TABLE OF AUTHORITIES

Cases

Wilwording v. Swenson,

Petitioners[1] are detained in ICE custody at Stewart Detention Center ("Stewart") and Irwin County Detention Center ("Irwin"), both in rural southern Georgia. Due to their medical conditions, Petitioners are vulnerable to serious cases of COVID

1 ¶ 11; Ex. 3 ¶ 11. Scrupulous hand hygiene and social distancing—staying at least six feet away from all other people—are the only known ways to avoid the illness. Ex. 1 ¶¶ 5, 9, 11; Ex. 2 ¶ 11; Ex. 3 ¶¶ 11, 22.

A. Petitioners Are Detained Individuals in Georgia at High Risk of Serious Injury or Death from COVID-19

Advanced age and certain underlying medical conditions, including compromised immune system, diabetes and other endocrine disorders, metabolic disorders, heart and lung disease, and neurological and neurodevelopmental conditions, greatly increase the likelihood of contracting a serious case of COVID-19 that requires hospitalization and support from a ventilator. Ex. 1 ¶¶ 6, 8; Ex. 2 ¶¶ 4-5; *see also* Ex. 3 ¶ 5. According to preliminary data from China, 20% of people in these high-risk categories who contract COVID-19 have died. Ex. 1 ¶ 6.

Petitioners are individuals detained at Stewart and Irwin who all have underlying medical conditions that put them at high risk for life-threatening cases of COVID-19. Ex. 8-15. Petitioners have safe places to live where they can practice social distancing and hand hygiene upon release. They will comply with all conditions of release including attending immigration court hearings.[5] Ex. 8 ¶¶ 28-29; Ex. 9 ¶¶ 23-24; Ex. 10 ¶¶ 22-23; Ex. 11 ¶¶ 17-18; Ex. 12 ¶¶ 23-24; Ex. 13 ¶¶ 27-28; Ex. 14 ¶¶ 26, 28; Ex. 15 ¶¶ 12-13.

[5]ICE regularly releases individuals using various alternatives to detention with documented success. For example, an evaluation of ICE's conditional supervision program, ISAP, reported a 99% attendance rate at all immigration court hearings. *See* U.S. Gov't Accountability Office, GAO-15-26, Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness 10-11 (Nov. 2014).

about running out." Ex. 14 ¶ 13. During an infectious disease outbreak, failing to provide sufficient soap is egregious. *See id*; Ex. 2 ¶ 16; Ex. 3 ¶ 11.

3. Social Distancing Is Impossible

Detention centers are particularly susceptible to rapid spread due to the congregate nature of detention centers and overcrowding. Ex. 1 ¶¶ 11, 12, 20; Ex. 3 ¶¶ 20, 23; Ex. 4 ¶ 5 ("The design of these facilities requires inmates to remain in close contact with one another.").

There is no way to practice social distancing at Stewart or Irwin. Ex. 8 ¶¶ 7-8; Ex. 9 ¶ 10; Ex. 10 ¶ 9; Ex. 11 ¶¶ 8-9; Ex. 12 ¶¶ 13-14; Ex. 13 ¶¶ 15, 19; Ex. 14 ¶¶ 10-11; Ex. 15 ¶¶ 8-10. At these facilities, detained people live in extremely close quarters, often in shared dorms with dozens of people sleeping feet apart from each other, or in small shared cells. *E.g.* Ex. 8 ¶¶ 7-8; Ex. 9 ¶ 10; Ex. 11 ¶¶ 8-9; Ex. 12 ¶¶ 13-14; Ex. 14 ¶¶ 10-11; Ex. 15 ¶ 8. Petitioners have observed very few if any changes within their facilities over the last several weeks in response to the pandemic. *See, e.g.*, Ex. 8 ¶ 13; Ex. 10 ¶ 17; Ex. 11 ¶ 12; Ex. 12 ¶ 18

detained people inside Stewart and Irwin indicate that there may already be confirmed COVID-19 cases inside the facilities and that reports of symptoms associated with COVID-19 are going ignored. Ex. 7 ¶¶ 15, 23, 25-26; Ex. 10 ¶ 18; Ex. 11 ¶ 16; Ex. 12 ¶ 21; Ex. 13 ¶ 24; Ex. 14 ¶¶ 9, 16; Ex. 15 ¶ 8. One detained person at Stewart reported that he developed symptoms of COVID-19, including “intense pa

ill-equipped to address medical emergencies and disease outbreaks. *See* Ex. 7 ¶¶ 7, 12 (reporting having witnessed a single holding cell used to contain detained individuals seeking medical care at Stewart), 17; Compl. ¶ 53 (describing previous outbreaks at Stewart). At both Stewart and Irwin, ICE has long been unable to provide even basic medical care to detained people, resulting in needless deaths and other medical emergencies. Ex. 7 ¶¶ 7, 22; Ex. 8 ¶¶ 14-26; Ex. 9 ¶¶ 4-6, 8-10, 19-20; Ex. 10 ¶¶ 8, 10-12; Ex. 11 ¶¶ 6-8, 14-15; Ex. 12 ¶¶ 7, 9-12, 16; Ex. 13 ¶¶ 5, 13, 18, 25; Ex. 14 ¶¶ 20, 23-25; Ex. 15 ¶ 7; Compl. ¶¶ 66-77 (collecting sources). When ICE has consistently demonstrated that it is incapable of managing the health and medical care of those in its custody during ordinary times, it is a foregone conclusion that ICE cannot protect the medically vulnerable in the face of a pandemic that has overwhelmed health systems the world over. *See* Ex. 1 ¶ 13, 16; Ex. briTA3seSe 7P.4(Com)-3es.0 Tc 0 Tw 1.r7(l)¶¶13,2T0,63(r)-E.645¶.7(20,63l)h7e.l44(a)67.D2T6d [(ys)-6(d4.867)-5.34(h

D. Releasing Petitioners Would Reduce the Devastating Public Health Impact of COVID-19 on Georgia

Petitioners' continued detention not only threatens their own health and wellbeing but also subjects all other detained individuals and staff at Stewart and Irwin to an increased risk of illness or death. *See* Ex. 1 ¶¶ 12, 20a, 25; Ex. 4 ¶ 7; Ex. 3 ¶¶ 19, 21. The release of vulnerable individuals mitigates the overall risk of a COVID-19 outbreak in any detention facility because it reduces the total number of detained individuals, thereby permitting greater social distancing and reducing the staff's workload. Ex. 4 ¶ 9; Ex. 1 ¶¶ 17, 24-27; Ex. 3 ¶ 22.[10]

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

Petitioners filed a habeas petition and complaint for declaratory and injunctive relief on April 7, 2020, alleging that their detention during the pandemic violates the Fifth Amendment Due

[10]Already prisons and detention centers in other countries and many U.S. states have begun releasing people from custody or reducing new arrests. *See, e.g.*, Compl. ¶ 56.

Courts have similarly broad power under Rule 65 to fashion equitable remedies to address constitutional violations in prisons. *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978); *see, e.g.*, *Brown v. Plata*, 563 U.S. 493, 511 (2011) (recognizing authority to "plac[e] limits on a prison's population" when necessary to ensure constitutional compliance); *Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984) (court had authority to direct release of low-bond pretrial detainees as necessary to reach a population cap).

A TRO is warranted when the movant demonstrates: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury unless the order issues; (3) the threatened injury to the movant outweighs any harm the injunction may cause the opposing party; and (4) the injunction would not undermine the public interest. *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995); *accord Friedenberg v. Sch. Bd. of Palm Beach Cty.*, 911 F.3d 1084, 1090 (11th Cir. 2018). "Where, as here, the 'balance of the equities weighs heavily in favor of granting the [injunction]' the Plaintiffs need only show a 'substantial case on the merits.'" *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1298 (11th Cir. 2005). Petitioners easily satisfy all four factors.

A. Petitioners are Likely to Succeed on the Merits of Their Due Process Claim.

All immigration detainees, even those with prior criminal convictions, are civil detainees held pursuant to immigration laws and protected by the Fifth Amendment Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioners are likely to succeed on the merits of their Due Process claim for two independent reasons: continuing to detain Petitioners in Stewart and Irwin during the COVID-19 global pandemic (1) constitutes impermissible punishment and (2) amounts to deliberate indifference to a substantial risk of harm.

1. Petitioners' Continued Detention During the COVID-19 Pandemic Constitutes Impermissible Punishment.

The Fifth Amendment Due Process Clause, like 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). 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)).

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 explicit intent, courts must ask first "whether any 'legitimate goal' was served by the prison conditions" and second, "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).

The threat of serious illness and death from COVID-19 is not reasonably related to, and vastly outweighs, any purported government interest in Petitioners' civil confinement. As set forth previously, *supra* I.A., Petitioners' underlying health conditions make them especially susceptible to severe illness, life-altering complications, or death if they contract COVID-19. The measures required to prevent Petitioners from contracting COVID-19 are impossible in Stewart and Irwin, and the medical resources needed to treat even a moderate volume of critical care patients are unavailable in south Georgia. *Supra* I.C. Under these circumstances, the government's detention

b. *Knowing Disregard of the Substantial Risk*

Respondents have "subjective knowledge of a substantial risk of serious harm" to Petitioners but are "disregard[ing] that known risk by failing to respond to it in an (objectively) reasonable manner." *Rodriguez v. Sec'y for Dep't of Corr.*, 508 F.3d 611, 617, 619 n.15 (11th Cir. 2007); *see also Farmer*, 511 U.S. at 842. Where a risk is obvious, such as the threat posed to medically vulnerable people during a highly contagious and deadly disease outbreak, courts can presume that government officials are aware of the risk. *See, e.g., idsk. p5.6(t)-5.3h5.3(Cor)5.7oply4-1TT0 1-24*

immigration detention—are effective ways to reduce the risk of exposure to COVID-19. Despite ICE's awareness of the heightened risk faced by Petitioners, the agency continues to detain them under conditions where there is no effective way to protect them from exposure.

Courts across the United States have recognized that urgent release of medically vulnerable individuals from immigration detention is the only appropriate course of action in the face of a

and Order at 8, *Thakker v. Doll*

COVID-19 poses to their health, as well as redress Respondents' violations of their due process rights.

C. The Balance of Equities and Public Interest Weigh Heavily in Petitioners' Favor.

The final two factors of the TRO inquiry "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). In contrast to Petitioners' significant risk of serious illness or death, *see supra* I.A, Respondents will not be injured by an injunction. Indeed, it is in both the Respondents' and the broader public interest to release medically vulnerable individuals from custody, rather than needlessly jeopardizing their health and lives. Moreover, "the public interest is served when constitutional rights are protected." *Jones v. Governor of Fla.*, 950 F.3d 795, 830 (11th Cir. 2020) (citation omitted); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006).

ICE has an interest in preventing any potential spread of COVID-19 in its detention facilities in order to maintain the health and safety of everyone who has contact with the facilities. The release of people most vulnerable to COVID-19—which would permit greater social distancing and decrease staff workloads—reduces the overall health risk for detained individuals and facility staff alike at Stewart and Irwin, as well as for surrounding communities. Far from harming the government, Petitioners' release would further ICE's interests in maintaining a healthy and orderly environment at Stewart and Irwin.

Releasing Petitioners is unquestionably in the public interest. Ex. 4 ¶ 6. *See, e.g.*, *Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 169 (2d Cir. 2005) (referring to "public health" as a "significant public interest[]"); *see also* Allen & Rich Ltr., *supra* n. 13 ("[I]t is essential to consider releasing all detainees who do not pose an immediate risk to public safety"). In the unprecedented and rapidly evolving circumstances of the COVID-19 crisis, continued civil detention of aging or ill individuals does not serve the public's interest. An outbreak of COVID-

19 at Stewart or Irwin would further strain both local and state health infrastructure and contribute to more massive community spread and more deaths. The health and safety of the public would thus be best served by rapidly decreasing the number of individuals detained in confined, unsafe conditions. Ex. 4 ¶ 9. By releasing such individuals now, ICE would reduce the spread and severity of infection inside Stewart and Irwin. This, in turn, would reduce the number of people who will become ill enough to require hospitalization and thereby decrease the health and economic burden on local communities. Ex. 1 ¶ 26.

To the extent the equities weigh in favor of some restraint of Petitioners' liberty, that can be achieved through fashioning reasonable release conditions that ICE already uses and that have demonstrated success. *See supra* n.5; Brief of Amicus Curiae at 36-37, *Jennings v. Rodriguez*, No. 15-1204, 2016 WL 6276890 (Oct. 24, 2016).

D. The Court Should Not Require Petitioners to Provide Security Prior to Issuing a Temporary Restraining Order.

Courts have discretion to waive the requirement in Federal Rule of Civil Procedure 65(c) that a movant provide a security upon the issuance of a preliminary injunction or TRO. *BellSouth Telecomms., Inc. v. MCImetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005). District courts in this Circuit often exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g.*, *Schultz v. Alabama*, 330 F. Supp. 3d 1344, 1376 (N.D. Ala. 2018) (county prisoners); *Campos v. I.N.S.*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998) (indigent immigrants). This Court should do the same here.

III. CONCLUSION

For the foregoing reasons, Petitioners' motion for a temporary restraining order should be granted.

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