing *Farmer v. Brennan*, 511 U.S. 825, 828 (1994)); *Hare*, 74 F.3d at 648. This occurs, for example, when officials “know [] of and disregard [] an excessive risk to inmate health or safety.” *Doe v. Robertson*, 751 F.3d at 388.

137. A detainee “does not need to show that death or serious illness has yet occurred to obtain relief”; instead, they need only “show that the conditions pose a substantial risk of harm to which . . . officials have shown a deliberate indifference.” *Gates v. Cook*, 376 F.3d 323, 339 (5th Cir. 2004). *Cf. Shepherd.*, 591 F.3d at 454 (finding violation of detainee’s due process rights where he “demonstrated that serious injury and death were the inevitable results of the jail’s gross inattention to the needs of inmates with chronic illness”). Federal custodians may not ignore “a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

138. Housing detained persons where they are at risk of infectious disease is unconstitutional, even when it “is not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.” *Id.* (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Nor can officials “be deliberately indifferent to the exposure

of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms.” *Id.* Further, deliberate indifference to underlying health conditions that make detainees “extremely vulnerable” to “serious . . . injury” is unconstitutional. For example, detention facilities cannot constitutionally permit “the mingling of inmates with serious contagious diseases with other prison inmates.” *Id.* at 34 (citing *Gates v. Collier*, 510 F.2d 1291 (5th Cir. 1974)).

II. Defendants Are Violating Plaintiffs’ Constitutional Due Process Rights.

139. Due process requires that the nature and duration of noncriminal confinement bear “some reasonable relation to the purpose for which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018). The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight and ensure the detained person’s attendance for a legal hearing adjudicating their status or for removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 699.

140. Keeping vulnerable people detained while at severe risk of infection serves no legitimate purpose. Dkt. 41 at 11-12 (“Requiring medically vulnerable individuals to remain in a detention facility where they cannot properly protect themselves from transmission of a highly contagious virus with no known cure is not rationally related to a legitimate government objective.”). Nor is detention under these circumstances reasonably related to the enforcement of immigration laws. Dkt. 41 at 11. As this Court has recognized, “Preventing Plaintiffs from protecting their own health from a high risk of serious illness or death does not reasonably relate to a legitimate governmental purpose and thus, violates the Fifth Amendment” *Id.* at 11 (citing *Sheperd v. Dallas Cty.*, 591 F.3d 445, 453-54 (5th Cir. 2009)).

141. Plaintiffs' due process rights are also being violated because their confinement places them at serious risk of being infected with COVID-19 and Defendants are being deliberately indifferent to this critical safety concern.

142. There is no question that COVID-19 poses a serious risk to Plaintiffs. COVID-19 is highly contagious and can cause severe illness and death. *See supra* ¶¶ 25-34. Plaintiffs are at a heightened risk because of their age and/or underlying health conditions, as described above. *See supra* ¶¶ 64-124.

143. Defendants have knowledge of but are disregarding the serious risk that COVID-19 poses to people like Plaintiffs and the proposed class at MPC who have underlying health conditions. Plaintiffs ██████████, ████████, ██████, and ██████████—all of whom are at high risk of serious illness or death from COVID-19—continue to be detained at MPC, as do the members of the proposed class.

144. Defendants have long been on notice of the risk that COVID-19 poses to Plaintiffs and others with serious medical conditions. Indeed, as early as February 25, 2020, two medical experts for DHS raised concerns with the agency about the specific risk posed to immigrant detainees as a result of COVID-19 with the agency. On March 19, 2020, they brought their concerns to the House and Senate Committees on Homeland Security and warned of the danger of rapid spread of COVID-19 in immigration detention facilities. Allen & Rich Letter at 2. They explained that in order to save both the lives of detainees and lives in the community at large, “minimally, DHS should consider releasing all detainees in high risk medical groups[.]” *Id.* at 5.

145. John Sandweg, a former acting director of ICE, has written publicly about the need to release detainees because ICE detention centers “are extremely susceptible to outbreaks

of infectious diseases” and “preventing the virus from being introduced into these facilities is impossible.” Dkt. 12-2, Ex. I.

146. The circumstances of this case make clear that release is the only means to protect Plaintiffs’ due process rights. Public health experts have made clear that slowing the spread of COVID-19 requires social distancing and increased hygiene and that individuals with Plaintiffs’ underlying medical conditions are vulnerable to serious disease and death if they contract this virus. *See supra* ¶¶ 40, 48, 51, 64-124; Golob Decl. ¶¶ 3, 14. However, Plaintiffs cannot take the requisite social distancing and hygiene measures while detained at MPC. *Supra* ¶¶ 36-63.

147. The only course of action that can remedy these unlawful conditions is release from the detention center, where risk mitigation is impossible.

III. ICE Regularly Uses Its Authority to Release People Detained In Custody Because They Suffer From Serious Medical Conditions.

148. ICE has a longstanding practice of humanitarian releases from custody. The agency has routinely exercised its authority to release particularly vulnerable detainees. In fact, ICE has exercised its discretion to release at least two particularly vulnerable people from MPC since the start of the pandemic, including Plaintiff ██████████. Ramirez Decl. ¶ 6; Dkt. 13.

149. 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 while released. ██████████ Decl. ¶¶ 47-49. For example, ICE’s conditional supervision program, called Intensive Supervision Appearance Program (“ISAP”), relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. *Id.* ¶ 47. 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. Dkt. 12-2, Ex. K at 5.

150. ICE's exercise of discretion is based in a range of statutory and regulatory provisions, and a long line of directives explicitly instruct officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating against detention. For example, under 8 C.F.R. § 212.5(b)(1), ICE has routinely exercised its discretion to release particularly vulnerable detainees. *See also* 8 U.S.C. §§ 1182(d)(5), 1225(b), 1226, 1231; 8 C.F.R. §§ 1.1(q), 212.5, 235.3, 236.2(b).

151. While ICE officers may have been exercising discretion to release less frequently in recent years, the statutory and regulatory authority underlying the use of prosecutorial discretion in custodial determinations remains in effect.

152. Moreover, ICE has released noncitizens on medical grounds regardless of the statutory basis for a noncitizen's detention. Schriro Decl. ¶ 23.

153. Here the Due Process Clause of the Fifth Amendment to the U.S. Constitution requires ICE to release detainees where civil detention has become punitive and where release is the only remedy to prevent this impermissible punishment. Plaintiffs seek release on constitutional grounds, and not in the exercise of ICE's discretion. However, the fact that ICE has the authority to release immigrants from custody and has exercised this authority in the past indicates that the remedy Plaintiffs request is neither unprecedented nor unmanageable for the agency.

IV. This Court Has Authority to Order Plaintiffs' Release to Vindicate Their Fifth Amendment Rights, and Such Relief Is Necessary Here.

154. 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). "When 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); *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).

155. In light of the imminent threat posed by COVID-19, this Court and courts across the country have recognized immediate release as an appropriate and necessary remedy and have accordingly ordered the release of particularly vulnerable detainees in ICE facilities. Dkt. 41 (ordering release of Plaintiff █████ and recognizing “the serious and imminent risk of infection” for those “remaining in immigration detention”); *Essien v. Barr*, No. 1:20-cv-01034-WJM, Dkt. 17 (D. Colo. Apr. 24, 2020) (granting TRO releasing medically vulnerable immigrant detainee because of the risk posed by COVID-19); *Medeiros v. Martin*, No. 1:20-cv-00178-WES-PAS, --- F. Supp. 3d ----, 2020 WL 1969363 (D.R.I. Apr. 24, 2020) (same); *Hernandez v. Kolutwenzew*, No. 2:20-cv-02088-SLD (C.D. Ill. Apr. 23, 2020) (granting habeas petition ordering medically vulnerable immigrant detainee’s release because of the risk posed by COVID-19); *Kaur v. DHS*, No. 2:20-cv-03172-ODW, 2020 WL 193986 (C.D. Cal. Apr. 22, 2020) (granting TRO releasing medically vulnerable detainee because of risk posed by COVID-19); *Durel B. v. Decker*, No. 2:20-cv-03430-KM, 2020 WL 1922140 (D.N.J. Apr. 21, 2020) (same); *Singh v. Barr*, No. 20-cv-02346-VKD, 2020 WL1929366 (N.D. Cal. Apr. 20, 2020) (same); *Zaya v. Adducci*, No. 5:20-cv-10921-JEL-APP, Dkt. 9 (E.D. Mich. Apr. 18, 2020) (same); *Amaya-Cruz v. Adducci*, No. 1:20-cv-789, 2020 WL 1903123 (D. Oh. Apr. 18, 2020) (same); *Fofana v. Albence*, No. 2:20-cv-10869-GAD-DRG, Dkt. 15 (E.D. Mich. Apr. 15, 2020) (same); *Arriaga Reyes v. Decker*, No. 20-cv-3600, ECF No. 27 (D. N.J. Apr. 14, 2020) (same for five detainees); *Perez v. Wolf*, No. 5:19-cv-05191, 2020 WL 1865303 (N.D. Cal. Apr. 14, 2020) (same for one detainee); *Doe v. Barr*, No. 3:20-cv-02141-LB, 2020 WL 1820667 (N.D. Cal. Apr. 12, 2020) (same); *Bent v. Barr*, No.

4:19-cv-06123-DMR, 2020 WL 1812850 (N.D. Cal. Apr. 9, 2020) (same); *Rafael L.O. v. Tsoukaris*, No. 2:20-cv-3481-JMV, 2020 WL 1808843 (D.N.J. Apr. 9, 2020) (same for three detainees); *Malam v. Adducci*, No. 2:20-cv-10829-JEL-APP, 2020 WL 1809675 (E.D. Mich. Apr. 9, 2020) (same for one detainee); *Bahena Ortuño v. Jennings*, No. 20-cv-2064, 2020 WL 1701724 (N.D. Cal. Apr. 8, 2020) (same for two detainees); *Hope v. Doll*, No. 20-cv-00562, ECF No. 11 (M.D. Pa. Apr. 7, 2020), *motion for reconsideration denied* (Apr. 10, 2020) (same for twenty-two detainees); *Malam v. Adducci*, No. 2:20-cv-10829-JEL-APP, Dkt. No. 23 (E.D. Mich. Apr. 6, 2020) (granting TRO releasing medically vulnerable immigrant detainee because of the risk of COVID-19); *Basank v. Decker*, -- F. Supp. 3d ----, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020) (same, because “[t]he nature of detention facilities makes exposure and spread of the [coronavirus] particularly harmful”); *Coronel v. Decker*, -- F. Supp. 3d ----, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020) (same for four detainees); *Robles Rodriguez v. Wolf*, No. 5:20-cv-00627-TJH-GJS, Dkt. Nos. 32, 35-39 (C.D. Cal. Apr. 2, 2020) (same for six detainees); *see also Coreas v. Bounds*, 2020 WL 1663133, at *11 (D. Md. Apr. 3, 2020) (holding that failure to act to address risk to high-risk individuals in light of any confirmed case of COVID-19 among staff members or detainees at the facility “would establish knowing disregard of a serious medical need constituting deliberate indifference”).

156. Courts have also ordered release and reduction in population of immigration detention facilities due to the threat that COVID-19 poses to the health of those who are *not* medically vulnerable. *Sallaj v. U.S. Immigration & Customs Enf’t*, No. 1:20-cv-00167-JJM-LDA, Dkt. 18 (D.R.I. Apr. 24, 2020). This Court has specifically highlighted the “especially important” need for “timely release . . . now during the COVID-19 pandemic” from ICE

detention for a detainee at MPC, with no reference to medical vulnerability, in light of the possible consequences of “significant exposure to those affected by the virus.” *Ali*, Dkt. No. 37.

157. In *Fraihat v. ICE*, a district court in the Central District of California ordered relief for a nationwide class of people in ICE custody who are medically vulnerable to COVID-19, in the context of litigation initiated prior to this pandemic challenging inadequate medical care for those in ICE custody nationwide. 5:19-cv-01546-JGB-SHK, Dkt. 132 at 38-39 (Apr. 20, 2020). The relief ordered in *Fraihat* requires ICE to follow its own guidance to evaluate all *Fraihat* class members for possible release. *Id.* at 38. Importantly, the ultimate determination regarding release in *Fraihat* rests with ICE. *See id.* ICE had previously declined to release Plaintiff ██████, who has now been released pursuant to this Court’s Order, notwithstanding her clear vulnerability under CDC guidelines. Dkt. 22-5 (declaration of ICE Health Service Corps’s MPC Clinical Director stating that ICE medical staff determined that Plaintiff ██████ “do[es] not have any of the underlying or preexisting medical conditions that may increase the risk of serious COVID-19 for individuals of any age”); Venters Supp. Decl. ¶ 9; Amon Supp. Decl. ¶ 6. The *Fraihat* relief also requires ICE to issue a performance standard for reducing risk of COVID-19 infection among medically vulnerable detainees and to monitor and enforce compliance with that standard. *Fraihat*, Dkt. 132 at 38-39.

158. The circumstances of this case make clear that, for Plaintiffs and the putative class, release is the only means to ensure compliance with the Fifth Amendment’s prohibition on detention that bears no reasonable relationship to a legitimate governmental purpose. In less than two weeks, six additional cases of COVID-19 have been publicly identified as associated with MPC, including three detainee cases. As this Court has recognized, “the threat of a mass outbreak is one . . . that MPC cannot take sufficient steps to prevent.” Dkt. 41 at 13.

159. By continuing to detain Plaintiffs, Defendants are subjecting Plaintiffs to unreasonable harm, and to unconstitutional punishment. The only course of action that can remedy these unlawful conditions is release from MPC, where risk mitigation is impossible.

CLAIMS FOR RELIEF

CLAIM ONE

Violation of Fifth Amendment Right to Substantive Due Process

(All Plaintiffs and the Putative Class)

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

160. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment.

161. 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 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, acting with deliberate indifference, it subjects civil detainees to objectively unreasonable risks to their health and safety, to cruel treatment, or to conditions of confinement that amount to punishment.

162. By detaining Plaintiffs at MPC, Defendants are subjecting Plaintiffs to an unreasonable risk of contracting COVID-19, for which there is no vaccine and no cure, and which can be lethal. Plaintiffs are particularly vulnerable to serious medical complications from COVID-19 infection and are at unreasonable risk of illness and death as long as they are held in detention.

163. By subjecting Plaintiffs to this risk, Defendants are maintaining detention conditions that amount to punishment and are failing to ensure safety and health in violation of

Plaintiffs' due process rights. Likewise, Defendants' continued detention of Plaintiffs at MPC is deliberately indifferent to Plaintiffs' health and safety because only releasing Plaintiffs from custody can adequately protect them from COVID-19. Defendants are aware of the serious risk posed by COVID-19 and are failing to take the only action that can respond to Plaintiffs' medical needs, which is to release Plaintiffs.

CLAIM TWO
Violation of 8 U.S.C. § 1231(a)(6)
(Plaintiff Bakasa)
(Detention Where Removal Is Not Significantly Likely in the Foreseeable Future)

164. Due process requires that immigration detention bear a reasonable relation to its purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The principal purpose of the statute that authorizes post-final-order detention, 8 U.S.C. § 1231, is to effectuate removal. Where removal cannot be effectuated, detention is not reasonably related to its purpose, would violate due process, and is not statutorily authorized.

165. Plaintiff ██████ has met his burden of establishing good reason to believe that his removal is not reasonably likely in the foreseeable future. Defendants have not rebutted this showing; they have provided no evidence that his removal is reasonably foreseeable. Absent such evidence, Mr. ██████'s detention is not authorized by statute, and he is entitled to immediate release under an order of supervision.

PRAYER FOR RELIEF

WHEREFORE Petitioners-Plaintiffs request that the Court grant the following relief:

- a. Certify, pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the following Plaintiff class:

All persons who are now, or will in the future be, detained in ICE custody at the Montgomery Processing Center, and who have been diagnosed with, or are receiving treatment for, an underlying medical condition (as listed in ¶ 125 of Plaintiffs' Amended Complaint) and/or are over the age of 50.

- b. Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);
- c. Issue a writ of habeas corpus on the ground that the continued detention of Plaintiffs and those similarly situated to them violates the Due Process Clause, and order the release of Plaintiffs and those similarly situated to them, with appropriate precautionary public health measures;
- d. Issue injunctive relief ordering Defendants to release Plaintiffs and those similarly situated to them, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause;
- e. Issue a declaration that Defendants' continued detention in civil immigration custody of individuals at increased risk for severe illness or death from COVID-19, including all people age 50 and older and people of any age with underlying medical conditions that place them at increased risk of serious COVID-19, violates the Due Process Clause;
- f. Declare that for Plaintiff Bakasa there is good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future and that Plaintiff Bakasa must be released unless the government can rebut that showing;
- g. Find that Defendants have failed to rebut Plaintiff ██████'s showing that his removal is not significantly likely in the reasonably foreseeable future; order Defendants to release Plaintiff ██████ from detention under an order of supervision; and enjoin Defendants from redetaining Plaintiff ██████ unless or until Defendants can establish that his removal is significantly likely in the reasonably foreseeable future;

- h. Award Plaintiffs 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
- i. Grant any other and further relief that this Court may deem fit and proper.

Dated: April 29, 2020

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Respectfully Submitted,

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Verification by someone acting on Petitioners' behalf pursuant to 28 U.S.C. § 2242

We are submitting this verification on behalf of the Petitioners because we are some of the Petitioners' attorneys. We have each discussed with one or more Petitioner and collectively have discussed with all Petitioners the events described in this Petition. On the basis of those discussions, we hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of our knowledge.

Dated: April 29, 2020

/s/ Bernardo Rafael Cruz

Bernardo Rafael Cruz, Attorney for Petitioners

/s/ Rochelle M. Garza

Rochelle M. Garza, Attorney for Petitioners

/s/ Kathryn Huddleston

Kathryn Huddleston, Attorney for Petitioners

/s/ Edgar Saldivar

Edgar Saldivar, Attorney for Petitioners

/s/ Noor Zafar

Noor Zafar, Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing motion via the Court's ECF filing system and via email courtesy copy to the office of the United States Attorney for the Southern District of Texas.

Dated: April 29, 2020

/s/ Andre Segura

Andre Segura