UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

ARISTOTELES SANCHEZ MARTINEZ, *et al.*,

Petitioners/Plaintiffs,

v.

MICHAEL DONAHUE, *et al.*,

Respondents/Defendants.

HEARING REQUESTED

Case No.:7:20-cv-00062-WLS-MSH

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND EMERGENCY WRIT OF HABEAS CORPUS

Petitioners file this Supplemental Memorandum of Law in Support of their Motion for Temporary Restraining Order and Emergency Habeas Relief in response to the Court's request made at the telephonic scheduling conference on April 8, 2020. (ECF No. 8). As explained below, the emergency relief Petitioners request is well within the Court's power, either through a Writ of Habeas Corpus, or alternatively, through an implied constitutional cause of action. Furthermore, Petitioners' claims are ripe and irreparable harm is imminent absent an order from the Court directing their release; any alterations to conditions of confinement will not ameliorate the constitutional violations here. Finally, Petitioners have included a chart at the end of this brief listing similar district court cases from around the country and the relief ordered, for the purpose of allowing the parties and the Court to proceed quickly in this emergency matter.

I. HABEAS IS THE PROPER VEHICLE FOR GRANTING THE REQUESTED RELIEF

Petitioners challenge the fact of their detention in violation of the Fifth Amendment Due Process Clause and seek immediate release, under conditions the Court deems proper. The writ of habeas corpus under 28 U.S.C. § 2241 is an appropriate vehicle for granting this relief. The writ extends to people "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

Habeas vests 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 essential to insure that miscarriages of justice within [the writ's] reach are surfaced and corrected." *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)). 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).

Petitioners' request for release based on their challenge to the fact of detention is clearly cognizable in habeas. *See, e.g., Chin Yow v. United States*, 208 U.S. 8, 13 (1908); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (noting that a "traditional function of the writ is to secure release from illegal custody"). This Court is fully empowered to remediate the particular illegality here—an outbreak of a lethal, highly contagious virus that threatens Petitioners' lives and violates their constitutional rights to be free from arbitrary and punitive detention—by ordering their release through habeas. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained[.]"). Ordering Petitioners' release will serve the interest of justice.

Petitioners are medically vulnerable to severe cases of COVID-19, their exposure to COVID-19 is imminent, and preliminary data suggests they have a 20% chance of dying if they contract COVID-19. Op. Br. Ex. 1 ¶ 6.[1] Petitioners were not convicted of a crime and sentenced to death. They are civilly detained, and therefore may not be lawfully punished. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). There are less harsh alternatives available, *see infra* Part IV, and continuing to detain them at this time is punishment, pure and simple. *See Telfair v. Gilberg*, 868 F. Supp. 1396, 1412 (S.D. Ga. 1994). ("[I]f conditions are so extreme that less harsh alternatives are easily available, those conditions constitute 'punishment.'"). Ordering release through habeas

[1]All exhibits labeled "Op. Br. Ex." are attached to the Declaration of Hillary Li (ECF 5-2) filed on April 7, 2020, in support of Petitioners' Motion for Temporary Restraining Order.

because detention amounts to unlawful punishment is a traditional exercise of courts' habeas power to put an end to the fact of unlawful detention. *See Boumediene*, 553 U.S. at 779.

In addition Petitioners' detention is also unconstitutional because the Fifth Amendment Due Process Clause incorporates, at a minimum, the Eighth Amendment deliberate indifference standard.[2] Under that theory, Petitioners may not be subjected to deliberate indifference of a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 834, 837–38 (1994); *Marbury v. Warden*, 936 F.3d 1227, 1233 (11th Cir. 2019). The risk of harm here is so high that, based on the unique factual circumstances of this case, release is the only remedy that could possibly ameliorate the constitutional violation here. *See infra* Part IV.

Whether habeas is a proper vehicle for litigating issues related to conditions of confinement is an open question. *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 Preiser v. Rodriguez*, 411 U.S. 475, 499-500 (1973) (explicitly leaving this question open in the context of a habeas petition by a state prisoner); *Aamer v. Obama*, 742 F.3d 1023, 1031-38 (D.C. Cir. 2014) (surveying history,

[2] The Eleventh Circuit has not articulated the specific standard applicable to people in civil immigration detention under the Fifth Amendment when it comes to unlawful conditions of confinement, though it is clear that at a minimum, conduct amounting to deliberate indifference under the Eighth Amendment would violate the Fifth Amendment in this context. *See Hale v. Tallapoosa County*, 50 F.3d 1579, 1582 n.4 (11th Cir. 1995) (pretrial detainees). Civil immigration detainees should not have to satisfy the Eighth Amendment's requirement that a prison official had subjective knowledge of a substantial risk in order to establish a Fifth Amendment violation related to conditions of confinement. The Eleventh Circuit has not yet directly addressed this issue. Other courts have held that an objective deliberate indifference standard should apply to individuals in this context. *See Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 794 (2019); *Darnell v. Pineiro*, 849 F.3d 17, 32-36 (2d Cir. 2017).

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)).

Federal courts of appeals are split on the question of whether conditions of confinement claims are cognizable in habeas, and the Eleventh Circuit has never issued a published decision weighing in. Thus, there is no binding authority precluding this Court from deciding that even run-of-the-mill challenges to conditions of confinement are cognizable in habeas. *Compare Aamer*, 742 F.3d at 1036 (D.C. Cir. 2014) (holding that prisoners can challenge the form of detention under habeas), *Jiminian v. Nash*, 245 F.3d 144, 146–47 (2d Cir. 2001) (allowing prisoners to challenge "prison disciplinary actions, prison transfers, type of detention and prison conditions" as "challenges [to] the execution of a federal prisoner's sentence" under § 2241), and *Miller v. United States*, 564 F.2d 103, 105 (1st Cir. 1977) (holding conditions-of-confinement claims are cognizable under § 2241) *with Nettles v. Grounds*, 830 F.3d 922, 933–34 (9th Cir. 2016) (holding the opposite), *Spencer v. Haynes*, 774 F.3d 467, 469–70 (8th Cir. 2014) (same), *Cardona v. Bledsoe*, 681 F.3d 533, 537 (3d Cir. 2012) (same), *Davis v. Fechtel*, 150 F.3d 486, 490 (5th Cir. 1998) (same), *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 811–12 (10th Cir. 1997) (same), *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991) (same), and *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004) (same). However, this is not a run-of-the-mill conditions case, and historically speaking, the emergency circumstances present here are unique. The Court need not decide whether the ordinary conditions case—which seeks a court order for amelioration of conditions or monetary damages—is cognizable in habeas. "For over 100 years, habeas corpus has been recognized as the vehicle through which noncitizens may challenge the *fact* of their detention. *See Chin Yow v. U.S.*¸ 208 U.S. 8, 13 (1908) ("Habeas corpus is the usual remedy for unlawful

imprisonment.") (emphasis added). Here, petitioners are not challenging the conditions of their confinement, rather the *fact* of their confinement. Based on the distinctive nature of the unprecedented global COVID-19 pandemic, the only adequate remedy is release. *See infra* Part IV; s*ee also Malam v. Adducci*, Case No. 2:20-cv-10829-JEL-APP (E.D. Mich. Apr. 5, 2020), ECF No. 22 ("Petitioner may nonetheless bring her claim under 28 U.S.C. § 2241 because she seeks *immediate* release from confinement as a result of there being no conditions of confinement sufficient to prevent irreparable constitutional injury under the facts of her case.")

Petitioners acknowledge that the Eleventh Circuit has held that a *prisoner* who proves an *Eighth Amendment* violation is not entitled to release. *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990). However, the Eleventh Circuit has never opined on whether a person in *civil immigration detention* is entitled to release under the *Fifth Amendment* when all steps short of release would fail to ameliorate a substantial risk of harm. Here, that risk amounts to, essentially, a 20% chance of death. Release through a writ of habeas corpus is appropriate under existing habeas jurisprudence, which recognizes broad equitable powers to release a petitioner when release is required to remedy a constitutional violation. *See, e.g.*, *Malam v. Adducci*, No. 20-10829, 2020 WL 1672662, at *4 (E.D. Mich. Apr. 4, 2020), *as amended* (Apr. 6, 2020) ("On its face, the application appears to concern petitioner's conditions of confinement . . . But Petitioner may nonetheless bring her claim under 28 U.S.C. § 2241 because she seeks immediate release from confinement as a result of there being no conditions of confinement sufficient to prevent irreparable constitutional injury under the facts of her case."); *Castillo v. Barr*, --- F. Supp. 3d ---, 2020 WL 1502864, at *5-6 (C.D. Cal. Mar. 27, 2020) (concluding that conditions of confinement violated the Fifth Amendment due to the COVID-19 pandemic and ordering release from immigration detention).

II. THIS COURT ALSO HAS INHERENT POWER TO ISSUE INJUNCTIVE RELIEF TO REMEDY CONSTITUTIONAL VIOLATIONS

As explained above, the writ of habeas corpus provides an independent basis for the Court to grant the relief Petitioners seek. In the alternative, federal courts have long recognized an implicit private right of action under the Constitution "as a general matter" to issue prospective injunctive relief barring unlawful government action. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010); *accord Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001) (equitable relief "has long been recognized as the proper means for preventing entities from acting unconstitutionally"); *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954) (holding that the Fifth Amendment and 29 U.S.C. § 1331 created a remedy for unconstitutional racial discrimination in public schools); *Bell v. Hood*, 327 U.S. 678, 684 (1946) ("[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution"). Indeed, "federal courts have broad equitable powers to remedy proven constitutional violations." *See Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984); *see also Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 16 (1971) (similar); *People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205*, 111 F.3d 528, 533 (7th Cir. 1997) (similar).

Thus, there is both jurisdiction under 28 U.S.C. § 1331 and a cause of action under the Fifth Amendment to enjoin the Defendants' unconstitutional actions. *See Malam v.*, 2020 WL 1672662, at *4 (E.D. Mich. Apr. 4, 2020), *as amended* (Apr. 6, 2020) (explaining that apart from habeas, "the Fifth Amendment provides Petitioner with an implied cause of action, and accordingly 28 U.S.C. 1331 would vest the Court with jurisdiction"); *cf. Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1231-32 (10th Cir. 2005) (implied cause of action under Eighth Amendment to enjoin unconstitutional prison conditions).

As part of the implied constitutional cause of action that exists here, courts may rely on their traditionally broad equitable powers to fashion equitable remedies to address constitutional violations in custodial settings. *See Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978). "When necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison's population." *Brown v. Plata*, 563 U.S. 493, 511 (2011); *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).

Furthermore, sovereign immunity poses no bar to Plaintiffs' challenge. First, Plaintiffs are suing for injunctive relief against federal officers in their official capacity. "The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). Second, under Section 702 of the Administrative Procedures Act, 5 U.S.C. § 702, "sovereign immunity is waived in actions against federal government agencies seeking nonmonetary relief if the agency conduct is itself subject to judicial review." *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1555 (11th Cir. 1985); *see also FPL Food, LLC v. U.S. Dept. of Agric.*, 671 F. Supp. 2d 1339, 1346 (S.D. Ga. 2009) (similar); *Malam*, 2020 WL 1672662, at *5 (similar).

III. PETITIONERS' CLAIMS ARE RIPE, AND IRREPARABLE INJURY IS IMMINENT

As a threshold matter, Petitioners' claim before this Court is ripe. For the controversy to be ripe, the complained-of injury must be immediate or imminently threatened. *Wilderness Soc'y v. Alcock*, 83 F.3d 386, 390 (11th Cir. 1996). Similarly, to warrant a TRO, Petitioners must show "a substantial threat of irreparable injury unless the order issues." *Levi Strauss & Co. v. Sunrise*

Int'l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995); *accord Friedenberg v. Sch. Bd. of Palm Beach Cty.*, 911 F.3d 1084, 1090 (11th Cir. 2018). The injury must be "actual and imminent, not remote or speculative." *Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't of Transp.*, 715 F.3d 1268, 1288 (11th Cir. 2013).

That Petitioners have not yet suffered the harm that they fear—serious injury or death because of a COVID-19 infection—does not make their motion for TRO, or underlying claim, inappropriate for judicial review. Courts do not require plaintiffs to "await a tragic event" before they can ask this Court to redress governmental detention that unconstitutionally endangers them. *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *see also Castillo v. Barr*, 2020 U.S. Dist. LEXIS 54425 (C.D. Cal. Mar. 27, 2020) (applying *Helling* to release from immigration detention individuals at high risk of severe illness or death from COVID-19). Rather, the Supreme Court has held that a plaintiff can challenge the constitutionality of a condition of their confinement based on a substantial risk of future harm, including "exposure . . . to a serious, communicable disease," regardless of whether that harm is likely to occur "the next week or month or year." *Id.* Indeed, "[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Id.*

Petitioners face an imminent and substantial risk of serious, lasting illness or death if they remain in detention during the rapidly evolving COVID-19 pandemic. Petitioners are highly likely to contract COVID-19 due to the highly contagious nature of the disease; the even greater risk of infectious disease spread in carceral settings; the impossibility of implementing critical protective measures in ICE detention; and the proximity of confirmed cases to Petitioners. There are already two confirmed cases of COVID-19 among ICE employees at Stewart, as well as cases in the counties where Stewart and Irwin are located. There are also reports from detained people inside

Stewart and Irwin indicating that there may already be confirmed COVID-19 cases inside the facilities, and that reports of symptoms associated with COVID-19 are going ignored. "[I]t is not a matter of *if* COVID-19 will enter . . . prisons, but *when* it is finally detected therein." *Thakker v. Doll*, 2020 U.S. Dist. LEXIS 59459, at *9-10 (M.D. Pa. Mar. 31, 2020). And if Petitioners do contract COVID-19, their serious underlying medical conditions make the disease potentially lethal. "There can be no injury more irreparable." *Thakker v. Doll*, 2020 U.S. Dist. LEXIS 59459, at *10 (M.D. Pa. Mar. 31, 2020); *see also J.M. v. Crittendon*, No. 1:18-CV-568-AT, 2018 WL 7079177, at *7 (N.D. Ga. May 21, 2018).

Indeed, several courts have recognized the necessity of emergency relief to prevent the severe, irreparable harm that COVID-19 poses to medically vulnerable individuals—such as Petitioners—in the immigration detention setting. *See, e.g.*, *Castillo*, 2020 U.S. Dist. LEXIS 54425, at *13 (granting motion for temporary restraining order despite no confirmed cases yet at detention center itself, because "[t]he Government, here, cannot say, with any degree of certainty, that no one — staff or detainee — at Adelanto has not been, or will not be, infected with the coronavirus. The science is well established — infected, asymptomatic carriers of the coronavirus are highly contagious."); Temporary Restraining Order and Order to Show Cause at 10-11, *Fraihat v. Wolf* (M.D. Pa. March 30, 2020) ("[The Government] cannot be deliberately indifferent to the potential exposure of civil detainees to a serious, communicable disease on the ground that the complaining detainee shows no serious current symptoms, or ignore a condition of confinement that is more than very likely to cause a serious illness."); *Thakker*, 2020 U.S. Dist. LEXIS 59459, at *21 (court found TRO necessary to protect high-risk individuals from "catastrophic results" that could ensue from ICE's inability to protect petitioners from contraction of COVID-19); *Coronel v. Decker*, 2020 U.S. Dist. LEXIS 53954, at *7-8 (S.D.N.Y. Mar. 27, 2020) (finding a satisfactory

showing of imminent, irreparable harm in the absence of a TRO where petitioners faced "a risk of severe, irreparable harm if they contract COVID-19" because of their underlying medical conditions); *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191 (S.D.N.Y. Mar. 26, 2020) ("The risk that [p]etitioners will face a severe, and quite possibly fatal, infection if they remain in immigration detention constitutes irreparable harm."); *Malam*, 2020 WL 1672662 at *11 ("By the time a case is confirmed, it will almost certainly be too late to protect Petitioner's constitutional rights."); *Hope v. Doll*, Case No. 1:20-cv-00562-JEJ at 7 (M.D. Pa. Apr. 7, 2020), ECF No. 11 (quoting *Thakker*); *c.f. Sacal Micha v. Longoria*, 2020 WL 1518861 *3 n. 3 (S.D. Tex. Mar. 27, 2020) (stating that the petitioner "need not await an actual injury (or illness, in this case) before bringing suit").

IV. THERE IS NO CHANGE IN CONDITIONS THAT RESPONDENTS COULD MAKE THAT WOULD REMEDY DEFENDANTS' DUE PROCESS VIOLATION

There are no steps ICE can take, short of release, to alleviate the risk of serious harm or death to Petitioners. As John Sandweg, the former Acting Director of ICE and former Acting General Counsel of DHS, has indicated, "ICE detention centers are extremely susceptible to outbreaks of infectious diseases," and "[t]he design of these facilities requires inmates to remain in close contact with one another—the opposite of the social distancing now recommended for stopping the spread of the lethal coronavirus." Op. Br. Ex. 4 ¶ 5. The U.S. Government itself, through Attorney General William Barr, has recognized the grave risk posed to vulnerable inmates in confinement. In a memorandum to the Director of the Bureau of Prisons dated April 3, 2020, A.G. Barr stated, "[w]e have to move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of" facilities affected by COVID-19." *See* Memo. To Director of Bureau of Prisons ("Barr Memo"), *available at* https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000, at 1. A.G. Barr further made a finding of emergency conditions under the CARES Act in order to "expand the cohort of inmates who can be considered for home

release." *Id.* In doing so, he explicitly directed that the review of individuals for release "include all at-risk inmates—not just those who were previously eligible for transfer." *Id.* at 2.

ICE cannot dramatically expand its infrastructure overnight to make space for social distancing. *Cf.* Op. Br. Ex. 1, ¶ 20e; Op. Br. Ex. 4, ¶ 5. DHS has issued guidance to isolate, quarantine, and cohort (segregate as a group from others in the facility) to attempt to mitigate spread, yet these measures will only make matters worse. Op. Br. Ex. 1, ¶ 22 (describing mental health risks and increased physical contact in isolation); Op. Br. Ex. 2, ¶ 20 ("Isolation of symptomatic individuals within detention settings similarly will not stop transmission before symptom onset."); Op. Br. Ex. 3 , ¶ 8 (describing medical isolation as an "unacceptable and potentially deadly form of quarantine"). Additionally, the memorandum from A.G. Barr further recognized that the "extensive precautions" taken by BOP "have not been perfectly successful," and "therefore direct[ed the BOP] to immediately review all inmates who have COVID-19 risk factors" for home release. Barr Memo, at 2. This order of immediate review for home release acknowledges the inability to properly protect at-risk individuals in confinement.

Petitioners' continued detention also subjects all other detained individuals and staff at Stewart and Irwin to an increased risk of illness or death. *See* Op. Br. Ex. 1, ¶¶ 12, 20a, 25; Op. Br. Ex. 4, ¶ 7; Op. Br. Ex. 3, ¶¶ 19, 21. Other courts have agreed. *See, e.g.*, Memorandum and Order at 24, *Thakker*, No. 1:20-cv-00480-JEJ (stating that ICE's facilities were "plainly not equipped" to protect petitioners from a potentially fatal exposure to COVID-19 and that failure to urgently release petitioners would be an "unconscionable and possibly barbaric result"). This threat can be mitigated in *any* ICE detention facility only through release of detainees, which would reduce the total number of detained individuals, thereby permitting greater social distancing and

decreasing the staff's workload. *See* Op. Br. Ex. 4 ¶ 9; Op. Br. Ex. 1, ¶¶ 17, 24-27; Op. Br. Ex. 3, ¶ 22.

The necessity of release is particularly acute here, as Stewart and Irwin are geographically isolated from appropriate levels of medical care to treat COVID-19. Op. Br. Ex. 3, ¶¶ 12-14. An outbreak of COVID-19 at Stewart or Irwin would likely overwhelm the local health infrastructure in the surrounding communities, and the time it will take to transport infected individuals to other hospitals could make the difference between life and death. Op. Br. Ex. 3, ¶¶ 14-16 (explaining impact of a detention center outbreak on regional hospitals that serve large swaths of South Georgia). The closest hospitals to these facilities that are equipped to manage serious cases of COVID-19 serve many counties that are already overwhelmed with COVID-19 cases or will quickly become so if there are outbreaks in these facilities. Op. Br. Ex. 3, ¶ 15 (citing predictions that all Georgia hospital resources will be in use by April 22, 2020). Phoebe Putney Memorial Hospital in Albany—a town only 53 miles from Stewart—has filled three ICUs to capacity with COVID-19 patients. Compl. ¶ 80. If particularly vulnerable detained individuals like Petitioners fall critically ill from COVID-19, their need for intensive medical care would even further strain local hospitals that are already stretched to capacity. Compl. ¶¶ 90-97; Op. Br. Ex. 1, ¶ 25; Op. Br. Ex. 2, ¶ 5 (fatality rates increase as hospitals become overburdened); Op. Br. Ex. 3, ¶¶14-15.

For the foregoing reasons, Petitioners are highly likely to contract COVID-19 if they remain in ICE detention, where their sole defenses against the risk of a coronavirus infection—social distancing and scrupulous hygiene—are simply impossible. The added lack of access to adequate medical care in the area surrounding Stewart and Irwin Detention Centers renders the risk of serious injury or death to these Petitioners exponentially higher if they are forced to remain

in detention. Release is the sole remedy that can effectively protect Petitioners against the grave and imminent threat that COVID-19 poses to their health.

V. IN SIMILAR CASES, COURTS ACROSS THE COUNTRY HAVE ISSUED THE RELIEF PETITIONERS REQUEST HERE

Please see the attached case chart for information about relief ordered in similar cases around the country.

VI. CONCLUSION

For the foregoing reasons and those articulated in Petitioners' Memorandum in Support of Motion for Temporary Restraining Order (ECF No. 5-1), Petitioners' motion for temporary restraining order should be granted.

Dated: April 8, 2020

Respectfully submitted,

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**pro hac vice motions forthcoming*