

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

JENNER BENAVIDES, *et al.*,

Petitioners/Plaintiffs,

v.

PATRICK GARTLAND, *et al.*,

Respondents/Defendants.

Case No.: 5:20-cv-46-LGW-BWC

HEARING REQUESTED

**PETITIONERS-PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND
EMERGENCY WRIT OF HABEAS CORPUS**

Pursuant to Federal Rule of Civil Procedure 65, Petitioners-Plaintiffs Jenner Benavides, David Fernandez, Gerardo Arriaga, Ajit Kumar, Scott James, and Winston Brown (collectively, “Petitioners”) hereby submit this Motion for Preliminary Injunction and emergency habeas relief.¹ Petitioners are medically vulnerable civil detainees at Folkston ICE Processing Center (“Folkston”). Due to their detention in a congregate setting, they are at a high risk of contracting COVID-19; given their medical vulnerabilities, they are at high risk of suffering severe negative health impacts, or even death, if they do. Because Respondents-Defendants’ (collectively, “Respondents”) continued detention of Petitioners, especially without consistent adherence to CDC Guidance, poses a severe risk of serious illness or death that vastly outweighs any legitimate government interest in continuing to detain them, that continued detention constitutes

¹ Petitioners Jenner Benavides, David Fernandez, and Gerardo Arriaga are proceeding in this action using pseudonyms, as permitted by oral order of the Court on April 15, 2020. Petitioners Ajit Kumar and Winston Brown also use pseudonyms herein and filed a motion to proceed pseudonymously on May 7, 2020. Respondents have indicated that they will not take a position on Petitioners’ motion.

impermissible punishment. Because Respondents know or should know of the substantial risk of serious harm to Petitioners, their continued detention also demonstrates deliberate indifference. In addition, because Respondents have failed to comply with the Performance-Based National Detention Standards (PBNDS) or the CDC Guidance in managing the COVID-19 pandemic at Folkston, they have violated the *Accardi* doctrine. For all these reasons, Respondents' conduct violates the Petitioners' rights under the Fifth Amendment Due Process Clause. Accordingly, Petitioners move the Court to issue a Writ of Habeas Corpus or a temporary restraining order securing their immediate release from detention.

If the Court does not grant Petitioners' release, Petitioners in the alternative request that the Court order the following relief to maximize their safety, to the extent possible, while in detention:

1. Respondents to immediately conduct custody redeterminations for all Petitioners, with specific consideration of the medical conditions that make Petitioners especially vulnerable to severe illness, long-term organ damage, or death from COVID-19. These custody redeterminations cannot consider deterrence of future migration as a factor justifying detention and must provide Petitioners the opportunity to submit medical records relevant to their risk of complications if they were to contract COVID-19;
2. Respondents to immediately comply with CDC Guidance regarding COVID-19 at Folkston, including but not limited to the provisions requiring:
 - a. Implementation and enforcement of social distancing (maintaining at least 6 feet of distance) among all people in the detention center at all times;
 - b. Provision of a supply of soap sufficient to allow frequent handwashing for 20 seconds at a time, as well as continual access to hygiene supplies (including PPE), running water, hand drying machines or disposable paper towels, and no-touch trash receptacles;

- c. Intensified cleaning and disinfecting practices, including: (1) evaluating dilution levels of cleaning products; (2) cleaning, several times per day, all frequently touched surfaces with household cleaners and EPA-registered disinfectants that are effective against COVID-19 and appropriate for the surface, (3) taking relevant precautions needed when using these products, particularly around detained people with underlying respiratory conditions, and (4) adapting cleaning and disinfecting practices when suspected or confirmed COVID-19 cases have been identified;
 - d. Testing of all symptomatic individuals, including rapid identification and appropriate triage of those at highest risk of complication of infection;
 - e. Immediate response to symptoms of COVID-19, including: (1) placement of the symptomatic individual under safe medical isolation, with their own housing space and bathroom, and regular provision of a clean face mask, and (2) determination of whether the symptomatic individual is at higher risk for severe illness from COVID-19 due to an underlying condition, and provision of further evaluation and treatment as appropriate;
 - f. Halting of transfers of detained people to and from Folkston unless “absolutely necessary,” and adhering to infection control measures for the transportation of detained people if any transfers are “absolutely necessary”;
 - g. Implementation of routine quarantining of new intakes for 14 days at Folkston with regular assessment for symptomatic individuals; and
 - h. Consistent and effective screening of visitors to Folkston to limit exposure to COVID-19;
 - i. Clear and regular verbal and written communication about COVID-19 and risk reduction to the detained populations, including: (1) posting signs throughout the facilities that advise detained people of the symptoms of COVID-19, hand hygiene and cough etiquette, and other methods of protection against COVID-19, and that can be understood by non-English speakers and those with low literacy or needing other accommodations, and (2) clear and frequent in-person communication with detained people about risk reduction and the presence of COVID-19 cases inside the facilities;
3. Respondents to submit to monitoring to ensure ongoing compliance with CDC Guidance;
 4. Respondents to provide reporting to this Court and Petitioners’ Counsel twice per week with the following:
 - a. Total detainee population at Folkston;
 - b. Total number of COVID-19 tests performed for detainees at Folkston, GEO Group staff employed at Folkston, ICE staff on site at Folkston, and any other contractors who visit Folkston; and dates of samples taken for testing;
 - c. Number of positive results among tests performed and reported under 4.b.;

- d. Number of suspected COVID-19 cases, or presumed positive cases among detainees at Folkston, GEO Group staff employed at Folkston, ICE staff on site at Folkston, and any other contractors who visit Folkston;
 - e. Number of people quarantined due to COVID-19 at time of report;
 - f. Number of people cohorted due to COVID-19 at time of report;
 - g. Number of people in negative pressure rooms due to COVID-19 at time of report;
 - h. Total number of medical appointment requests received since the last report (with the first report referring back to April 1, 2020) and number of medical appointments completed since the last report (with the first report referring back to April 1, 2020), including the date the medical appointment took place and where the medical appointment took place (i.e., in the medical unit or in the housing unit);
 - i. Number of people transferred to Folkston since the last report (with the first report referring back to April 1, 2020), including the specific location where they were transferred from and the date(s) of transfer(s);
 - j. Compliance with this Court's order, to the extent not covered in the reporting and monitoring requirements above; and
5. Such other relief as this Court may deem appropriate.

In addition, Petitioners propose the following schedule for briefing and a hearing on this and their other pending motion:

Friday, May 8	Status Conference with the Court on (a) Motion for Expedited Discovery (b) Motion for Preliminary Injunction
Monday, May 11 at 12:00pm	Respondents' response to Motion for Expedited Discovery due
Tuesday, May 12 at 12:00pm	Petitioners' reply in support of Motion for Expedited Discovery due
Wednesday, May 13 at 9:00am	Hearing on Motion for Expedited Discovery
Thursday, May 14 at 12:00pm	Respondents' responses to interrogatories due
Friday, May 15	Dr. Homer Venters' inspection of Folkston
Tuesday, May 19	Dr. Homer Venters' report due to the Court
Thursday, May 21 at 12:00pm	Respondents' response to Motion for Preliminary Injunction due

Friday, May 22 at 5:00pm	Petitioners' reply in support of Motion for Preliminary Injunction due
Tuesday, May 26	Hearing on Petitioners' Motion for Preliminary Injunction

The grounds for Petitioners' Motion are set forth in more detail in the accompanying Memorandum of Law in Support of their Motion for Preliminary Injunction.

Dated: May 8, 2020

Respectfully submitted,

SOUTHERN POVERTY LAW CENTER

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* *admitted pro hac vice*

** *pro hac vice motion forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I am counsel of record for the Petitioners in the above-captioned action and that on May 8, 2020, Petitioners' counsel electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Given the emergency nature of this action, I further certify that on May 8, 2020, Petitioners' counsel emailed copies of this filing to Woelke Leithart, Assistant United States Attorney in the Southern District of Georgia, at Woelke.Leithart@usdoj.gov.

/s/ Kathryn E. Isted
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