

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

JENNER BENAVIDES
DAVID FERNANDEZ
GERARDO ARRIAGA
Folkston ICE Processing Center
P.O. Box 248
Folkston, GA 31537

Petitioners/Plaintiffs,

v.

PATRICK GARTLAND
Warden, Folkston ICE Processing Center
3026 Hwy 252 E
P.O. Box 98
Folkston, GA 31537;

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

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

and

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

and

Case No.:

HEARING REQUESTED

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
500 12th 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**

TABLE OF CONTENTS

I. INTRODUCTION1

II. PARTIES3

III. JURISDICTION AND VENUE5

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES5

V. STATEMENT OF FACTS6

A. COVID-19 Is a Global Pandemic that Poses a Significant Risk of Death
or Serious Illness to Petitioners.....6

i. Transmission of COVID-19.....9

ii. Symptoms of COVID-19, Underlying Risks Factors, and Long-
Term Effects.....10

iii. Prevention of COVID-19 Transmission11

B. COVID-19 Will Likely Ravage Jails, Prisons, and Detention Centers.....12

C. Folkston Detention Center Is Primed for COVID-19 Exposure and
Severe Outbreaks18

i. Existing Conditions at Folkston Will Further Enable COVID-19
Transmission18

ii. Folkston Has a Dismal Medical Care Track Record and Are
Currently Ignoring Reported Flu-like Symptoms Among the
Detained Population.....19

iii. It Is Only a Matter of Time Before COVID-19 Reaches Folkston
Detention Center21

D. The Lack of Hospital Resources Near Folkston Will Put Petitioners at
Even Greater Risk22

E. Respondents’ Actions to Address the Pandemic Thus Far Have Been
Woefully Inadequate, and Release is the Only Adequate Response to
Protect Petitioners24

F. Petitioners Are Particularly Vulnerable to Serious Illness or Death if
Infected by COVID-19 and Should Be Released from Detention.27

VI. LEGAL FRAMEWORK29

A. Petitioners Have a Constitutional Right to Reasonable Safety in Custody.....29

B. This Court Has Authority to Order Petitioners’ Release to Vindicate
Their Fifth Amendment Rights, and Such Relief Is Necessary Here.31

C. Habeas Is a Broad, Flexible Remedy That Authorizes Courts to Order
Release from Unlawful Detention Conditions as Law and Equity
Requires.....32

VII. CLAIM FOR RELIEF34

A.	Violation of Fifth Amendment Right to Substantive Due Process (Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement).....	34
VIII.	PRAYER FOR RELIEF	35

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 12,000 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.¹

6. In immigration detention facilities—including Folkston ICE Processing Center (“Folkston”) in Folkston, 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 Folkston is located—and face serious illness and death.

¹See, 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).

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 Folkston or living in the surrounding community—from the imminent harm that will result from their continued detention.

II. PARTIES

9. Petitioner Jenner Benavides² is a 27-year-old transgender woman and citizen of Mexico who has been detained by ICE at Folkston since May 2019. She entered the U.S. at the age of 10 and later became a DACA recipient. She applied for asylum based on continuous sexual assault and abuse she endured as a child in Mexico, and her gender and sexual identity. She is currently appealing the denial of this relief to the BIA and applying for a U-visa. In 2014 her mother died from stomach cancer, leaving Ms. Benavides as the sole caretaker and custodian of her four minor siblings in Nashville, Tennessee. Ms. Benavides is HIV positive and suffers from bipolar disorder and severe depression and anxiety. As a consequence of her health condition, she is at high risk for severe illness or death if she contracts COVID-19.

10. Petitioner David Fernandez is a 45-year-old citizen of Mexico who has been detained by at Folkston since December 2019. He has lived in the United States for nearly 18 years and has worked consistently in labor jobs, including farming, construction, and roofing. He is currently seeking asylum. Mr. Fernandez suffers from diabetes and has a history of tuberculosis. ICE has not consistently provided him with his necessary insulin injections, so his health has deteriorated while in detention. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

² Petitioner Jenner Benavides, David Fernandez, and Gerardo Arriaga have filed this action using pseudonyms. They seek leave to proceed pseudonymously in a concurrently filed motion.

11. Petitioner Gerardo Arriaga is a 24-year-old citizen of Peru. He is married to a U.S. citizen and was living in Atlanta, Georgia before ICE detained him. He is eligible for adjustment of status. Mr. Arriaga is currently detained at Folkston and has been in ICE custody since March 2020. He suffers from Lupus, an autoimmune disease that causes him to be immunocompromised and causes inflammation and damage to his joints, skin, kidneys, blood, heart, and lungs. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

12. Respondent-Defendant (“Respondent”) Patrick Gartland is the Warden of Folkston ICE Processing Center. Pursuant to a contract with ICE, Mr. Gartland is responsible for the operation of Folkston, where Petitioners are detained.

13. 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 Folkston. Respondent Giles is a legal custodian of Petitioners. He is sued in his official capacity.

14. 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.

15. 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.

16. 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

17. 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.

18. 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).

19. Venue is proper in the Southern District of Georgia pursuant to 28 U.S.C. § 1391(e) because Respondents are federal officers sued in their official capacity; Respondent Gartland resides 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

20. 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

21. 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.³

22. On March 11, 2020, the World Health Organization (“WHO”) declared the outbreak a global pandemic,⁴ and COVID-19 has now touched nearly every country on the planet.⁵ As of April 7, 2020, the number of confirmed cases worldwide has surpassed 1.4 million, including

³ 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>

⁴ 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>

⁵ *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_4https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200330-sitrep-70-covid-19.pdf?sfvrsn=7e0fe3f8_2

over 394,278 people in the United States. Over 81,858 people have died as a result of COVID-19 worldwide, including at least 12,717 in the United States.⁶

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

24. 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.”¹⁰ At the time, there were 64 diagnosed COVID-19 cases spread across 15 counties.¹¹ As of April 7, 2020, less than a month

⁶ Worldometer: Coronavirus, <https://www.worldometers.info/coronavirus/#countries> (last accessed Apr. 7, 2020).

⁷ 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>

⁸ 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>

⁹ *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>

¹⁰ 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>

¹¹ *Id.*

later, the number of reported cases had jumped to 8,818 with 155 counties now affected.¹² The number of reported deaths from COVID-19 is 329, making Georgia the state with the ninth highest number of COVID-19-related deaths in the United States.¹³ Governor Kemp issued a shelter in place order for the state of Georgia on April 3, 2020.¹⁴

25. 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.¹⁵

26. 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 40,012.¹⁶ Because of the shortage of tests in the United States—admitted to be a “failing” by top infectious disease expert Dr. Anthony Fauci¹⁷—the CDC

¹² *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 7, 2020), <https://dph.georgia.gov/covid-19-daily-status-report>

¹³ Listing of United States Total Coronavirus Cases (last updated Apr. 7, 2020), <https://www.worldometers.info/coronavirus/country/us/>

¹⁴ 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>

¹⁵ 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/>

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

¹⁷ 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>

currently recommends prioritizing testing for symptomatic healthcare providers and hospitalized patients¹⁸—which means that the number of diagnosed COVID-19 cases may be only the tip of a very large iceberg.¹⁹

i. Transmission of COVID-19

27. 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 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.²⁰ 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.²¹

28. 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.

¹⁸ 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>

¹⁹ 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>

²⁰ 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>

²¹ 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>

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

29. 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.

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

31. 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.

32. 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.²²

33. 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.

²² 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>

iii. Prevention of COVID-19 Transmission

34. 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.²³

35. 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.

36. Social distancing reduces the average number of contacts between people, which lowers every individual's risk both for acquiring COVID-19 and transmitting it to another person.

37. 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.²⁴ Following the lockdown, Wuhan saw a sustained decrease in

²³ 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>

²⁴ 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/>

transmission of COVID-19, and two months later, the daily number of reported cases dropped to zero.²⁵

38. 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.²⁶ Overall, countries encompassing an estimated one third of the world's population have enacted similar restrictions.²⁷ 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 "shelter in place" or stay at home.²⁸

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

39. 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."²⁹

²⁵ *Id.*

²⁶ 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>

²⁷ 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>

²⁸ 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>

²⁹ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and*

40. 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.³⁰

41. 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.³¹ 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 already at maximum capacity. They also expressed concern that “isolation may be misused and place individuals at higher risk of neglect and death.”

42. Like these and other experts,³² 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

Detention Facilities (last reviewed Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

³⁰ 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>

³¹ 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

³² 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.”).

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.

43. 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.³³ 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.

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

45. 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.³⁴ Some detained people have staged public protests, including initiating hunger

³³ 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>

³⁴ 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,

strikes and threatening suicide, to express their outrage at being housed with newly arriving individuals who may have been exposed to COVID-19.³⁵

46. 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.

47. ICE's past inept handling of infectious disease outbreaks in detention centers foreshadows the impact once COVID-19 hits Folkston. In 2019, a mumps outbreak across 57 immigration detention facilities throughout the country led to almost 900 cases of mumps contracted inside the facilities³⁶ before the outbreak spread to surrounding communities.³⁷ ICE

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>

³⁵ *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

³⁶ 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 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/>

³⁷ *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.

and CBP facilities have also been sites of other infectious outbreaks in recent years,³⁸ as have other prisons and jails.³⁹

48. COVID-19 has indeed already started to spread inside U.S. prisons and jails across the United States, including in Georgia⁴⁰ and New York City.⁴¹

49. 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.⁴² 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-19.⁴³

³⁸ Christina Potter, Outbreak Observatory *supra* n. 33, (describing outbreaks of acute respiratory illnesses like influenza, and other diseases like scabies and chickenpox).

³⁹ 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).

⁴⁰ 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/>

⁴¹ 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/>

⁴² *ICE Guidance on COVID-19*, *supra* n. 34

⁴³ 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 way to border detention facilities*, The Nation (Mar. 24, 2020), <https://www.thenation.com/article/society/corona-covid-immigration-detention/>

50. Nationally and internationally, governments and jail and prison staff have already recognized the threat posed by COVID-19. Authorities in Iran,⁴⁴ Ethiopia,⁴⁵ and the state of Texas⁴⁶ 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,⁴⁷ including Dougherty County Detention Center in Albany, which is suffering from one of the most severe outbreaks in the state.⁴⁸ 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.”⁴⁹

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

⁴⁴ 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>

⁴⁵ 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>

⁴⁶ 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/>

⁴⁷ 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/>;

⁴⁸ 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/>

⁴⁹ 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. Folkston Detention Center Is Primed for COVID-19 Exposure and Severe Outbreaks

i. Existing Conditions at Folkston Will Further Enable COVID-19 Transmission

52. The ICE Atlanta Field Office currently detains an estimated 1,000 noncitizens at Folkston.

53. Preventing the spread of COVID-19 inside Folkston is impossible. The design of immigration detention facilities generally, and Folkston in particular, 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.

54. Folkston houses 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. Folkston also has some smaller cells housing multiple people with shared bathrooms. People eat together in shared cafeterias and regularly congregate in common areas of their housing units.⁵⁰

55. The conditions at Folkston are also flagrantly unsanitary and dangerous to the health of detained individuals. Private contractors operate Folkston, and the DHS Office of Inspector General has repeatedly concluded that ICE fails to hold detention facility contractors accountable for meeting performance standards required to ensure humane conditions.⁵¹

⁵⁰ Keith Gardner, dvids.net, Folkston Processing Center B-Roll (Apr. 4, 2017), <https://www.dvidshub.net/video/529423/folkston-processing-center-b-roll>

⁵¹ 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),

56. At Folkston, 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 Folkston have reported being served food that is undercooked or spoiled.

ii. Folkston Has a Dismal Medical Care Track Record and Are Currently Ignoring Reported Flu-like Symptoms Among the Detained Population

57. Respondents have consistently failed to provide even minimally adequate medical care to individuals detained at Folkston. They cannot possibly be trusted to protect those in their custody from a potentially lethal infectious disease outbreak that has overwhelmed healthcare systems around the world.

58. Critical medical care is routinely delayed—sometimes for months—or denied outright.

59. Detained people at Folkston have reported to advocates that medical staff dismiss detained people's medical concerns or ridicule them as "dramatic." On one occasion, other detained individuals had to stage a protest to demand a response to a person exhibiting signs of severe medical distress. In another case, Folkston staff ignored a man and his attorney's repeated requests to go to the emergency room due to excruciating abdominal pain. His appendix later ruptured.

60. When detained people at Folkston do manage to get the attention of a medical provider, they are often given substandard care or are not provided with the proper medications.

<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>.

61. Detained individuals with diabetes—a condition that the CDC considers a risk factor for severe COVID-19, “particularly if not well controlled”⁵²—have reported diets that are inadequate given their medical needs. Petitioner David Fernandez has received as few as three out of the fourteen insulin injections per week he requires to manage his diabetes, which has left him so weak and tired that he could not stand up.

62. 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.

63. For example, on March 19, 2020, a man detained at Folkston reported that he was afraid of contracting COVID-19 because he feared Folkston would not provide proper medical treatment. Another man at Folkston reported that there was at least one person in his housing unit who was experiencing coughing, fever, and shortness of breath but had not been moved to another location.

64. Preliminary data suggests that a person with COVID-19 is most infectious during the early stage of the disease.⁵³ Early, proactive action is necessary to prevent the virus’s spread. The well-documented failure to provide adequate and timely medical care at Folkston is the mark of a system that cannot possibly cope with the spread of COVID-19.

⁵² 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>

⁵³ 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/>

iii. It Is Only a Matter of Time Before COVID-19 Reaches Folkston Detention Center

65. COVID-19 is bound to reach Folkston if it has not already. In Charlton County, where Folkston is located, there were three confirmed case of COVID-19 as of April 7, 2020⁵⁴— including a woman who lives in Folkston with two family members who work in the local public schools and came into contact with students.⁵⁵ Duval County, Florida, includes the city of Jacksonville, which is the closest metro area to Folkston—about 45 miles away. Duval County had 524 confirmed cases as of April 7, 2020.⁵⁶

66. There is great risk that people traveling in and out of Folkston will expose Petitioners to COVID-19.

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

68. Attorneys continue to visit their detained clients in Folkston because most immigration court hearings are still proceeding and many filing deadlines still apply. Since the pandemic began, ICE has permitted attorneys to enter Folkston without taking adequate precautions to limit exposure in the event that a visiting attorney is a COVID-19 carrier. At Folkston, attorneys were permitted to enter for legal visits in late March without wearing any

⁵⁴ *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 7, 2020).

⁵⁵ Gordon Jackson, *Folkston coronavirus case confirmed*, *The Brunswick News* (Mar. 17, 2020), https://thebrunswicknews.com/news/local_news/folkston-coronavirus-case-confirmed/article_79dd9c5d-f2dc-554b-8993-1ae66bcd127f.html

⁵⁶ Florida Department of Health, Division of Disease Control and Health Protection, Florida's COVID-19 data and Surveillance Dashboard, (last updated April 7, 2020) <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

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.

69. On March 25, an attorney visiting Folkston observed 50-60 detained people in the same room, sitting inches away from each other, waiting for their court hearings to be conducted by video teleconferencing (VTC). She attended two hearings with clients that day in small VTC rooms that provide just enough space for two people to sit next to each other facing the VTC camera.

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

71. Once the virus appears in Folkston, 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 Folkston Will Put Petitioners at Even Greater Risk

72. The local and regional hospitals near Folkston are ill-equipped to handle a COVID-19 outbreak within the facility, increasing the life-threatening risks to Petitioners.

73. An outbreak of COVID-19 at Folkston 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 the facility, diverting crucial and limited medical resources.

74. 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.⁵⁷ And those who develop serious complications will need advanced support, including highly specialized equipment that is in limited supply and an entire team of care providers. This level of support is especially difficult to provide to detained individuals because ICE detention facilities lack adequate medical care infrastructure.

75. Folkston is 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 Folkston 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.

76. 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.

77. The nearest hospital to Folkston detention center with ICU capabilities is Southeast Georgia Health System in Camden with only 40 beds, including 5 ICU beds, approximately 26 miles away. Patients would likely require initial transport or transfer to Southeast Georgia Health System – Brunswick with 300 beds, including 24 ICU beds, which is about 45 miles away and serves five different counties in Southeast Georgia.

⁵⁷ 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)

78. 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. Respondents' Actions to Address the Pandemic Thus Far Have Been Woefully Inadequate, and Release is the Only Adequate Response to Protect Petitioners

79. Respondents' failure to recognize the inevitability of an outbreak at Folkston and to take adequate precautions, including releasing people, demonstrates its complete disregard for the lives of detained immigrant, including Petitioners.

80. 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.

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

82. 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.

83. Several Petitioners and other detained immigrants at Folkston have indicated that ICE personnel never informed them of COVID-19 or advised them on recommended hygiene or social distancing practices. One detained woman at Folkston reported that when detained people asked for explanations and information around COVID-19, guards and staff responded by threatening to take away their possessions and put them in solitary confinement.

84. Detained immigrants also report a severe lack of access to hygiene supplies. Petitioner Jenner Benavides described only receiving four single-use squares of liquid soap a week, which she needed to use for both hand washing and showers. This would be an unacceptable hygiene practice even before the COVID-19 pandemic; now, it is egregious.⁵⁸

85. 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 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

⁵⁸ 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)

exposure, people who pass ICE's screenings can expose detained individuals, as well as detention center staff.

86. 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. Folkston does not have the space or staff to safely care for patients for this period of time.

87. 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.

88. 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 in detention. 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.

89. Petitioners in this case individuals who are currently detained at Folkston and are particularly vulnerable to serious illness or death if infected by COVID-19.

90. **Jenner Benavides.** Jenner Benavides is a 27-year-old transgender woman and citizen of Mexico who has been in ICE custody since May 2019. Ms. Benavides is living with HIV and bipolar disorder. She also suffers from depression, anxiety and suicidal ideation exacerbated by her conditions of confinement. At Folkston, she is constantly bullied and harassed by other immigrants detained there. She was recently sexually assaulted more than once by men in her pod unit. When she reported the assault, she was put on suicide watch, and then moved to protective custody, which further worsens her anxiety and depression. She has also experienced delays and inconsistencies in medical services at Folkston, and she is not provided enough soap or toiletries to keep herself clean and protected from illness.

91. Ms. Benavides is critically vulnerable to COVID-19 because of her autoimmune disease and other health problems. Her U.S. citizen friend is waiting to care for her in Nashville once she is released, where her two youngest siblings also eagerly await her return. An immigration attorney submitted a humanitarian parole request on her behalf on April 2, 2020. ICE denied the request on April 5, 2020.

92. **David Fernandez.** Mr. Fernandez is a 45-year-old citizen of Mexico who has been detained at Folkston since December 2019. Mr. Fernandez has diabetes and has suffered from tuberculosis in the past. A doctor has told him that if he does not manage his blood sugar levels, he is at risk of suffering a heart attack. Prior to his detention by ICE, he had his sugar levels under control, and he felt well. However, maintenance of his diabetes requires fourteen injections of insulin per week, and he has not consistently received all of these necessary injections. Some

weeks he receives as few as three. His health has deteriorated, and he sometimes cannot stand up from fatigue. Mr. Fernandez is now suffering flu-like symptoms in a facility where he cannot practice social distancing, he is not provided sufficient soap, testing for COVID-19 is unavailable, and staff are not taking precautions to protect him from infection.

93. Mr. Fernandez is critically vulnerable to COVID-19 because of his significant health problems. Upon his release, he plans to self-quarantine in South Carolina, where friends eagerly wait to welcome him home.

94. **Gerardo Arriaga.** Mr. Arriaga is a 24-year-old citizen of Peru who has Lupus, an autoimmune disease that causes him to be immunocompromised and causes inflammation and damage to his joints, skin, kidneys, blood, heart, and lungs. Because of his condition, he is predisposed to infections, and needs medications and topical creams to manage the symptoms. While he has been at Folkston, he has not received these necessary medications. He has also requested medical attention that has been ignored, and staff are not taking precautions to protect him from COVID-19. He has also not been provided any soap by ICE since he has been detained.

95. Mr. Arriaga is critically vulnerable to COVID-19 because of his significant health problems. Upon his release, he plans to self-quarantine with his wife in Atlanta, Georgia.

96. 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.

97. 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 U.S.C. § 1182(d)(5)(a); 8 C.F.R. § 212.5(b)(1); 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

98. 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.*

99. 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).

100. 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).

101. 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).

102. “[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).

103. 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).

104. 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).

105. 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).

106. 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).

107. “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.

108. 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.”)

109. 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).

110. 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.

111. 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.

112. 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).

113. 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)).

114. 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)).

115. 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)

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

117. 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.

118. 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.

119. 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.

120. 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.

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

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

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

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

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

126. 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 8, 2020

Respectfully submitted,

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**pro hac vice motions forthcoming*