

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

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

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

500 12

- A. Petitioners Have a Constitutional Right to Reasonable Safety in Custody38
- B. This Court Has Authority to Order Petitioners' Release to Vindicate Their Fifth Amendment Rights, and Such Relief Is Necessary Here.

I. INTRODUCTION

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

2. There is no vaccine against COVID-19 and no known cure. Currently, the only recognized strategies to reduce the risk of exposure to COVID-19 are social dis

imprisonment.¹

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

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

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

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

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

II. PARTIES

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

10. Petitioner Michael Robinson² is a 54-year-old citizen of Jamaica, who has been at Stewart since around February 2020. He has six U.S. citizen children, and has family in both Florida and New York. He is seeking asylum, Withholding of Removal, and protection under the

difficulty breathing due to a stab wound he

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

15. Petitioner Nilson Fernando Barahona Marriaga is a 38-year-old citizen of Honduras who has been detained at Irwin since October 2019. He has lived in the U.S. for more than ten years and been married to a U.S. citizen for over six years. They have a six-year-old son. He also has a U.S. Citizen father, a mother who is a lawful permanent resident, and two U.S. Citizen sisters. Mr. Barahona Marriaga is eligible for adjustment of status through a pending I-130, Petition for Alien Relative. He has also applied for Non-LPR Cancellation of Removal, and may be eligible for a U-Visa based on a kidnapping in 2011. An attorney helped him apply for parole and bond, but they were denied. Mr. Barahona Marriaga suffers from diabetes and hypertension, both of

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

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

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

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

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

21. Respondent Chad Wolf is the Acting Secretary of the United States Department of Homeland Security (DHS). In this capacity, he is responsible for the implementation and

III. JURISDICTION AND VENUE

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

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

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

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

constitutional challenge to procedures adopted by the INS).

V. STATEMENT OF FACTS

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

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

28. 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 6, 2020, the number of confirmed cases worldwide has surpassed one million, including over 367,004 people in the United States. Over 74,697 people have died as a result

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

30. In the state of Georgia, transmission of COVID-19 has also been rampant. On March 14, 2020, Governor Brian Kemp declared a public health state of emergency, describing the spread of COVID-19 as an “unprecedented public health threat.”¹⁰ At the time, there were 64 diagnosed COVID-19 cases spread across 15 counties.¹¹ As of April 6, 2020, less than 30 days later, the number of reported cases had jumped to 7,558 with 154 counties now affected.¹² The number of reported deaths from COVID-19 is 294, making Georgia the state with the twelfth highest number of COVID-19-related deaths in the United States.¹³ Governor Kemp issued a shelter in place order for the state of Georgia on April 3, 2020.¹⁴

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.

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

¹³ Listing of United States Total Coronavirus Cases (last updated Apr. 6, 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>

31.

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

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

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

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

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

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

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),

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

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

iii. Prevention of COVID-

“shelter in place” or stay at home.²⁸

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

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

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

47. In March 2020, over 3,000 medical professionals across the United States also urged ICE to release individuals and families from detention “to prevent the spread of COVID-19 and mitigate the harm of an outbreak” to detained individuals, as well as to facility staff.³¹

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

51. Despite the global pandemic and shelter-in-

56. 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

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

contractors accountable for meeting performance standards required to ensure humane conditions.⁵¹

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

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

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

65. At both facilities, food preparation and service are communal with little opportunity for surface disinfection. Detained people, overseen by food service contractors, staff the kitchens. People detained in these facilities have for years reported being served food that is undercooked,

healthcare systems around the world.

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

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

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

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

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

⁶⁰ Imprisoned Justice at 35-36; Shadow Prisons at 40; DHS Office for Civil Rights and Civil Liberties, *Formal Complaint – Stewart Detention Center, Lumpkin, GA* (Oct. 11, 2019), <https://www.detentionwatchnetwork.org/sites/default/files/CRCL%20complaint%20-%20SDC%20-->

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

75. In the context of the COVID-19 pandemic, early reports indicate that ICE is using the same playbook—

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

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

79. COVID-19 is bound to reach Stewart and Irwin, if it has not already. Detained people at Stewart and Irwin have reported to advocates that there are cases of COVID-19 within their facilities, including one possible COVID-19-related death at Stewart, though ICE has not confirmed any of these reports. In addition, two guards at Stewart have now tested positive for COVID-19.⁶⁹ The total number of confirmed cases in Stewart County is three.⁷⁰

80. Many cities and counties surrounding Lumpkin also have confirmed cases of COVID-19.⁷¹ Lumpkin is only about 50 miles from Albany, which, as of March 26, 2020, had the fourth highest number of COVID-19 cases per capita and the third highest number of COVID-19 deaths per capita in the entire world.⁷² Phoebe Putney Memorial Hospital, located in Albany, has

⁶⁸ 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/>

⁶⁹ Alex Jones, *Second Stewart Detention Center employee tests positive for COVID-19*, WTVM (last updated April 6, 2020) --i - t e - b

filed all three of its ICUs with critically ill COVID-19 patients, after having opened a fourth ICU for patients not infected with COVID-19.⁷³ As of April 6, 2020, Dougherty County, which encompasses Albany, had the second highest number of reported COVID-19 diagnoses—722—and COVID-19-related deaths—44—among all 159 counties in Georgia.⁷⁴ Lumpkin is also about 50 miles from another COVID-19 “hot spot”—Lee County, Alabama, had 118 confirmed cases as of April 6, 2020.⁷⁵

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

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

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

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

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

⁷⁴ *Georgia Department of Public Health COVID-19 Daily Status Report* (last reviewed Apr. 6,

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

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

86. As recently as March 23, 2020, Stewart—

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

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

94. Critical access hospitals are generally located in rural areas where the access to nearby hospitals is extremely limited. They have fewer than 25 beds and are designed to care for patients who will require fewer than 96 hours of care. I

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

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

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

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

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

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

108. Locking any detained person, with or without underlying medical conditions, in a jail cell for extended periods of time, is psychologically damaging and could lead to a spike in severe depression, suicides, and other medical emergencies. In the context of an infectious disease outbreak, where onsite medical staff are operating at or over capacity, these problems will only accelerate. Isolation also increases the amount of physical contact between detention center staff and deta077 Tw -14i.8.4(a)-o o ob17 -oa oi.8c(t)-5.3(i o)6(b)asi hJ -0.01 (t)-5.4(he6(l)-5ff)16.3(m)-, (s)5.6(i)-5

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

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

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

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

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

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

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

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

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

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

VI. LEGAL FRAMEWORK

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

133. All noncitizens who are in0 T-JTJ 10.8omvks Z.6(6dvTf 1y.4(odayf5.4(tH4 <</l

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

137. “[W]hen the State takes a person into its custody and holds him there against his will, the

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

140. The government may violate the Eighth Amendment when it “ignore[s] a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” including “exposure of inmates to a serious, communicable disease,” even when “the complaining inmate shows no serious current symptoms.”

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

147. Petitioner also seek relief under the federal habeas statute, 28 U.S.C. § 2241, which is itself infused with long-standing common law equitable principles. See 28 U.S.C. § 2241(c)(3)

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

VII. CLAIM FOR RELIEF

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

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

152. The Fifth Amendment to the U.S. Constitution guarantees individuals in immigration detention the right to be free from punishment. The government violates this guarantee when conditions of confinement lack a reasonable relationship to any legitimate governmental purpose, *i.e.* when a custodian’s actions are excessive in relation to their purpose.

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

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

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

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

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

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

159.

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

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

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

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

Dated: April 7, 2020

Respectfully submitted,

SOUTHERN POVERTY LAW CENTER

ASIAN AMERICANS ADVANCING JUSTICE-
ATLANTA

By: /s/ Gracie Willis
Gracie Willis (GA Bar #851021)
Rebecca Cassler (GA Bar #487886)
Lorilei Williams* (NY Bar #5302617)
150 E. Ponce de Leon Ave., Ste. 340
Decatur, GA 30030
Tel: (404) 521-6700
Fax: (404) 221-5857
gracie.willis@splcenter.org
rebecca.cassler@splcenter.org

By: /s/ Hillary Li
Hillary Li (GA Bar #898375)
Phi Nguyen (Ga Bar #578019)
5680 Oakbrook Pkwy, Ste. 148
Norcross, GA 30093
Tel: (404) 585-8466
Fax: (404) 890-5690
hli@advancingjustice-atlanta.org
pnguyen@advancingjustice-atlanta.org

Paul Chavez* (FL Bar #1021395)
Victoria Mesa-Estrada*(FL Bar #076569)
2 S. Biscayne Blvd., Ste. 3200
Miami, FL 33101
Tel: (786) 347-2056
paul.chavez@splcenter.org
victoria.mesa@splcenter.org

KILPATRICK TOWNSEND & STOCKTON LLP
By: /s/ Tayah Woodard
Tayah Woodard (GA Bar #312548)
Tamara Serwer Caldas* (GA Bar #617053)
Kathryn E. Isted* (GA Bar #908030)
Amanda Brouillette* (GA Bar #880528)
1100 Peachtree St., NE, Ste. 2800
Atlanta, GA 30309
Tel: (404) 815-6006

Melissa Crow* (DC Bar #453487)
1101 17th Street, NW, Ste. 705

Washington, DC 20036

Tel: (202) 355-4471

Fax: (404) 221-5857 oM 1 Tscn /:

elia.a@pars.a