

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA**

ARISTOTELES SANCHEZ MARTINEZ  
MICHAEL ROBINSON  
PETER OWUSU  
Stewart County Detention Center  
146 CCA Road  
Lumpkin, GA 31815

and

JOSEPH LLOYD THOMPSON  
ANSUMANA JAMMEH  
KAREN LOPEZ  
NILSON FERNANDO BARAHONA MARRIAGA  
SHELLEY DINGUS  
Irwin County Detention Center  
132 Cotton Drive  
Ocilla, GA 31774

Petitioners/Plaintiffs,

v.

MICHAEL DONAHUE  
Warden, Stewart Detention Center  
146 CCA Road  
P.O. Box 248  
Lumpkin, GA 31815;

and

DAVID PAULK  
Warden, Irwin County Detention Center  
132 Cotton Drive  
Ocilla, GA 31774;

and

THOMAS GILES  
Field Office Director U.S. Immigration and Customs  
Enforcement  
Atlanta Field Office,  
180 Ted Turner Drive, SW, Suite 522  
Atlanta, GA 30303;

and

Case No.:

**HEARING REQUESTED**

MATTHEW T. ALBENCE  
Deputy Director and Senior Official Performing the Duties  
of the Director  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> Street, SW  
Washington, D.C. 20536;

and

CHAD WOLF  
Acting Secretary  
Department of Homeland Security,  
3801 Nebraska Avenue, NW  
Washington, D.C. 20016;

and

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
500 12<sup>th</sup> Street, SW  
Washington, D.C. 20536;

Respondents/Defendants.

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

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## **I. INTRODUCTION**

1. The COVID-19 pandemic is wreaking havoc throughout the world. The United States has now surpassed every other country in number of confirmed cases, and over 10,000 Americans have died. Experts estimate that the coronavirus will ultimately infect between 160 and 214 million people and taken the lives of up to 1.7 million people in the United States alone.

2. There is no vaccine against COVID-19 and no known cure. Currently, the only recognized strategies to reduce the risk of exposure to COVID-19 are social distancing and scrupulous hygiene, which have led to unprecedented public health measures around the world.

3. In light of the devastation COVID-19 has already caused and the extreme difficulty in stopping its transmission, the President has declared a national emergency; forty-eight U.S. states—including Georgia—have declared states of emergency; and numerous states and localities—including Georgia and many of its cities and counties—have issued “shelter-in-place” orders requiring residents to stay in their homes. These extreme measures all seek to reduce the spread of the virus and, ultimately, save lives.

4. Unfortunately, U.S. Immigration and Customs Enforcement (ICE), who detains immigrants who may be subject to removal from the United States, has failed to follow suit. Despite warnings from thousands of medical and public health professionals that releasing detained immigrants is the only viable option to avert an imminent public health threat, the agency has generally refused to do so in the absence of court intervention.

5. Federal judges across the country have ordered the urgent release of numerous immigrants, explaining the pressing health risks created by ICE detention and other types of

imprisonment.<sup>1</sup>

6. In immigration detention facilities—including Stewart Detention Center (“Stewart”) in Lumpkin, Georgia and Irwin County Detention Center (“Irwin”) in Ocilla, Georgia, where Plaintiffs-Petitioners (“Petitioners”) are imprisoned—social distancing is virtually impossible. In these congregate environments, hundreds or thousands of people live, eat, and sleep together in close quarters, and contact with other detainees and ICE personnel is a fact of life. ICE detention facilities are also notorious for their unsanitary conditions and meager provision of hygiene products. Under these circumstances, an outbreak of COVID-19 will “spread like wildfire,” according to a former high-level ICE official.

7. Due to their underlying medical conditions, Petitioners are particularly vulnerable to serious cases of COVID-19. If they contract the virus, there is a high risk they will require critical care—largely unavailable in southern Georgia where the facilities are located—and face serious illness and death.

8. Petitioners bring this action to remedy ICE’s violations of their constitutional rights and to protect themselves—as well as others detained or employed at Stewart and Irwin or living

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<sup>1</sup>*See, e.g., Xochihua-Jaimes v. Barr*, 2020 WL 1429877 (9th Cir. Mar. 24, 2020); *Hope v. Doll*, Case No. 1:20-cv-00562-JEJ (M.D. Pa. Apr. 7, 2020), ECF No. 11; *Martin Munoz v. Wolf*, Case No. 20-cv-00625-TJH-SHK (C.D. Cal. Apr. 2, 2020), ECF No. 14; *Robles Rodriguez v. Wolf*, 20-cv-00627-TJH-GJS (C.D. Cal. Apr. 2, 2020), ECF No. 37; *Hernandez v. Wolf*, CV 20-60017-TJH (KSx)(C.D. Cal. Apr. 1, 2020), ECF No. 17; *Arana v. Barr*, 2020 WL 1502039 (S.D.N.Y. Mar. 27, 2020); *Xuyue Zhang v. Barr*, 2020 WL 1502607 (C.D. Cal. March 27, 2020); *Basank v. Decker*, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Castillo v. Barr*, 2020 WL 1502864 (C.D. Cal. March 27, 2020); *Thakker v. Doll*, No. 1:20-cv-00480-JEJ (M.D. Pa. Mar. 31, 2020), ECF No. 47; *Coronel v. Decker*, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020); *Fraihat v. Wolf*, No. ED CV 20-00590 TJH (KSx) (C.D. Cal. Mar. 30, 2020); *Calderon Jimenez v. Wolf*, No. 18 Civ. 10225 (D. Mass. Mar. 26, 2020), ECF No. 507; *United States v. Stephens*, 2020 WL 1295155, at \*2 (S.D. N.Y. Mar. 19, 2020); *Matter of Extradition of Toledo Manrique*, 2020 WL 1307109, at \*1 (N.D. Cal. Mar. 19, 2020).

in the surrounding communities—from the imminent harm that will result from their continued detention.

## **II. PARTIES**

9. Petitioner Aristoteles Sanchez Martinez is a 47-year-old citizen of Venezuela who is currently detained by ICE at Stewart. His family lives in Queens, New York. He has been in ICE custody since approximately September 2018. The BIA denied his appeal of his removal order in November 2019, but he is unlikely to be removed to Venezuela. Mr. Martinez suffers from Type II diabetes, hypertension, neuropathy, avascular necrosis, non-palpable pulses in the lower extremities, and venous insufficiency, among other conditions. He is currently in a wheelchair due to his conditions. He is also recovering from a recent hernia repair surgery after which he was brought back to Stewart within a day instead of remaining in intensive care. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

10. Petitioner Michael Robinson<sup>2</sup> is a 54-year-old citizen of Jamaica, who has been at Stewart since around February 2020. He has six U.S. citizen children, and has family in both Florida and New York. He is seeking asylum, Withholding of Removal, and protection under the Convention Against Torture, based on persecution he experienced as a bisexual man. Mr. Robinson suffers from hypertension, asthma, cardiac murmur, high blood pressure, and benign prostatic hyperplasia. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

11. Petitioner Peter Owusu is a 40-year-old citizen of Ghana who been detained at Stewart since January 2020. He is seeking asylum, Withholding of Removal, and protection under the Convention Against Torture based on persecution he experienced in Ghana. Mr. Owusu has

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<sup>2</sup> Petitioners Michael Robinson, Peter Owusu, and Karen Lopez have filed this action using pseudonyms. They seek leave to proceed pseudonymously in a concurrently filed motion.

difficulty breathing due to a stab wound he suffered prior to fleeing from Ghana. He received a breathing machine at a previous detention center but has not been able to access it at Stewart. The wound he sustained also led to other complications, including improperly healed stitches, ongoing stomach pain, digestion issues, dizziness, headaches, and heart issues. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19. Mr. Owusu is a 40-year-old citizen of Ghana. He is seeking asylum, Withholding of Removal, and protection under the Convention Against Torture based on persecution he experienced in Ghana.

12. Petitioner Joseph Lloyd Thompson is a 49-year-old citizen of Jamaica, lawful permanent resident of the United States, and long-term resident of Georgia. He is currently detained at Irwin and has been in ICE custody since approximately January 2018. He suffers from diabetes, hypertension, depression, and a severe aortic aneurysm requiring surgery that ICE repeatedly refuses to facilitate. He has a history of hospitalization for pneumonia and cardiac issues. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19. He has two sons who are 5 and 22 years old. He is extremely passionate about cooking; before he was detained, he worked at a country club as a sous chef. He is working with his immigration attorneys to apply for Cancellation of Removal.

13. Petitioner Ansumana Jammeh is a 43-year-old citizen of Gambia who has been detained at Irwin since March 2019. His Board of Immigration Appeals (BIA) appeal of his removal order is currently pending. He suffers from diabetes and severe hemorrhoids that have required surgery and cause him extreme pain. He was also hospitalized in December 2019 for inflammation in his intestine. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

14. Petitioner Karen Lopez is a 42-year-old citizen of Honduras who has been held at



Irwin since March 2020. She has a partner and five children, ages 13 to 27 years old; prior to detention they all lived together in Atlanta, Georgia. She is pursuing deferral of removal under the Convention Against Torture and is also eligible for U-visa. She has a pacemaker due to a heart condition that also caused her to suffer a stroke. She additionally suffers from multiple sclerosis, which causes severe chronic pain, along with problems with her vision, balance, muscle control, and other bodily functions. As a consequence of her health conditions, she is at high risk for severe illness or death if she contracts COVID-19.

15. Petitioner Nilson Fernando Barahona Marriaga is a 38-year-old citizen of Honduras who has been detained at Irwin since October 2019. He has lived in the U.S. for more than ten years and been married to a U.S. citizen for over six years. They have a six-year-old son. He also has a U.S. Citizen father, a mother who is a lawful permanent resident, and two U.S. Citizen sisters. Mr. Barahona Marriaga is eligible for adjustment of status through a pending I-130, Petition for Alien Relative. He has also applied for Non-LPR Cancellation of Removal, and may be eligible for a U-Visa based on a kidnapping in 2011. An attorney helped him apply for parole and bond, but they were denied. Mr. Barahona Marriaga suffers from diabetes and hypertension, both of which he has struggled to manage while in detention. His condition has deteriorated since he has been detained, and many of his requests for medical services have been ignored. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

16. Petitioner Shelley Dingus is a 52-year-old citizen of England who is currently detained at Irwin. She has lived in the U.S. for over nine years and has been married for 21 years to a U.S. citizen who is a U.S. Air Force veteran. She has five children, ages 17 to 28 years old. Prior to detention, she lived in Norton, Virginia and worked as a senior healthcare specialist. Ms. Dingus suffers from asthma, chronic obstructive pulmonary disease, severe migraines, depression,

anxiety, and eczema that causes severe skin allergies and open wounds that are easily infected. As a consequence of her health conditions, she is at high risk for severe illness or death if she contracts COVID-19.

17. Respondent-Defendant (“Respondent”) Michael Donahue is the Warden of Stewart County Detention Center. Pursuant to a contract with ICE, Mr. Donahue is responsible for the operation of Stewart, where Mr. Sanchez Martinez, Mr. Robinson, and Mr. Owusu are detained.

18. Respondent David Paulk is the Warden of Irwin County Detention Center. Pursuant to a contract with ICE, Mr. Paulk is responsible for the operation of Irwin, where Mr. Thompson, Mr. Jammeh, Ms. Lopez, Mr. Barahona Marriaga, and Ms. Dingus are detained.

19. Respondent Thomas Giles is the Field Office Director for the ICE Atlanta Field Office. The ICE Atlanta Field Office has complete control over the admission and release of noncitizens detained at Stewart and Irwin. Respondent Giles is a legal custodian of Petitioners. He is sued in his official capacity.

20. Respondent Matthew T. Albence is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Respondent Albence is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of immigrants. He is sued in his official capacity.

21. Respondent Chad Wolf is the Acting Secretary of the United States Department of Homeland Security (DHS). In this capacity, he is responsible for the implementation and enforcement of immigration laws and oversees ICE. He is sued in his official capacity.

22. Respondent ICE is a federal law enforcement agency within DHS. ICE is responsible for the criminal and civil enforcement of the immigration laws, including the detention and removal of immigrants.

### **III. JURISDICTION AND VENUE**

23. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2241 (habeas jurisdiction), 28 U.S.C. § 1651 (All Writs Act), Article I, Section 9, clause 2 of the U.S. Constitution (the Suspension Clause), and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

24. The district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

25. Venue is proper in the Middle District of Georgia pursuant to 28 U.S.C. § 1391(e) because Respondents are federal officers sued in their official capacity; Respondents Paulk and Donahue reside in this District; Petitioners are currently detained in this District; and a substantial part of the events or omissions giving rise to this action occurred in this District. Venue is also proper under 28 U.S.C. § 2241 because Respondents exercise control over Petitioners.

### **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26. Petitioners have no administrative remedies to exhaust because no administrative process exists to raise a constitutional challenge to their detention. “[A] petitioner need not exhaust his administrative remedies where the administrative remedy will not provide relief commensurate with the claim.” *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001). Thus, “[b]ecause the BIA does not have the power to decide constitutional claims—like the validity of a federal statute—[certain constitutional] need not be administratively exhausted.” *Warsame v. U.S. Attorney Gen.*, 796 Fed. Appx. 993, 1006 (11th Cir. 2020). *See also Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (11th Cir. 1989), *aff’d sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991) (exhaustion had “no bearing” where petitioner sought to make a

constitutional challenge to procedures adopted by the INS).

## V. STATEMENT OF FACTS

### A. COVID-19 Is a Global Pandemic that Poses a Significant Risk of Death or Serious Illness to Petitioners

27. Coronavirus disease 2019 (“COVID-19”) is a highly contagious respiratory disease caused by a newly discovered coronavirus. Since the first case was reported in December 2019, the transmission of COVID-19 has been growing exponentially. The number of reported cases climbed from 1 to 100,000 in 67 days; from 100,000 to 200,000 in only 11 days; and from 200,000 to 300,000 in just 4 days.<sup>3</sup>

28. On March 11, 2020, the World Health Organization (“WHO”) declared the outbreak a global pandemic,<sup>4</sup> and COVID-19 has now touched nearly every country on the planet.<sup>5</sup> As of April 6, 2020, the number of confirmed cases worldwide has surpassed one million, including over 367,004 people in the United States. Over 74,697 people have died as a result of COVID-19 worldwide, including at least 10,871 in the United States.<sup>6</sup>

29. Nationally, projections by the Centers for Disease Control and Prevention (“CDC”) indicate that over 200 million people in the United States could be infected with COVID-19 over

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<sup>3</sup> Berkeley Lovelace Jr., et al., CNBC, *Coronavirus pandemic is accelerating as cases eclipse 350,000, WHO says* (last updated Mar. 23, 2020), <https://www.cnbc.com/2020/03/23/coronavirus-pandemic-is-accelerating-as-cases-eclipse-350000-who-says.html>

<sup>4</sup> Tedros Adhanom Ghebreyesus, *WHO Director-General’s opening remarks at the media briefing on COVID-19 – 11 March 2020* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

<sup>5</sup> *Coronavirus disease 2019 (COVID-19) Situation Report – 73*, World Health Organization (April 2, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_4)[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200330-sitrep-70-covid-19.pdf?sfvrsn=7e0fe3f8\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200330-sitrep-70-covid-19.pdf?sfvrsn=7e0fe3f8_2)

<sup>6</sup> Worldometer: Coronavirus, <https://www.worldometers.info/coronavirus/#countries> (last accessed Apr. 6, 2020).

the course of the pandemic without effective public health intervention, with as many as 1.7 million deaths in the most severe projections.<sup>7</sup> On March 23, 2020, the WHO warned that the United States could become the next epicenter of the pandemic.<sup>8</sup> And indeed on March 26, 2020, the United States surpassed every other country in the world in number of confirmed COVID-19 cases.<sup>9</sup>

30. In the state of Georgia, transmission of COVID-19 has also been rampant. On March 14, 2020, Governor Brian Kemp declared a public health state of emergency, describing the spread of COVID-19 as an “unprecedented public health threat.”<sup>10</sup> At the time, there were 64 diagnosed COVID-19 cases spread across 15 counties.<sup>11</sup> As of April 6, 2020, less than 30 days later, the number of reported cases had jumped to 7,558 with 154 counties now affected.<sup>12</sup> The number of reported deaths from COVID-19 is 294, making Georgia the state with the twelfth highest number of COVID-19-related deaths in the United States.<sup>13</sup> Governor Kemp issued a shelter in place order for the state of Georgia on April 3, 2020.<sup>14</sup>

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<sup>7</sup> Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The New York Times (last updated Mar. 18, 2020), <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>

<sup>8</sup> Sarah Boseley, *US may become next centre of coronavirus pandemic, says WHO*, The Guardian (Mar. 24, 2020), <https://www.theguardian.com/world/2020/mar/24/us-may-become-centre-of-coronavirus-pandemic-who-says>

<sup>9</sup> *U.S. Now Leads the World in Confirmed Cases*, The New York Times (last updated Apr. 1, 2020), <https://www.nytimes.com/2020/03/26/world/coronavirus-news.html><https://www.nytimes.com/2020/03/26/world/coronavirus-news.html>

<sup>10</sup> Governor Brian P. Kemp, *Kemp Declares Public Health State of Emergency*, Office of the Governor (Mar. 16, 2020), <https://gov.georgia.gov/press-releases/2020-03-16/kemp-declares-public-health-state-emergency>

<sup>11</sup> Id.

<sup>12</sup> *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 2, 2020), <https://dph.georgia.gov/covid-19-daily-status-report>

<sup>13</sup> Listing of United States Total Coronavirus Cases (last updated Apr. 6, 2020), <https://www.worldometers.info/coronavirus/country/us/>

<sup>14</sup> Governor Brian P. Kemp, *Governor Kemp Issues Shelter in Place Order*, Office of the Governor (Apr. 2, 2020), <https://gov.georgia.gov/press-releases/2020-04-02/governor-kemp-issues-shelter-place-order>

31. The risk of serious illness or death from COVID-19 is greater in Georgia than in other parts of the United States because the population is overall much less healthy. Georgia has among the highest incidence of diabetes, hypertension, obesity and strokes in the country, particularly in areas with high poverty rates.<sup>15</sup>

32. Due to the lack of widespread testing available in most countries, including the United States, the number of confirmed cases is likely but a fraction of the true number of COVID-19 cases worldwide. As of April 6, 2020, approximately 1,917,095 tests have been administered in the entire United States; in Georgia, only 40,012.<sup>16</sup> Because of the shortage of tests in the United States—admitted to be a “failing” by top infectious disease expert Dr. Anthony Fauci<sup>17</sup>—the CDC currently recommends prioritizing testing for symptomatic healthcare providers and hospitalized patients<sup>18</sup>—which means that the number of diagnosed COVID-19 cases may be only the tip of a very large iceberg.<sup>19</sup>

i. Transmission of COVID-19

33. COVID-19 easily spreads through respiratory droplets that an infected person expels when they cough, sneeze, speak, or breathe. Transmission occurs if these virus-carrying

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<sup>15</sup> Alan Judd, *In hard-hit Georgia, virus expected to linger*, The Atlanta Journal-Constitution (Mar. 26, 2020), <https://www.ajc.com/news/hard-hit-georgia-virus-expected-linger/AYMvVN9SIq8A0RUgUzIt5O/>

<sup>16</sup> The COVID Tracking Project, Our most up-to date data and annotations (last updated Apr. 6, 2020), <https://covidtracking.com/data/>

<sup>17</sup> Elizabeth Chuck, *'It is a failing. Let's admit,' Fauci says of coronavirus testing capacity* NBC News (Mar. 12, 2020), <https://www.nbcnews.com/health/health-news/it-failing-let-s-admit-it-fauci-says-coronavirus-testing-n1157036>

<sup>18</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19)* (last updated Mar. 24, 2020), <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>

<sup>19</sup> George Citroner, *How Many People in the United States Actually Have COVID-19?*, Healthline (Mar. 18, 2020), <https://www.healthline.com/health-news/how-many-coronavirus-cases-are-there>

droplets land directly on a nearby person's nose or mouth. It can also occur when a person inhales these droplets or touches a contaminated surface and then touches their mouth, nose, or eyes.<sup>20</sup> The coronavirus can survive up to three hours in the air, four hours on copper, 24 hours on cardboard, and two to three days on plastic and stainless steel.<sup>21</sup>

34. Many people with COVID-19 remain completely asymptomatic and may never realize that they are infected, yet can still spread the disease. Likewise, infected people who may eventually develop symptoms are contagious even when they are pre-symptomatic and may account for 50% of transmissions. Interventions that isolate or quarantine only symptomatic individuals, therefore, cannot effectively contain transmission.

ii. Symptoms of COVID-19, Underlying Risks Factors, and Long-Term Effects

35. Even though it causes only mild symptoms or no symptoms at all for some, COVID-19 can, for others, result in more serious injury, including respiratory failure, kidney failure, and death.

36. Older individuals and those with certain medical conditions are at particularly high risk for serious illness or death from COVID-19.

37. Medical conditions that increase the risk of severe illness or death from COVID-19 for individuals of any age include blood disorders, chronic kidney or liver disease, compromised immune system, diabetes and other endocrine disorders, metabolic disorders, heart and lung disease, neurological and neurodevelopmental conditions, and current or recent pregnancy.

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<sup>20</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *How Coronavirus Spreads* (last reviewed Mar. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

<sup>21</sup> Harvard Health Publishing, *As coronavirus spreads, many questions and some answers* Harvard Medical School, Coronavirus Resource Center (last updated Apr. 1, 2020), <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>

38. Infected individuals can face prolonged treatment and recovery periods, requiring intensive hospital care and ventilators that are in increasingly short supply. Those who do not die can suffer serious damage to the lungs, heart, liver, or other organs.<sup>22</sup>

39. Complications from COVID-19 can manifest at an alarming pace. Patients can go from being medically stable with no need for supplemental oxygen to requiring intubation and ventilator-assisted breathing within 24 hours. Various studies estimate that the average length of time from onset of symptoms to hospitalization or the development of severe symptoms is only 7-9 days.

iii. Prevention of COVID-19 Transmission

40. There is currently no vaccine against COVID-19. Nor are there any known prophylactic medications that will prevent or reduce the risk of a COVID-19 infection. Therefore, the only effective way to protect people against the risk of serious illness or death from COVID-19 is to limit their exposure to the virus through social distancing—i.e., physical separation of at least six feet from all others—and vigilant hygiene, including frequent and thorough handwashing with soap and water.<sup>23</sup>

41. The high incidence of asymptomatic transmission, alongside the nationwide dearth of diagnostic tests to identify and isolate infected individuals, necessitate strict social distancing measures to interrupt transmission.

42. Social distancing reduces the average number of contacts between people, which

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<sup>22</sup> Lisa Maragakis, M.D., M.P.H., *I've been diagnosed with the new coronavirus disease, COVID-19. What should I expect?* Johns Hopkins Medicine, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/diagnosed-with-covid-19-what-to-expect>

<sup>23</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *How to Protect Yourself* (last reviewed Apr. 1, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>



lowers every individual's risk both for acquiring COVID-19 and transmitting it to another person.

43. Strict social distancing measures have proven effective in reducing the transmission of COVID-19. On January 23, 2020, the Chinese government instituted a complete lockdown of Wuhan, China, where the COVID-19 outbreak began, to attempt to fight the spread of the virus. They shut down all schools, offices, and factories and banned private vehicles from city streets. This lockdown expanded to other cities in Hubei province in the next several days, extending to 60 million people in China.<sup>24</sup> Following the lockdown, Wuhan saw a sustained decrease in transmission of COVID-19, and two months later, the daily number of reported cases dropped to zero.<sup>25</sup>

44. Throughout the world, other countries have also implemented drastic social distancing measures in an effort to control the COVID-19 pandemic and protect people's health and lives. France, for example, imposed a strict nationwide lockdown, prohibiting gatherings of any size and ordering all residents to stay at home.<sup>26</sup> Overall, countries encompassing an estimated one third of the world's population have enacted similar restrictions.<sup>27</sup> Across the United States, cities and states are imposing increasingly stringent measures to effectuate social distancing. As of April 2, 2020, at least 38 states, 48 counties, and 14 cities, and had ordered their residents to

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<sup>24</sup> Amy Gunia, *China's Draconian Lockdown Is Getting Credit for Slowing Coronavirus. Would It Work Anywhere Else?*, Time Magazine (Mar. 13, 2020), <https://time.com/5796425/china-coronavirus-lockdown/>

<sup>25</sup> *Id.*

<sup>26</sup> Bryan Pietsch, *'We are at war': France's president just announced a 15-day lockdown, banning public gatherings and walks outdoors*, Business Insider (Mar. 16, 2020), <https://www.businessinsider.com/coronavirus-france-president-macron-announces-15-day-lockdown-2020-3>

<sup>27</sup> Juliana Kaplan, Lauren Frias, & Morgan McFall-Johnson, *A Third of the Global Population Is On Coronavirus Lockdown*, Business Insider (last updated Apr. 6, 2020) <https://www.businessinsider.com/countries-on-lockdown-coronavirus-italy-2020-3>

“shelter in place” or stay at home.<sup>28</sup>

**B. COVID-19 Will Likely Ravage Jails, Prisons, and Detention Centers**

45. Imprisoned populations, including those in ICE detention facilities, are at higher risk for infectious disease, as compared to the general population. Factors that heighten their risk include poor sanitation, high population density, and “a higher prevalence of infectious and chronic diseases and . . . poorer health than the general population, even at younger ages.”<sup>29</sup>

46. Dr. Scott Allen and Dr. Josiah Rich, experts in the fields of detention health, infectious disease, and public health who advise DHS’s Office of Civil Rights and Civil Liberties, have urged Congress to take immediate actions to slow the spread of COVID-19 in ICE detention centers, including releasing immigrants to facilitate social distancing—which, they say, is an “oxymoron” in congregate settings.<sup>30</sup>

47. In March 2020, over 3,000 medical professionals across the United States also urged ICE to release individuals and families from detention “to prevent the spread of COVID-19 and mitigate the harm of an outbreak” to detained individuals, as well as to facility staff.<sup>31</sup> They warned that social distancing measures recommended by the CDC are nearly impossible in immigration detention and that large-scale quarantines may be unfeasible at ICE facilities that are

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<sup>28</sup> Sarah Mervosh, Denise Lu, and Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, The New York Times (last updated Apr. 3, 2020) <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>

<sup>29</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (last reviewed Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

<sup>30</sup> Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH Letter to Congress (Mar. 19, 2020) <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>

<sup>31</sup> Janus Rose, *Thousands of Doctors Demand ICE Release Detainees to Stop a COVID-19 Disaster*, Vice.com (Mar. 18, 2020), [https://www.vice.com/en\\_us/article/4agp4w/thousands-of-doctors-demand-ice-release-detainees-to-stop-a-covid-19-disaster](https://www.vice.com/en_us/article/4agp4w/thousands-of-doctors-demand-ice-release-detainees-to-stop-a-covid-19-disaster)

already at maximum capacity. They also expressed concern that “isolation may be misused and place individuals at higher risk of neglect and death.”

48. Like these and other experts,<sup>32</sup> Drs. Allen and Rich also warned of the dire consequences that a COVID-19 outbreak within an ICE detention facility would have on the community outside the facility. They describe a “tinderbox” scenario where a rapid outbreak inside a facility would result in the hospitalization of multiple detained people in a short period of time, which would then spread the virus to the surrounding community and create a demand for ventilators far exceeding the supply.

49. Once a disease is introduced into a jail, prison, or detention facility, it spreads faster than under most other circumstances due to overcrowding, poor sanitation and hygiene, and lack of access to adequate medical services. For these same reasons, the outbreak is harder to control.<sup>33</sup> The severe outbreaks of COVID-19 in congregate environments, such as cruise ships and nursing homes, illustrate just how rapidly and widely COVID-19 would rip through an ICE detention facility. On the Diamond Princess cruise ship, for example, approximately 700 passengers and crew on board were infected over the course of three weeks despite the initiation of quarantine protocols.

50. Good hygiene is also critical to reducing exposure to COVID-19, but the notoriously unsanitary conditions in detention centers and ICE’s meager provision of hygiene and

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<sup>32</sup> See, e.g., Rich Schapiro, *Coronavirus could ‘wreak havoc’ on U.S. jails, experts warn*, NBC News (Mar. 12, 2020), <https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586> (“An outbreak of the deadly virus inside the walls of a U.S. prison or jail is now a question of when, not if, according to health experts.”).

<sup>33</sup> Christina Potter, *Outbreaks in Migrant Detention Facilities*, Outbreak Observatory (Jul. 11, 2019), <https://www.outbreakobservatory.org/outbreakthursday-1/7/11/2019/outbreaks-in-migrant-detention-facilities>

cleaning products rob detained individuals of the ability to practice good hygiene.

51. Despite the global pandemic and shelter-in-place orders across the country, ICE continues to bring new people into detention centers and to transfer previously detained people between facilities.<sup>34</sup> Some detained people have staged public protests, including initiating hunger strikes and threatening suicide, to express their outrage at being housed with newly arriving individuals who may have been exposed to COVID-19.<sup>35</sup>

52. Correctional staff is also an especially dangerous vector for a COVID-19 outbreak within a detention center since they regularly travel back and forth between the outside world and the detention facilities where they work.

53. ICE's past inept handling of infectious disease outbreaks in detention centers foreshadows the impact once COVID-19 hits these facilities. In 2019, a mumps outbreak across 57 immigration detention facilities throughout the country—including Stewart—led to almost 900 cases of mumps contracted inside the facilities<sup>36</sup> before the outbreak spread to surrounding

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<sup>34</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (last reviewed/updated Apr. 2, 2020), <https://www.ice.gov/covid19> (“ . . . our law enforcement officers and agents continue daily enforcement operations to make criminal and civil arrests.”); see Richard Hall, *Coronavirus: ICE Crackdown Stokes Fears for Safety of Undocumented Immigrants During Pandemic*, Independent (Mar. 15, 2020) (noting that “[i]n New York, immigration advocates have noted a marked increase in ICE activity in recent months, which has not slowed as the coronavirus outbreak has worsened.”). On March 18, 2020, ICE announced it would “temporarily adjust” its enforcement practices during the COVID-19 outbreak,” but declined to say it would stop arresting people altogether. See Rebecca Klar, *ICE Pausing Most Enforcement During Coronavirus Crisis*, The Hill (Mar. 18, 2020), <https://thehill.com/latino/488362-ice-pausing-most-immigration-enforcement-during-coronavirus-crisis>

<sup>35</sup> *Ice detainees threaten suicide, stage protests over coronavirus fears*, The Washington Post (Mar. 25, 2020) [https://www.washingtonpost.com/video/national/ice-detainees-threaten-suicide-stage-protests-over-coronavirus-fears/2020/03/25/8232738e-0b1e-4fdb-8538-456e269a8eb7\\_video.html](https://www.washingtonpost.com/video/national/ice-detainees-threaten-suicide-stage-protests-over-coronavirus-fears/2020/03/25/8232738e-0b1e-4fdb-8538-456e269a8eb7_video.html)

<sup>36</sup> Leung J, Elson D, Sanders K, et al. *Notes from the Field: Mumps in Detention Facilities that House Detained Migrants—United States, September 2018–August 2019*, MMWR Morb Mortal

communities.<sup>37</sup> ICE and CBP facilities have also been sites of other infectious outbreaks in recent years,<sup>38</sup> as have other prisons and jails.<sup>39</sup>

54. COVID-19 has indeed already started to spread inside U.S. prisons and jails across the United States, including in Georgia<sup>40</sup> and New York City.<sup>41</sup>

55. ICE has publicly reported 13 cases of COVID-19 among its detained population as of April 6, 2020, and identified 56 additional cases among its personnel, including seven employees who work at an ICE detention facility.<sup>42</sup> In addition, according to a leaked internal report, ICE has placed at least nine detainees in medical isolation and is monitoring 24 more in ten different detention facilities—all likely due to suspicion of COVID-19.<sup>43</sup>

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Wkly, 749–50 (Aug. 30, 2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6834a4-H.pdf>; Roxanne Scott, *Stewart Detention Center Watches For New Cases Of Mumps*, WABE (Mar. 8, 2019), <https://www.wabe.org/stewart-detention-center-watches-for-new-cases-of-mumps/>

<sup>37</sup> See Terrence McDonald, *Bergen County Won't Say if Mumps Outbreak Affects Only Immigrant Detainees*, Northjersey.com (Jun. 13, 2019), <https://www.northjersey.com/story/news/bergen/2019/06/13/bergen-county-nj-wont-say-if-jail-mumps-outbreak-hit-only-ice-inmates/1448708001>. In addition, in 2019, thousands of individuals in 39 immigration detention centers across the country were exposed to chickenpox. See Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (Jun. 14, 2020), [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>38</sup> Christina Potter, *Outbreak Observatory supra* n. 33, (describing outbreaks of acute respiratory illnesses like influenza, and other diseases like scabies and chickenpox).

<sup>39</sup> J. O'Grady, et al., *Tuberculosis in prisons: anatomy of global neglect*, *European Respiratory Journal* (2011), <https://erj.ersjournals.com/content/38/4/752.short> (stating that tuberculosis prevalence among prisoners worldwide can be up to 50 times higher than national averages).

<sup>40</sup> Joshua Sharpe and Christian Boone, *Ga. Inmate dies from COVID-19 as virus hits more prisons*, *The Atlanta Journal-Constitution* (Mar. 27, 2020), <https://www.ajc.com/news/local/breaking-inmate-dies-from-covid-outbreak-worsens-prison/TzQZL4uXfK4GzH9ebSFNQN/>

<sup>41</sup> Emma Grey Ellis, *Covid-19 Poses a Heightened Threat in jails and Prisons*, *wired.com* (Mar. 24, 2020), <https://www.wired.com/story/coronavirus-covid-19-jails-prisons/>

<sup>42</sup> *ICE Guidance on COVID-19*, *supra* n. 34

<sup>43</sup> Ken Klippenstein, *Exclusive: ICE Detainees Are Being Quarantined, A leaked document about the Department of Homeland Security's Covid-19 response suggests that the crisis has made its*

56. Nationally and internationally, governments and jail and prison staff have already recognized the threat posed by COVID-19. Authorities in Iran,<sup>44</sup> Ethiopia,<sup>45</sup> and the state of Texas<sup>46</sup> have all begun to release people to mitigate the harm that the impending spread of COVID-19 will cause. Some jails in Georgia have done the same,<sup>47</sup> including Dougherty County Detention Center in Albany, which is suffering from one of the most severe outbreaks in the state.<sup>48</sup> The Federal Bureau of Prisons has also instructed prison directors to prioritize releasing federal inmates to home confinement, taking into consideration factors including “[t]he age and vulnerability of the inmate to COVID-19, in accordance with the [CDC] guidelines.”<sup>49</sup>

57. Still, ICE continues to detain even the most medically vulnerable noncitizens despite the grave risk of serious illness or death.

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*way to border detention facilities*, The Nation (Mar. 24, 2020),

<https://www.thenation.com/article/society/corona-covid-immigration-detention/>

<sup>44</sup> Babk Dehghanpisheh and Stephanie Nebehay, *Iran Temporarily Releases 70,000 Prisoners as Coronavirus Cases Surge*, Reuters (Mar. 9, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5>

<sup>45</sup> Bukola Adebayo, *Ethiopia pardons more than 4,000 prisoners to help prevent coronavirus spread*, CNN (Mar. 26, 2020), <https://www.cnn.com/2020/03/26/africa/ethiopia-pardons-4000-prisoners-over-coronavirus/index.html>

<sup>46</sup> Dillon Collier, *Bexar County jail population down more than 500 inmates after release of nonviolent offenders*, KSAT.com (last updated Mar. 25, 2020), <https://www.ksat.com/news/local/2020/03/25/bexar-county-jail-population-down-more-than-500-inmates-after-release-of-nonviolent-offenders/>

<sup>47</sup> Christian Boone, *Hall, Fulton counties releasing nonviolent offenders early as virus looms*, The Atlanta Journal-Constitution (Mar. 23, 2020), <https://www.ajc.com/news/crime--law/hall-fulton-counties-releasing-nonviolent-offenders-early-virus-looms/IOZTaZ9lVSwoy38Cp6XJIP/>;

<sup>48</sup> Stanley Dunlap, *Georgia jailers cope with COVID-19; release inmates, quarantine arrivals*, Georgia Recorder (Mar. 30, 2020), <https://georgiarecorder.com/2020/03/30/georgia-jailers-cope-with-covid-19-release-inmates-quarantine-arrivals/>

<sup>49</sup> Office of the Attorney General, Washington, DC, Memorandum for Director of Bureau Prisons, *Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic* (Mar. 26, 2020), <https://www.politico.com/f/?id=00000171-1826-d4a1-ad77-fda671420000>

**C. Stewart and Irwin Detention Centers Are Primed for COVID-19 Exposure and Severe Outbreaks**

i. Existing Conditions at Stewart and Irwin Will Further Enable COVID-19 Transmission

58. The ICE Atlanta Field Office currently detains an estimated 3,000 noncitizens at Stewart and Irwin.

59. Preventing the spread of COVID-19 inside Stewart and Irwin is impossible. The design of these facilities requires detained individuals to remain in close contact with one another—the opposite of the social distancing recommended for stopping the spread of lethal coronavirus.

60. Both Stewart and Irwin house people in very close quarters, making social distancing and the recommended hygiene measures effectively impossible. Most people sleep in bunk rooms housing dozens of immigrants—where beds are feet apart from each other—and use shared toilets and showers. The facilities also have some smaller cells housing 2-4 people with shared bathrooms. People eat together in shared cafeterias and regularly congregate in common areas of their housing units.<sup>50</sup> A man at Stewart reported to advocates on March 26, 2020, that a staff member told detained individuals that social distancing “doesn’t apply” to them because they “are in detention.”

61. The conditions at Stewart and Irwin are also flagrantly unsanitary and dangerous to the health of detained individuals. Private contractors operate Stewart and Irwin, and the DHS Office of Inspector General has repeatedly concluded that ICE fails to hold detention facility

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<sup>50</sup> Project South, Center for Immigrants’ Rights Clinic, *Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers* (May 2017), available at [https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\\_Justice\\_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf) at 31, 43 [hereinafter *Imprisoned Justice*];

contractors accountable for meeting performance standards required to ensure humane conditions.<sup>51</sup>

62. The bathrooms in these facilities are often unsanitary, poorly maintained, or lack hot or cold water. For example, at Irwin, detained individuals have reported that water from the showers is so hot that it has caused hair to fall out after washing and that the “moldy infection-riddled bathrooms” are “consistently dirty.”<sup>52</sup>

63. Access to items necessary for personal hygiene, such as soap, clean clothing, and cleaning supplies, is insufficient at both Stewart and Irwin.<sup>53</sup> In a pending class-action lawsuit, people detained at Stewart allege that they are forced to work in the facility for cents an hour in order to buy additional hygiene supplies like soap and toilet paper at the commissary.<sup>54</sup> Detained people in Irwin have reported that bleach is only used “on special occasions” and that detained

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<sup>51</sup> See U.S. Department of Homeland Security, Office of the Inspector General, OIG-19-18, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, 1 (Jan. 29, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>; U.S. Department of Homeland Security, Office of the Inspector General, OIG-18-67, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, 1 (Jun. 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/20//18-06/OIG-18-67-Jun18.pdf>; see also U.S. Department of Homeland Security, Office of Inspector General, Office of Inspections & Evaluations, Adult Detention Oversight, 16-047-ISP-ICE (Feb. 2017), [https://www.oig.dhs.gov/sites/default/files/assets/FOIA/OIG\\_FOIA\\_Stewart-Detention-Center-Work-Papers.pdf](https://www.oig.dhs.gov/sites/default/files/assets/FOIA/OIG_FOIA_Stewart-Detention-Center-Work-Papers.pdf) [hereinafter *OIG Stewart Work Papers*]

<sup>52</sup> U.S. Department of Homeland Security, Office of Inspector General, OIG-18-32, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> at 7 [hereinafter *Concerns about ICE Detainee Treatment*]; *Imprisoned Justice* at 31, 43-44

<sup>53</sup> *Imprisoned Justice* at 30, 33, 42-45; *OIG Stewart Work Papers*; *Concerns about ICE Detainee Treatment* at 7.

<sup>54</sup> *Wilhen Hill Barrientos, et al. v. Corecivic, Inc.*, No. 18-cv-00070-CDL (M.D. Ga. Apr. 17, 2018) Dkt. 1 Complaint for Declaratory and Injunctive Relief and Damages, <https://projectsouth.org/wp-content/uploads/2018/04/Complaint-Barrientos-v.-Core-Civic.pdf>



people are forced to wear the same pair of shoes in the moldy showers as they do around the rest of their housing unit.<sup>55</sup>

64. Reports indicate that the water quality at Stewart is shockingly poor. Detained individuals have reported boiling water in their cells before drinking it; developing rashes after showers; water turning their white clothes green; and getting headaches or long bouts of diarrhea after drinking the water. One attorney visiting Stewart reported to an advocacy group that a sympathetic guard urged the attorney not to drink water out of the drinking fountain.<sup>56</sup>

65. At both facilities, food preparation and service are communal with little opportunity for surface disinfection. Detained people, overseen by food service contractors, staff the kitchens. People detained in these facilities have for years reported being served food that is undercooked, rotten, or rancid and that contains hair and foreign objects such as rocks, insects, mice, plastic, a tooth, and a nail.<sup>57</sup>

ii. Stewart and Irwin Detention Centers Have a Dismal Medical Care Track Record and Are Currently Ignoring Reported Flu-like Symptoms Among the Detained Population

66. Respondents have consistently failed to provide even minimally adequate medical care to individuals detained at Stewart and Irwin.<sup>58</sup> They cannot possibly be trusted to protect those in their custody from a potentially lethal infectious disease outbreak that has overwhelmed

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<sup>55</sup> Imprisoned Justice at 32, 45

<sup>56</sup> Imprisoned Justice at 32; Southern Poverty Law Center, *Shadow Prisons: Immigrant Detention in the South* (Nov. 21, 2016), <https://www.splcenter.org/20161121/shadow-prisons-immigrant-detention-south> [hereinafter *Shadow Prisons*] at 16, 42

<sup>57</sup> Imprisoned Justice at 30, 44, 47; *Shadow Prisons* at 16, 26, 42; OIG Stewart Work Papers

<sup>58</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, Inspections and Detention Oversight Division, Compliance Inspection, Enforcement and Removal Operations, ERO Atlanta Field Office, Stewart County Detention Center, Lumpkin, Georgia (Aug. 21-23, 2012), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/2012stewart\\_detntn\\_cnr\\_lumpkin\\_GA\\_aug21-23-2012.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/2012stewart_detntn_cnr_lumpkin_GA_aug21-23-2012.pdf); *Concerns about ICE Detainee Treatment*; *Shadow Prisons* at 14-15, 17, 23-25, 40-41; Imprisoned Justice at 46-49

healthcare systems around the world.

67. At both detention centers, critical medical care is routinely delayed—sometimes for months—or denied outright.

68. At Irwin, requests for medical attention have been met with punishment, such as placement in solitary confinement. One man at Irwin reported that a guard told him “medical staff would only take [him] to the hospital if they see [him] dying.” Others detained at Irwin reported that the facility lacks a medical alert system to notify guards of an emergency, leaving detained people helpless in the event of a medical emergency in the living area. An inspection at Irwin in 2017 found that its medical unit cells were so dirty that “floors needed to be mopped, walls wiped down, toilets cleaned, and trash and refuse removed.”<sup>59</sup>

69. Accessing medical care at Stewart is also incredibly difficult. In 2018, there was no way for an individual to even request medical attention in writing. During a stakeholder tour of the facility in 2018, a detained man in the waiting room of the medical unit said to the tour participants, “nos están tratando mal,” or *they’re mistreating us*.

70. When detained people at Stewart and Irwin do manage to get the attention of a medical provider, they are often given the wrong diagnostic tests, medication, or dosage, or prescribed only painkillers, regardless of the source of their complaints.<sup>60</sup>

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<sup>59</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, Inspections and Detention Oversight Division, Compliance Inspection, Enforcement and Removal Operations, ERO Atlanta Field Office, Irwin County Detention Center, Ocilla, Georgia (Mar. 7-9, 2017), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2017IrwinCountyGA.pdf> at 6

<sup>60</sup> Imprisoned Justice at 35-36; Shadow Prisons at 40; DHS Office for Civil Rights and Civil Liberties, *Formal Complaint – Stewart Detention Center, Lumpkin, GA* (Oct. 11, 2019), [https://www.detentionwatchnetwork.org/sites/default/files/CRCL%20complaint%20-%20SDC%20-%20Oct%2011%20-%20translation\\_Redacted.pdf](https://www.detentionwatchnetwork.org/sites/default/files/CRCL%20complaint%20-%20SDC%20-%20Oct%2011%20-%20translation_Redacted.pdf); Project South, Institute for the Elimination of Poverty & Genocide, *Letter to Members of the Georgia Delegation to the 116<sup>th</sup>*

71. The facilities also face consistent understaffing, including “chronic shortages of almost all medical staff positions.”<sup>61</sup>

72. Detained individuals with diabetes—a condition that the CDC considers a risk factor for severe COVID-19, “particularly if not well controlled”<sup>62</sup>—have reported diets that are inadequate given their medical needs, consisting largely of potatoes, white rice, and bread.<sup>63</sup>

73. Failing to address people’s medical needs has had deadly consequences at Stewart and Irwin. Four people detained at Stewart have died since spring 2017.<sup>64</sup> One man died from complications of pneumonia, despite being a healthy 33-year-old before entering detention.<sup>65</sup> According to ICE’s own records, facility staff failed to properly monitor the man’s documented symptoms of hypertension (a condition that increases the risk of a serious case of COVID-19), failed to immediately authorize emergency medical services after a provider ordered them to do so, and failed to suspend the man’s food service work duties even though he had symptoms that could “potentially transmit[ ] contagious illnesses.”<sup>66</sup>

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*United States Congress Re: Requesting an Investigation of the Stewart Detention Center* (Oct. 17, 2019), <https://projectsouth.org/wp-content/uploads/2019/10/10.17.2019-Letter-to-Georgia-Congressional-Delegates-.pdf>; *Concerns about ICE Detainee Treatment* at 7

<sup>61</sup> *Imprisoned Justice* at 35; [OIG Stewart Work Papers](#)

<sup>62</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *People who are at higher risk for severe illness* (last reviewed Mar. 31, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html>

<sup>63</sup> *Imprisoned Justice* at 22-23, 32; *Shadow Prisons* at 17, 42.

<sup>64</sup> José Olivares, *How Solitary Confinement Kills: Torture and Stunning Neglect End in Suicide at Privately Run ICE Prison*, *The Intercept* (Aug. 29, 2019), <https://theintercept.com/2019/08/29/ice-solitary-mental-health-corecivic/>

<sup>65</sup> Jeremy Redmon, *Brother: Cuban was healthy before dying of pneumonia in ICE custody*, *The Atlanta Journal-Constitution* (Feb. 20, 2018), <https://www.ajc.com/news/state--regional-govt--politics/brother-cuban-was-healthy-before-dying-pneumonia-ice-custody/9TNpiI95CYQPyiGPoSyzmJ/>

<sup>66</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement, Report of Investigation, Case No. 201803734, Castro-Garrido, Yulio/non-employee/0109 Detainee/Alien – Death (Known Cause – Terminal Illness)/Jacksonville, Duval, FL (Jan. 31, 2018), *available at*

74. A whistleblower within the ICE Health Service Corps (IHSC) alleged in 2018 that medical staff at Stewart delayed a critically ill man’s care after receiving a lab report that should have resulted in immediate intervention. Even though IHCS determined that medical staff’s actions “may have caused harm that could have resulted in fatality,” IHSC leadership “failed to take appropriate action.”<sup>67</sup>

75. In the context of the COVID-19 pandemic, early reports indicate that ICE is using the same playbook—ignoring pleas for help, threatening those who seek medical care with punishment, and waiting until it may be too late.

76. For example, on March 23, 2020, a man detained at Stewart reported to advocates that people detained there are afraid to report their symptoms for fear of being placed in segregation—in a 6-by-9-foot cell—where a number of detained people have died by suicide.

77. Reportedly, individuals at Stewart sometimes choose not to request medical appointments because they do not believe they will receive proper care. One man at Stewart, who reported to advocates on March 26, 2020, that he was experiencing a sore throat, dizziness, and diarrhea, shared his observation that people who seek medical care for a cough are returned to the general population, rather than isolated, after their appointments.

78. Preliminary data suggests that a person with COVID-19 is most infectious during

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<https://projectsouth.org/wp-content/uploads/2019/06/OPR-Release-of-2019-ICLI-00033.pdf> at 12.

<sup>67</sup> U.S. Department of Homeland Security, Office for Civil Right and Civil Liberties, Memorandum for Ronald Vitiello, Deputy Director and Senior Official (ICE), From Cameron P. Quinn, Officer for Civil Rights and Civil Liberties and Marc Pachon, Attorney Advisor – Legal Division, Office of General Counsel, *Subject: ICE Health Service Corps (IHSC) Medical/Mental Care and Oversight* (Mar. 20, 2019), available at <https://www.documentcloud.org/documents/6575024-ICE-Whistleblower-Report.html>

the early stage of the disease.<sup>68</sup> Early, proactive action is necessary to prevent the virus's spread. The well-documented failure to provide adequate and timely medical care at Stewart and Irwin is the mark of a system that cannot possibly cope with the spread of COVID-19.

iii. It Is Only a Matter of Time Before COVID-19 Reaches Stewart and Irwin Detention Centers

79. COVID-19 is bound to reach Stewart and Irwin, if it has not already. Detained people at Stewart and Irwin have reported to advocates that there are cases of COVID-19 within their facilities, including one possible COVID-19-related death at Stewart, though ICE has not confirmed any of these reports. In addition, two guards at Stewart have now tested positive for COVID-19.<sup>69</sup> The total number of confirmed cases in Stewart County is three.<sup>70</sup>

80. Many cities and counties surrounding Lumpkin also have confirmed cases of COVID-19.<sup>71</sup> Lumpkin is only about 50 miles from Albany, which, as of March 26, 2020, had the fourth highest number of COVID-19 cases per capita and the third highest number of COVID-19 deaths per capita in the entire world.<sup>72</sup> Phoebe Putney Memorial Hospital, located in Albany, has

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<sup>68</sup> Helen Branswell, *People 'shed' high levels of coronavirus, study finds, but most are likely not infectious after recovery begins*, statnews.com (Mar. 9, 2020), <https://www.statnews.com/2020/03/09/people-shed-high-levels-of-coronavirus-study-finds-but-most-are-likely-not-infectious-after-recovery-begins/>

<sup>69</sup> Alex Jones, *Second Stewart Detention Center employee tests positive for COVID-19*, WTVM (last updated April 6, 2020) <https://www.wtvm.com/2020/04/06/second-stewart-detention-center-employee-tests-positive-covid-/>

<sup>70</sup> *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 6, 2020), <https://dph.georgia.gov/covid-19-daily-status-report>

<sup>71</sup> *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 6, 2020), <https://dph.georgia.gov/covid-19-daily-status-report> – specifically Randolph County, plus (not directly bordering) Muscogee County, Terrell County, Sumter County. As well as Russell County, GA: *COVID-19 map of Alabama: latest coronavirus cases by county*, wvtm13.com (last updated Apr. 1, 2020), <https://www.wvtm13.com/article/coronavirus-map-alabama/31919956#>

<sup>72</sup> Nate Cohn, et al., *Some U.S. Cities Could Have Coronavirus Outbreaks Worse Than Wuhan's*, The New York Times (Mar. 27, 2020), <https://www.nytimes.com/interactive/2020/03/27/upshot/coronavirus-new-york-comparison.html>

filed all three of its ICUs with critically ill COVID-19 patients, after having opened a fourth ICU for patients not infected with COVID-19.<sup>73</sup> As of April 6, 2020, Dougherty County, which encompasses Albany, had the second highest number of reported COVID-19 diagnoses—722—and COVID-19-related deaths—44—among all 159 counties in Georgia.<sup>74</sup> Lumpkin is also about 50 miles from another COVID-19 “hot spot”—Lee County, Alabama, had 118 confirmed cases as of April 6, 2020.<sup>75</sup>

81. There were seven confirmed cases of COVID-19 in Irwin County as of April 6, 2020, with confirmed cases in all bordering counties as well.<sup>76</sup> Like Lumpkin, Ocilla is only roughly 60 miles from Albany, where there is sustained community spread of the virus.

82. There is great risk that people traveling in and out of Stewart and Irwin will expose Petitioners to COVID-19. Indeed, two of the three known cases in Stewart County are staff at Stewart Detention Center.

83. Staff at Stewart and Irwin arrive and leave on a shift basis, and there is limited ability to adequately screen incoming staff for new, asymptomatic infection.

84. Staff often need to crowd into small spaces to enter and exit detention centers. On

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<sup>73</sup> Christina Maxouris and Angela Barajas, *Georgia’s hardest-hit hospital says its intensive care units are filled with ‘critically ill’ coronavirus patients*, CNN (last updated Mar. 26, 2020), <https://www.cnn.com/2020/03/26/us/southwest-georgia-icu-units-full/index.html>

<sup>74</sup> *Georgia Department of Public Health COVID-19 Daily Status Report* (last reviewed Apr. 6, 2020), <https://dph.georgia.gov/covid-19-daily-status-report>

<sup>75</sup> *COVID-19 map of Alabama: latest coronavirus cases by county*, wvtm13.com (last updated Apr. 6, 2020), <https://www.wvtm13.com/article/coronavirus-map-alabama/31919956#>; Paul Gattis, *Alabama’s new coronavirus ‘hot spot’: Auburn area*, al.com (Mar. 25, 2020), <https://www.al.com/news/2020/03/alabamas-new-coronavirus-hotspot-lee-county.html>; Alabama Department of Public Health, Division of Infectious Diseases & Outbreaks, Alabama’s COVID-19 Data and Surveillance Dashboard (last updated Apr. 2, 2020) <https://alpublichealth.maps.arcgis.com/apps/opsdashboard/index.html#/6d2771faa9da4a2786a509d82c8cf0f7>

<sup>76</sup> *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 2, 2020), <https://dph.georgia.gov/covid-19-daily-status-report>

March 24, 2020, an immigration attorney visiting Stewart observed a shift change in which a group of 15-20 staff was waiting in a small hallway for a gate to open, all crowded within several inches of each other. Over the course of multiple visits during the same week, she did not see any staff at Stewart wearing gloves, masks, or other personal protective equipment (PPE); one officer at the entrance to the Stewart immigration court without any PPE was “coughing continually.” Similarly, an attorney visiting Irwin on March 22, 2020, observed no use of PPE by facility staff, other than a guard who put on gloves before taking her temperature, and took them off right afterwards.

85. Attorneys continue to visit their detained clients in Stewart and Irwin because most immigration court hearings are still proceeding and many filing deadlines still apply. Since the pandemic began, ICE has permitted attorneys to enter these facilities without taking adequate precautions to limit exposure in the event that a visiting attorney is a COVID-19 carrier. At Irwin and Stewart, attorneys were permitted to enter for legal visits in late March without wearing any PPE. They merely had to submit to temperature checks and answer a brief set of questions about whether they had traveled recently or had contact with a confirmed case of COVID-19.

86. As recently as March 23, 2020, Stewart—which houses an immigration court—was holding hearings with more than ten people inside a court room. At least one such hearing included a live interpreter who, according to the judge, had traveled from the New York court where a judge had a presumed positive case of COVID-19. After the hearing, the attorney went to visit her client and was permitted to enter the visitation lobby at Stewart without any PPE. When she visited her client in the legal visitation rooms at Stewart, the client did not have gloves, a mask, or hand sanitizer.

87. Another immigration attorney reported that, as recently as April 6, 2020, no guards or other court staff wore any PPE during a hearing at Stewart Immigration Court. ICE also refused

to let him supply his clients with PPE. Later that day, the same attorney was permitted to visit clients at Stewart without being screened for symptoms or his potential exposure to COVID-19.

88. There are myriad ways in which COVID-19 is likely to enter or has already entered Stewart and Irwin, none of which Respondents can meaningfully address without blanket testing of every individual who enters. However, testing shortages make such a measure impossible.

89. Once the virus appears in these facilities—if it has not already—it will be effectively impossible for Petitioners to protect themselves from infection through social distancing and vigilant hygiene—the only known mitigation measures. If they do contract COVID-19, Petitioners—who are already at particularly high risk of serious illness and death—are unlikely to receive the medical care they need.

**D. The Lack of Hospital Resources Near the Georgia Detention Centers Will Put Petitioners at Even Greater Risk**

90. The local and regional hospitals near Stewart and Irwin are ill-equipped to handle a COVID-19 outbreak within these facilities, increasing the life-threatening risks to Petitioners.

91. An outbreak of COVID-19 at Stewart or Irwin would put at risk not only detained populations but also the thousands of ICE officers, medical personnel, contract workers, and many others who work in these facilities, diverting crucial and limited medical resources.

92. Patients who are hospitalized for COVID-19 commonly require intensive care and a ventilator to assist breathing. Even some younger and healthier individuals who contract COVID-19 may require supportive care.<sup>77</sup> And those who develop serious complications will need advanced support, including highly specialized equipment that is in limited supply and an entire

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<sup>77</sup> Fei Zhou, MD, et al., *Clinical course and risk factors for mortality of adults in patients with COVID-19 in Wuhan, china: a retrospective cohort study*, *The Lancet*, vol. 395, issue 10229 (Mar. 11, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext)



team of care providers. This level of support is especially difficult to provide to detained individuals because ICE detention facilities lack adequate medical care infrastructure.

93. Stewart and Irwin are geographically isolated from appropriate levels of medical care to treat COVID-19. The disease requires an intensive care unit with appropriate medical equipment and staff. The closest hospitals to these facilities are either critical access hospitals without the necessary facilities or regional hospitals that serve many counties and are already overwhelmed or will quickly become overwhelmed if there are outbreaks within these detention centers.

94. Critical access hospitals are generally located in rural areas where the access to nearby hospitals is extremely limited. They have fewer than 25 beds and are designed to care for patients who will require fewer than 96 hours of care. Importantly, even if some have ICU-type beds, they do not have capacity for the type of long-term treatment required for COVID-19 patients. Critical access hospitals are not designed to care for critically ill patients; they are designed to stabilize and transfer them.

95. Stewart is at least one hour away from two facilities where the necessary level of care could be provided, one of which—Phoebe Putney in Albany—is already completely overwhelmed with COVID-19 patients. A hospital closer to Stewart—Southwest Georgia Regional Medical Center in Cuthbert, Georgia—has no long-term ICU beds.

96. The nearest hospital to Irwin with ICU capabilities is Tift Regional Medical Center, approximately 18 miles away. Tift Medical Center has 181 hospital beds, including 20 ICU beds. As a regional hospital, it serves 12 counties. A coronavirus outbreak in any of these counties would overwhelm the hospital and its ICU beds.

97. With the increasing shortage of PPE, healthcare providers, hospital capacity, and

ICU resources like ventilators, it is impossible to know when specific hospitals in Georgia will run out of any of these requisite resources. However, predictions suggest that Georgia currently has an ICU bed shortage of 755 beds and 1,075 ventilators and that all state hospital resources will be used by April 22, 2020.

**E. ICE's Actions to Address the Pandemic Thus Far Have Been Woefully Inadequate, and Release is the Only Adequate Response to Protect Petitioners**

98. ICE's failure to recognize the inevitability of outbreaks at Stewart and Irwin and to take adequate precautions, including releasing people, demonstrates its complete disregard for the lives of detained immigrant, including Petitioners.

99. Instead of releasing Petitioners and other vulnerable people, ICE has issued guidance reflecting certain changes to its operations. These changes fail to adequately protect those in ICE's custody, especially Petitioners, who are particularly vulnerable to infection and illness. Indeed, given the realities of detention, no conditions of confinement can possibly protect Petitioners from the risk of COVID-19.

100. Moreover, many of the changes ICE claims to have implemented at Stewart and Irwin are either patently ineffective or contradicted by reports from individuals with first-hand experience in the detention centers.

101. Reports from Petitioners and other detained immigrants belie ICE's assertions that it has implemented "[c]omprehensive protocols" for the protection of staff and patients, including the appropriate use of [PPE]." Detained immigrants and visiting attorneys have not observed ICE staff routinely using PPE, even during close interactions, or regularly washing their hands since the start of the COVID-19 outbreak. Due to national shortages, some of the top trauma centers and hospitals in the state of Georgia have had difficulty obtaining sufficient PPE and other medical supplies, and ICE is presumably dealing with the same issues. Indeed, some guards at Stewart have

told detainees that they have had to purchase their own PPE.

102. Individuals detained at Stewart also report that, despite the CDC's recent recommendation that everyone wear a mask, guards have forced them to remove makeshift masks that they fashioned from towels.

103. Several Petitioners and other detained immigrants at Irwin and Stewart have indicated that ICE personnel never informed them of COVID-19 or advised them on recommended hygiene or social distancing practices. A few individuals have reported seeing notices about COVID-19 posted on a bulletin board but not receiving any additional information. Petitioner Nilson Fernando Barahona Marriaga reported that the only precaution he and other kitchen workers were instructed to take was to replace plastic ware with disposable plates.

104. Detained immigrants also report a severe lack of access to hygiene supplies. Petitioner Robinson described receiving soap for personal use once a week and being expected to make it last until the next distribution. He often uses less soap than he needs because he is worried about running out. This would be an unacceptable hygiene practice even before the COVID-19 pandemic; now, it is egregious.<sup>78</sup>

105. Other measures ICE claims to have taken, including temporarily suspending social visitation in detention and screening new detained immigrants and arriving visitors for certain symptoms of COVID-19, are insufficient to curb the risk of infection within the detention centers. Moreover, ICE's screening procedures for visitors, which are limited to temperature checks and a questionnaire, will no doubt fail to identify some infected individuals. Many COVID-19 patients

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<sup>78</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *Interim Guidance on management of Coronavirus Disease 2019 (COVID-19) in correctional and Detention Facilities* (Mar. 23, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (about providing soap supply)

may be asymptomatic or have only mild or less common symptoms that do not include fever or respiratory symptoms. As symptoms of COVID-19 can present anywhere from 2 to 14 days after exposure, people who pass ICE's screenings can expose detained individuals, as well as detention center staff.

106. Moreover, reports from immigration attorney indicate that staff at Stewart has been inconsistent with even performing the minimal screening that ICE purports it has implemented.

107. The limited options available to ICE to mitigate the risk of COVID-19, like solitary confinement for all medically vulnerable people, are problematic and unsafe. Placing an individual with significant medical needs in solitary confinement not only exacerbates underlying medical conditions, including any mental health issues, but also creates significant, life-threatening risks. This is particularly true given the rapid and severe progression of COVID-19 and the need for responsive medical observation. Stewart and Irwin do not have the space or staff to safely care for patients for this period of time.

108. Locking any detained person, with or without underlying medical conditions, in a jail cell for extended periods of time, is psychologically damaging and could lead to a spike in severe depression, suicides, and other medical emergencies. In the context of an infectious disease outbreak, where onsite medical staff are operating at or over capacity, these problems will only accelerate. Isolation also increases the amount of physical contact between detention center staff and detained people due to increased handcuffing, escorting individuals to and from the showers, and increased use of force due to the increased psychological stress of isolation.

109. Experts believe release from custody is both the most effective public health measure to curb transmission of COVID-19 and the only meaningful and ethical strategy to protect medically vulnerable people like Petitioners from further harm. ICE's response to COVID-19 has

made abundantly clear that they do not plan to establish special protections for high-risk patients, instead waiting for them to become symptomatic. This puts not only Petitioners but ICE's own personnel and the larger community at risk of a preventable disaster.

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

110. Petitioners in this case are particularly vulnerable to serious illness or death if infected by COVID-19 and are currently detained at Stewart and Irwin.

111. **Aristoteles Sanchez Martinez.** Mr. Sanchez Martinez is detained by ICE at Stewart and has been in ICE custody since approximately September 2018. Before Stewart, he was detained at the Houston Contract Detention Facility in Houston, Texas, and at Folkston. Mr. Sanchez Martinez has Type II diabetes, hypertension, neuropathy, avascular necrosis, non-palpable pulses in the lower extremities, and venous insufficiency, among other conditions. His sugar levels have at times been dangerously high while in ICE custody. He is currently in a wheelchair due to his conditions. He is also currently recovering from a hernia repair surgery after which he was brought back to Stewart within a day instead of remaining in intensive care. He still experiences pain, weakness, and inflammation from the surgery. ICE has neglected to care for Mr. Sanchez Martinez's health—he has only received Tylenol to treat his severe pain and ICE often fails to check his sugar levels.

112. Mr. Sanchez Martinez is critically vulnerable to COVID-19 because of his significant health problems. Upon his release, he plans to self-quarantine with his family in Queens with the support of a Lutheran Church in Brooklyn, New York.

113. **Michael Robinson.** Mr. Robinson has been detained by ICE at Stewart since February 2020. Mr. Robinson suffers from hypertension, asthma, cardiac murmur, high blood pressure, and benign prostatic hyperplasia. He was recently told by a doctor that the "left side of

[his] heart is swollen.” He also recently experienced an incident during which he was exposed to pepper spray, which made him cough blood. His medical condition has been deteriorating since being detained. New medication in detention has led to severe side effects including constant headaches, numbness in his mouth, and uncontrollable shaking. The medical staff at Stewart have not responded to his requests for his medical records. At Stewart, he lives in very close quarters, is not provided enough soap, and is fearful of the confirmed case of COVID-19 at the facility.

114. Mr. Robinson is critically vulnerable to COVID-19 because of his age and his significant health problems. Upon his release, he plans to self-quarantine with either his family in Florida, sister in Long Island, New York, or mother in Brooklyn, New York.

115. **Peter Owusu.** Mr. Owusu has been detained at Stewart since January 2020. Before he fled Ghana, he suffered a stab wound that causes him difficulty breathing. At a previous detention center, he received a breathing machine, but he has not been able to access it at Stewart. He has trouble breathing without the machine, particularly at night and when it is cold. Without the machine, he cannot sleep well. The wound he sustained also led to other complications, including improperly healed stitches, ongoing stomach pain, digestion issues, dizziness, headaches, and heart issues. Mr. Owusu requested to see a doctor, but ICE has not taken him to see one, and instead told him to take a painkiller.

116. Mr. Owusu is critically vulnerable to COVID-19 because of his significant health problems. Upon his release, he plans to self-quarantine with his uncle in Houston, Texas.

117. **Joseph Lloyd Thompson.** Mr. Thompson is a 49-year-old man who is currently detained at Irwin. Mr. Thompson has diabetes, hypertension, depression, and a severe heart aneurysm that requires a surgery that ICE has repeatedly refused to facilitate. He has been hospitalized three times for pneumonia, and many times for his heart problems. During his time in

ICE custody, Mr. Thompson has been hospitalized on at least ten occasions. His attorneys have submitted two parole requests with details about his medical problems, but ICE denied both.

118. While in ICE custody, including at Irwin, Mr. Thompson has consistently been denied adequate medical care. While detained in North Carolina, he was assaulted by ICE and detention officers, to the point that he could not swallow and that he still has nerve damage in his right hand from being handcuffed so violently. He did not receive any treatment for his hand. While detained at Folkston, he did not receive adequate care for chest pain from his aneurysm. He was transferred to several other facilities, but instead of approving necessary operations to address his aneurysm, ICE continues to only medicate his symptoms.

119. At Irwin, ICE has repeatedly delayed Mr. Thompson's care as well, including not even providing him with his required medications for nearly two weeks in March 2020. He is also forced to live in unsanitary conditions and drink unhygienic water.

120. Mr. Thompson is critically vulnerable to COVID-19 because of his significant health problems. Upon his release, he will self-quarantine at his U.S. Citizen sister's home in Snellville, Georgia.

121. **Ansumana Jammeh.** Mr. Jammeh is a 43-year-old citizen of Gambia. He has been detained by ICE at Irwin since March 2019. Mr. Jammeh suffers from diabetes for which he requires insulin pills and blood sugar checks, as well as a special diabetic diet that he is not provided at Irwin. He also has severe hemorrhoids that developed while in ICE custody, cause him extreme pain, and recently required surgery in March 2020.

122. He was prescribed antibiotics after the surgery but has not received them, instead receiving only prescription pain medication and Ibuprofen, which have not managed his pain. He will likely require a second surgery to treat other hemorrhoids. In December 2019, he was taken

to the emergency room for severe abdominal pain caused by inflammation in his intestines. When he returned to Irwin, ICE similarly failed to provide most of the medications prescribed by the doctor.

123. At Irwin, in addition to repeatedly struggling to obtain the medications and medical services that he requires, Mr. Jammeh is also not provided with enough hygiene products each week, including soap, and was told by staff that he had to clean his own room while he was bedridden from the hemorrhoids surgery.

124. Due to his significant health problems, Mr. Jammeh is critically vulnerable to COVID-19. Upon his release, he plans to self-quarantine at the home of a close friend in Atlanta, Georgia. He also has two cousins in Marietta, Georgia who are willing to take him in as well.

125. **Karen Lopez.** Ms. Lopez has been detained by ICE at Irwin since March 2020. She has a pacemaker due to a heart condition that also caused her to suffer a stroke about six years ago. Her heart condition makes it difficult for her to even climb in and out of a top bunk bed. She also suffers from multiple sclerosis (MS), which causes her severe chronic pain along with problems with her vision, balance, muscle control, and other bodily functions. Three weeks ago, ICE forced her to have a mammogram against her wishes, which, because of her pacemaker, made her feel very sick and weak for several days only to be taken to the emergency room before stabilizing. Ms. Lopez also may have a stomach ulcer. Despite all of her serious medical conditions, ICE has not provided her with the medications and medical services she needs. She has only been given Ibuprofen and aspirin for her pain, and not a specialized medication or diet for her MS.

126. Ms. Lopez is critically vulnerable to COVID-19 because of her significant health problems. Upon her release, she plans to return home and self-quarantine with her partner and



children in Atlanta, Georgia, who eagerly await her return.

127. **Nilson Barahona Marriaga.** Mr. Barahona Marriaga has been detained by ICE at Irwin since approximately October 2019. He has diabetes and hypertension, both of which he struggles to manage while in detention. ICE does not provide the necessary diet and access to exercise that he needs to manage his diabetes, so his condition has deteriorated and many of his requests for medical services have been ignored. He is also forced to remain in very crowded, unsanitary quarters, and is fearful of COVID-19 because he knows there are detained people in quarantine at Irwin.

128. Mr. Barahona Marriaga is critically vulnerable to COVID-19 because of his significant health problems. Upon his release, he would self-quarantine in his home in Lawrenceville, Georgia, where his wife and child eagerly await his return.

129. **Shelley Dingus.** Ms. Dingus is currently detained by ICE at Irwin, and has been in ICE custody since January 2020. She suffers from asthma, chronic obstructive pulmonary disease, severe migraines, depression, anxiety, and eczema that causes severe skin allergies and open wounds that are easily infected. She requires an inhaler and other medicines for her asthma every day. She also requires lotion and cream for her skin condition, medication for her migraines, anti-depressants, and hormone replacement tablets due to a full hysterectomy. ICE does not consistently provide her with her medications, or provides her with improper medications. Her requests for medical care are also often ignored or delayed, and she is not provided enough hygiene products.

130. Ms. Dingus is critically vulnerable to COVID-19 because of her age and her significant health problems. Her husband and two younger sons await her return; upon her release, she plans self-quarantine at their home in Virginia.

131. Public health experts with experience in immigration detention and correctional

settings have unequivocally concluded that vulnerable people, like Petitioners, will be safer if they are released from custody.

132. ICE has a longstanding practice of exercising its authority to release from custody particularly vulnerable immigrants with significant medical or humanitarian needs, including on bond, parole, or under other conditions including highly effective alternatives to detention (“ATD”) such as GPS monitoring and telephone check-ins. *See, e.g.*, 8 C.F.R. § 212.5(b)(1); 8 U.S.C. § 1182(d)(5)(a); 8 C.F.R. § 235.3(b)(1)(iii); 8 C.F.R. § 235.3(b)(4)(ii); 8 C.F.R. § 241.4.

## **VI. LEGAL FRAMEWORK**

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

133. All noncitizens who are in ICE, even those with prior criminal convictions, are civil detainees held pursuant to civil immigration laws. *Zadvydas*, 533 U.S. at 690. Their constitutional protections while in civil custody are thus derived from the due process clause of the Fifth Amendment. *Id.*

134. The Fifth Amendment Due Process Clause, which mirrors the Fourteenth Amendment, prohibits punishment of people in civil custody. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979); *Magluta v. Samples*, 375 F.3d 1269, 1273 (11th Cir. 2004); *Hamm v. Dekalb County*, 774 F.2d 1567, 1572 (11th Cir. 1985) (citing *Ingraham v. Wright*, 430 U.S. 651, 671 n. 40 (1977)). (1989).

135. Civilly detained people “are generally ‘entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Marsh v. Fla. Dep’t of Corrections*, 330 F. App’x 179 (11th Cir. 2009) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982)); accord *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 209 n.5 (4th Cir. 2017).

136. To establish that a particular condition or restriction of detention constitutes

impermissible punishment, a petitioner must show either (1) an expressed intent to punish; or (2) 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. Absent an explicit intention to punish, a court must apply a two-part test: “First, a court must ask whether any ‘legitimate goal’ was served by the prison conditions. Second, it must ask whether the conditions are ‘reasonably related’ to that goal.” *Jacoby v. Baldwin County*, 835 F.3d 1338, 1345 (11th Cir. 2016). “[I]f conditions are so extreme that less harsh alternatives are easily available, those conditions constitute ‘punishment.’” *Telfair v. Gilberg*, 868 F. Supp. 1396, 1412 (S.D. Ga. 1994) (citing *Wolfish*, 441 U.S. at 538-39 n.20).

137. “[W]hen 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 Cty. Dep’t. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). The government must provide detained individuals with basic necessities, such as adequate medical care, food, clothing, and shelter; the failure to provide these necessities violates due process. *Hamm*, 774 F.2d at 1573; *Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cty.*, 402 F.3d 1092, 1115 (11th Cir. 2005).

138. At a minimum, the Fifth Amendment Due Process Clause prohibits Respondents’ deliberate indifference to a substantial risk of serious harm that would rise to the level of an Eighth Amendment violation in the post-conviction criminal context. *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244, (1983) (“[T]he due process rights of a [detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner.”); *see also Hale v. Tallapoosa County*, 50 F. 3d 1579, 1582 n.4 (11th Cir. 1995).

139. In order to show that Respondents are acting with deliberate indifference,

Petitioners must show exposure to a substantial risk of serious harm of which Respondents are aware and have disregarded. *Farmer v. Brennan*, 511 U.S. 825, 834, 837-38 (1994); *Marbury v. Warden*, 936 F.3d 1227, 1233 (11th Cir. 2019); *Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1582 (11th Cir. 1995).

140. The government may violate the Eighth Amendment when it “ignore[s] a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” including “exposure of inmates to a serious, communicable disease,” even when “the complaining inmate shows no serious current symptoms.” *Helling*, 509 U.S. at 33; see also *id.* at 34 (citing with approval *Gates v. Collier*, 501 F.2d 1291, 1300 (5th Cir. 1974), which held that prisoners were entitled to relief under the Eighth Amendment when they showed, *inter alia*, the mingling of “inmates with serious contagious diseases” with other prison inmates).

141. Thus, the harm that Petitioners fear—i.e., that their confinement will result in a COVID-19 infection that will seriously injure and possibly kill them—need not become a reality to establish a violation of their constitutional rights. Courts do not require a plaintiff to “await a tragic event” before seeking relief from a condition of confinement that unconstitutionally endangers them. See *Helling*, 509 U.S. at 33 (holding prisoner’s Eighth Amendment claim could be based upon possible future harm to health, as well as present harm).

142. “Nor does it matter that some inmates may not be affected by the condition, and that the harm is thus, in a sense, only potential harm. The Court has found an Eighth Amendment violation ‘even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.’” *Tittle v. Jefferson Cty. Comm’n*, 10 F.3d 1535, 1543 (11th Cir. 1994) (quoting *Helling*, 509 U.S. at 33).

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

143. Courts have broad power to fashion equitable remedies to address constitutional violations in prisons, *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978), and “[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011); *see also Stone v. City & County of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992) (“Federal courts possess whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights.”)

144. This authority extends to “placing limits on a prison’s population” when necessary to ensure compliance with the Constitution. *Brown*, 563 U.S. at 511; *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).

145. The same principle applies here. As the constitutional principles and public health experts make clear, releasing Petitioners is the only viable remedy to ensure their safety from the threat to their health that COVID-19 poses. Petitioners are older adults and/or people with medical conditions who are at particularly grave risk of severe illness or death if they contract COVID-19.

146. In the face of this great threat, social distancing and hygiene measures are Petitioners’ only defense against COVID-19. Those protective measures are impossible in the environment of an immigration detention center, where Petitioners sleep in close quarters; share toilets, sinks, and showers; eat in communal spaces, and are regularly in close contact with the many other detained people and officers around them. These conditions pose a particularly high risk of exposure to COVID-19, and as a result, Petitioners face unreasonable harm from continued detention and should be released immediately.

**C. Habeas Is a Broad, Flexible Remedy That Authorizes Courts to Order Release from Unlawful Detention Conditions as Law and Equity Requires.**

147. Petitioner also seek relief under the federal habeas statute, 28 U.S.C. § 2241, which is itself infused with long-standing common law equitable principles. See 28 U.S.C. § 2241(c)(3) (the writ extends to those prisoners “in custody in violation of the Constitution or laws or treaties of the United States”). “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

148. Habeas invests in federal courts broad, equitable authority to “dispose of the matter as law and justice require,” 28 U.S.C. § 2243, as the “very nature of the writ demands that it be administered with the initiative and flexibility.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969); see *Boumediene v. Bush*, 553 U.S. 723, 780 (2008) (“Habeas is not ‘a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose.’”) (quoting *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

149. Accordingly, the illegality of custody under the “Constitution or laws . . . of the United States” may stem from the fact of detention and the duration of detention—what is often referred to as the historical core of habeas—and for unlawful placement or conditions of detention. See *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971) (habeas challenging “living conditions and disciplinary measures” is “cognizable in federal habeas corpus”); *Johnson v. Avery*, 393 U.S. 483 (1969) (permitting federal habeas challenge to legality of prison regulation prohibiting provision of legal assistance to other prisoners). See also *Aamer v. Obama*, 742 F.3d 1023, 1031-38 (D.C. Cir. 2014) (surveying history, purpose and Supreme Court jurisprudence and “the weight of the reasoned precedent in the federal Courts of Appeal” relating to habeas and concluding “habeas corpus tests not only the fact but also the form of detention” (citation omitted)).

150. A court is fully empowered to remediate the particular illegality here—an outbreak

of lethal and unavoidable virus that threatens Petitioners and violates their constitutional rights to be free from arbitrary and punitive detention—by ordering their release. Habeas corpus is, “above all, an adaptable remedy,” *Boumediene*, 553 U.S. at 779, and federal courts retain “broad discretion in conditioning a judgment granting habeas relief . . . ‘as law and justice require.’” *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (quoting 28 U.S.C. § 2243). That authority includes an order of release, *Boumediene*, 553 U.S. at 779, so as “to insure that miscarriages of justice within [the writ’s] reach are surfaced and corrected.” *Harris*, 395 U.S. at 291.

## VII. CLAIM FOR RELIEF

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

151. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

152. The Fifth Amendment to the U.S. Constitution guarantees individuals in immigration detention the right to be free from punishment. 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.

153. Respondents’ continued detention of Petitioners during the COVID-19 pandemic is excessive in relation to any legitimate governmental purpose. Less harsh measures are available to satisfy any government interest in continuing to detain Plaintiffs, including release with conditions. Under these circumstances, Respondents’ detention of Petitioners amount to impermissible punishment.

154. Conditions of confinement for individuals in immigration detention also violate the Fifth Amendment when the government fails, with deliberate indifference, to safeguard the health and safety of those in custody. The government acts with deliberate indifference when it knowingly

exposes an individual in its custody to a substantial risk of serious harm.

155. Respondents have subjected Petitioners to conditions of confinement that create a substantial risk of contracting a serious case of COVID-19, for which there is no known vaccine, treatment, or cure. Respondents know or should be aware of the fact that Petitioners' underlying conditions render them especially vulnerable to severe illness or even death if they contract COVID-19. Respondents are therefore knowingly subjecting Petitioners to an unreasonable risk of serious harm, in violation of constitutional due process.

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

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

158. Respondents have exposed Petitioners to a substantial risk of serious harm.

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

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

161. Respondents' continued detention of Petitioners violates the Due Process Clause of the Fifth Amendment.

### **VIII. PRAYER FOR RELIEF**

WHEREFORE Petitioners request that the Court grant the following relief:

a. Issue a Writ of Habeas Corpus on the ground that Respondents' continued detention of Petitioners violates the Due Process Clause and order Petitioners' immediate release, with appropriate precautionary public health measures;

b. In the alternative, issue injunctive relief ordering Respondents to immediately



release Petitioners, with appropriate precautionary public health measures, on the grounds that continued detention violates Petitioners' constitutional due process rights;

c. Issue a declaration that Respondents' continued detention of individuals at increased risk for severe illness, including all people fifty-five and older and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;

d. Award Petitioners their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court may deem fit and proper.

Dated: April 7, 2020

Respectfully submitted,

SOUTHERN POVERTY LAW CENTER

ASIAN AMERICANS ADVANCING JUSTICE-  
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*\*pro hac vice motions forthcoming*