

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JOSEPH LLOYD THOMPSON

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.e 20536;

and

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

and

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT
500 12th Street, SW
Washington, D.e 20536;

Respondents/Defendants.

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 A. Petitioners Have a Constitutional Right to Reasonable Safety in Custody 67

 B. This Court Has Authority to Order Petitioners’ Release to Vindicate Their Fifth Amendment Rights, and Such Relief Is Necessary Here.71

 C. Habeas Is a Broad, Flexible Remedy That Authorizes Courts to Order Release from Unlawful Detention Conditions as Law and Equity Requires.73

VII. CLAIM FOR RELIEF75

 A.

I. INTRODUCTION

1. The COVID-19 pandemic is wreaking havoc throughout the world. The United States has now surpassed the rest of the world in the number of confirmed cases. Over 6,000 Americans have died. Experts estimate that, after the pandemic runs its course, the coronavirus will have infected between 160 and 214 million people and taken the lives of up to 1.7 million people in the United States alone.

2.

medical and public health professionals that releasing detained immigrants is the

ICE has repeatedly refused to facilitate. He has a history of hospitalization for pneumonia and his heart problems. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

10.

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.

12. Petitioner Sarai Hernandez is a citizen of Honduras who has been detained at Irwin since March 2020. She is the sister, legal guardian, and primary caretaker of Petitioner Tomas Hernandez. She has suffered from severe asthma her entire life, which gives her respiratory distress requiring hospitalization and weakens her immune system. She has not been able to get access to an inhaler from ICE. As a consequence of her health condition, she is at high risk for severe illness or death if she contracts COVID-19.

13. Petitioner Nilson Fernando Barahona Marriaga is a citizen of Honduras who has been detained by ICE at Irwin since October 2019. He suffers from diabetes and hypertension, both of which he has struggled to manage while in detention. His condition has deteriorated since he has been detained, and many of his requests for medical services have been ignored. As a consequence of his health condition, he is at high risk for severe illness or death if he contracts COVID-19.

14. Petitioner Shelley Dingus is a citizen of England, who is detained by ICE at Irwin. She has been in ICE custody since January 2020. She suffers from asthma, chronic obstructive pulmonary disease, severe migraines, depression, anxiety, and eczema that causes severe skin allergies and open wounds that are easily

18. Petitioner Aristoteles Sanchez Martinez is a citizen of Venezuela, who is detained by ICE at Stewart. He has been in ICE custody since approximately September 2018. He 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 currently recovering from a hernia repair surgery after which he was brought back to the ICE facility 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.

19. Petitioner Michael Robinson is a citizen of Jamaica, who has been detained by ICE at Stewart since around February 2020. He suffers from hypertension, asthma, cardiac murmur, high blood pressure, and benign prostatic hyperplasia. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

20. Petitioner Tomas Hernandez is a citizen of Honduras who has been detained at Stewart since March 2020.³ He has an intellectual disability, suffers from

³ Tomas Hernandez's last known location was the Stewart Detention Center in Lumpkin, Georgia. As of April 3, 2020, Petitioners' counsel has reason to believe

asthma and ADHD, and has a history of seizures. Petitioner Sarai Hernandez is his sister, legal guardian, and primary caretaker, and she is detained at Irwin. Being detained by ICE is the first time the two have been separated. Mr. Hernandez is particularly vulnerable as he is unable to communicate his needs to others due to his

22. Respondent-Defendant (hereinafter Respondent) John Tsoukaris is the Interim 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, Irwin, and Folkston. Respondent Tsoukaris is a legal custodian of Petitioners. He is sued in his official capacity.

23. 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.

24. 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.

25. Respondent ICE is a federal law enforcement agency within the Department of Homeland Security. ICE is responsible for the criminal and civil enforcement of the immigration laws, including the detention and removal of immigrants.

III. JURISDICTION AND VENUE

26. 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.

27. 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).

28. Venue is proper in the Northern District of Georgia pursuant to 28 U.S.C. § 2243 because this is the District Court with territorial jurisdiction over the place where the immediate custodian is located. *See, e.g., Masingene v. Martin*, No. 19-CV-24693, 2020 WL 465587 (S.D. Fla. Jan. 27, 2020). Venue in this District is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred in this District, as well as under 28 U.S.C. § 1391(e) be7v.

days; from 100,000 to 200,000 in only 11 days; and from 200,000 to 300,000 in just

States. Over 53,238 people have died as a result of COVID-19 worldwide, including at least 6,095 in the United States.⁷

32. Nationally, projections by the Centers for Disease Control and Prevention (“CDC”) indicate that over 200 million people in the United States could

United States surpassed every other country in the world in number of confirmed COVID-19 cases.¹⁰

33. 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.”¹¹ At the time, there were 64 diagnosed COVID-19 cases spread across 15 counties.¹² As of April 3, 2020, less than 30 days later, the number of reported cases had jumped to 5,831 with 143 counties now affected.¹³ The number of reported deaths from COVID-19 is 184, making Georgia the state with the eleventh highest

¹⁰ *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>

¹¹ 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>

¹² *Id.*

¹³

number of COVID-19-related deaths in the United States.¹⁴ Governor Kemp has now

when a person inhales these droplets or touches a contaminated surface and then touches their mouth, nose, or eyes.²¹ 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.²²

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

²¹ 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>

²² 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> <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>

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

38. In some people, COVID-19 causes only mild symptoms or no symptoms at all. But for others, COVID-19 can result in more serious injury, including respiratory failure, kidney failure, and death.

39.

42. Complications from COVID-19 can manifest at an alarming pace.

45. Social distancing reduces the average number of contacts between

lockdown, prohibiting gatherings of any size and ordering all residents to stay at home.²⁷ Overall, countries encompassing an estimated one third of the world’s population have enacted similar restrictions.²⁸ 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.²⁹

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

48. 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

²⁷ 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>

²⁸ Andrea Salcedo & Gina Cherehus, *Coronavirus Travel Restrictions, Across the Globe*, The New York Times (Apr. 1, 2020) <https://www.nytimes.com/article/coronavirus-travel-restrictions.html>

²⁹ Juliana Kaplan, Lauren Frias, & Morgan McFall-Johnson, *A Third of the Global Population Is On Coronavirus Lockdown*, Business Insider (last updated Apr. 2, 2020) <https://www.businessinsider.com/countries-on-lockdown-coronavirus-italy-2020-3>

higher prevalence of infectious and chronic diseases and . . . poorer health than the general population, even at younger ages.”³⁰

49. 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

sanitation and hygiene, and lack of access to adequate medical services. For these same reasons, the outbreak is harder to control.³⁴

57.

59. Nationally and internationally, governments and jail and prison staff have already recognized the threat posed by COVID-19 and released detainees. Iran,⁴⁵ Ethiopia,⁴⁶ and Texas⁴⁷ and have all begun to release people to mitigate the harm that the impending spread of COVID-19 will cause. As of March 23, 2020, Fulton County Jail in Atlanta, Georgia had already released 30 people from its custody, and Hall County Jail in Gainesville, Georgia had released 300.⁴⁸ Dougherty

(Mar. 24, 2020), <https://www.thenation.com/article/society/corona-covid-immigration-detention/>

⁴⁵ Babk Dehghanpisheh and Stephanie Nebhay, *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>

⁴⁶ 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>

⁴⁷ Dillon Collier, *Bexar County jail population down more than 500 inmates after*

County Detention Center, which is about a mile from Phoebe Putney Memorial Hospital in Albany, Georgia, has also taken steps to reduce its incarcerated population in light of the severe outbreak devastating the surrounding community.⁴⁹ On March 26, 2020, the Federal Bureau of Prisons 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.”⁵⁰

60.

C. Stewart, Folkston, and Irwin Are Primed for COVID-19 Exposure and Severe Outbreaks

i. Existing Conditions at the Georgia Detention Centers Will Further Enable COVID-19 Transmission

61. The ICE Atlanta Field Office currently detains an estimated 4,000 noncitizens at Stewart, Folkston, and Irwin.

62. The existing conditions at Stewart, Folkston, and Irwin pose a heightened public health risk for the spread of COVID-19. These conditions are too extensive to remedy in time to adequately respond to the urgent COVID-19 crisis.

63. Private contractors operate Stewart, Folkston, and Irwin. 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

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), <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>; see also U.S. Department of Homeland Security, Office of Inspector General, Office of Inspections & Evaluations, *A/lt Detention Oversight*, 16-047-ISP-ICE (Feb. 2017),

64. All three facilities house people in very close quarters, making social

reported that water from the showers is so hot that it caused hair to fall out after

67.

ii. The Georgia Detention Centers Have a Dismal Medical Care Track Record and Are Currently Ignoring Reported Flu-like Symptoms Among the Detained Population

69. Respondents have consistently failed to provide minimally adequate medical care in Stewart, Folkston, and Irwin.⁵⁹ This failure is so severe that it cannot be remedied quickly to respond to COVID-19, especially in a time when healthcare resources are in high demand.

70. At all three detention centers, critical medical care is routinely delayed—sometimes for months—or denied outright.

71. Detained people have reported to advocates at Folkston 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.

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

72.

74. When detained people at these facilities do 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.⁶¹

75. The facilities also face consistent understaffing, including “chronic shortages of almost all medical staff positions.”⁶²

76. People in these facilities with diabetes—a condition that the CDC considers a risk factor for severe COVID-19 “particularly if not well controlled”⁶³—have reported diets that are inadequate given their medical needs, consisting largely

⁶¹ 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), available at https://www.detentionwatchnetwork.org/sites/default/files/CRCL%20complaint%20-%20SDC%20-%20Oct%2011%20-%20translation_Redacted.pdf; Project South, Institute for the Elimination of Poverty & Genocide, *Letter to Members of the Georgia Delegation to the 116th United States Congress Re: Requesting an Investigation of the Stewart Detention Center* (Oct. 17, 2019) available at <https://projectsouth.org/wp-content/uploads/2019/10/10.17.2019-Letter-to-Georgia-Congressional-Delegates-.pdf>; *Concerns about ICE Detainee Treatment* at 7

⁶² Imprisoned Justice at 35; OIG Stewart Work Papers

⁶³ 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>

of potatoes, white rice, and bread.⁶⁴ 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.

77. Failing to provide for detained people’s medical needs has had deadly consequences in Georgia. Four people detained at Stewart have died since spring 2017.⁶⁵ One died from complications of pneumonia, despite being a healthy 33-year-old before entering detention.⁶⁶ According to ICE’s own records, facility staff failed to properly monitor his documented symptoms of hypertension (a condition that increases the risk of a serious case of COVID-19), failed to immediately authorize emergency medical services after a provider ordered them to do so, and failed to suspend his food service work duties after observing symptoms that could “potentially transmit[] contagious illnesses.”⁶⁷

⁶⁴ Imprisoned Justice at 22-23, 32; Shadow Prisons at 17, 42.

⁶⁵ José Olivares, *How Solitary Confinement Kills: Torture and Stunning Neglect*

78. 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. After it was determined that the treatment the staff had prescribed “may have caused harm that could have resulted in fatality,” IHSC leadership “failed to take appropriate action.”⁶⁸

79. 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.

80. 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

employee/0109 Detainee/Alien – Death (Known Cause – Terminal Illness)/Jacksonville, Duval, FL (Jan. 31, 2018), *available at* <https://projectsouth.org/wp-content/uploads/2019/06/OPR-Release-of-2019-ICLI-00033.pdf> at 12.

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. The same day, a detained man at Irwin reported to advocates that a person inside his housing unit had a worsening cough but had not been moved to another location.

81. On March 23, 2020, a man detained at Stewart reported to advocates that people detained there are afraid to report their symptoms for fear of being placed in segregation—in a 6-by-9-foot cell—where a number of detained people have died by suicide.

82. On March 26, 2020, a man detained at Stewart reported to advocates that sick people at Stewart might not ask for a medical appointment because they do not believe they will be treated appropriately. Another man detained at Stewart reported to advocates that he was experiencing a sore throat with dizziness and diarrhea, and that he had observed other people with a cough go to a medical appointment at Stewart, after which they were just returned to the general population rather than isolated. The same day, a detained person at Folkston reported to advocates that he was having flu-like symptoms and had waited for more than a day since requesting a medical appointment.

83. Preliminary data suggests that a person with COVID-19 is most infectious during the early stage of the disease.⁶⁹ Early, proactive action is necessary to prevent the virus's spread. The well-documented failure to provide adequate and timely medical care at Stewart, Folkston, and Irwin is the mark of a system that cannot possibly cope with spread of COVID-19.

iii. It Is Only a Matter of Time Before COVID-19 Reaches All Three Facilities

85. Many counties surrounding Stewart County also have confirmed cases of COVID-19.⁷¹ Lumpkin is about 50 miles from Albany, Georgia—a community in Dougherty County that has been hard hit by the pandemic. Albany is home to Phoebe Putney Memorial Hospital, Georgia’s most “severely impacted” hospital thus far in the pandemic.⁷² On March 25, 2020, Phoebe Putney reported that all three of its ICUs were filled with critically ill COVID-19 patients, after having opened a fourth ICU for patients not infected with COVID-19.⁷³ As of March 26, 2020, Albany had the fourth highest rate of confirmed COVID-19 per capita in the

⁷¹ *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 2, 2020), <https://dph.georgia.gov/covid-19-daily-status-report> – specifically Randolph

world and the third-highest number of COVID-19 deaths per capita.⁷⁴ As of April 2, 2020, Dougherty County had the second highest number of reported COVID-19 diagnoses—521—and COVID-19-related deaths—30—among all 159 counties in Georgia.⁷⁵ Lumpkin is also about 50 miles from Lee County, Alabama, which is also a COVID-19 “hot spot” in Alabama, with 91 confirmed cases as of April 2, 2020.⁷⁶

86. There were five confirmed cases of COVID-19 in Irwin County as of April 2, 2020, with confirmed cases in all bordering counties as well.⁷⁷ Ocilla is

⁷⁴ Nate Cohn, et al.,

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.

92. 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.

93. As recently as March 23, 2020, Stewart—which houses an

meaningfully address without blanket testing of every individual who enters.

However, testing shortages make such a measure impossible.

95. Once the virus appears in these facilities, it will be effectively

individuals who contract COVID-19 may require supportive care.⁸¹ 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.

99. Stewart, Folkston, and Irwin are geographically isolated from

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 critically ill patients. Regional hospitals in rural areas provide services to populations spread over a large area, often many counties.

101. Stewart is at least one hour away from two facilities where the necessary level of care could be provided, one of which—Phoebe Putney in Albany, Georgia—is already completely overwhelmed with COVID-19 patients. A hospital closer to Stewart—Southwest Georgia Regional Medical Center in Cuthbert, Georgia—has no long-term ICU beds.

102.

104. With the increasing shortage of PPE, 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 necessary resources. However, predictions in Georgia suggest all hospital resources will be used by April 22, 2020, and that the state currently has an ICU bed shortage of 755 beds and 1,075 ventilators.

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107.

Barahona Marriaga reported that the only precaution he and other kitchen workers were instructed to take was to replace plastic ware with disposable plates.

110. 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.⁸²

111. Other measures ICE claims to have taken, including temporarily suspending social visitation in detention and screening new detained immigrants and

114. Experts believe release from custody is both the most effective public health measure to curb increased transmission of COVID-19 and the most practical strategy to protect medically vulnerable people like Petitioners from further harm.

118. Mr. Thompson has diabetes, hypertension, depression, and a severe heart aneurysm that requires 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 ICE custody, Mr. Thompson has been hospitalized on at least ten occasions. His attorneys have submitted two parole requests with details about his medical problems, but ICE denied both.

119. While in ICE custody, including at Irwin, Mr. Thompson has consistently been denied adequate medical care. While detained in North Carolina, he was assaulted by ICE and detention officers, to the point that he could not swallow and that he still has nerve damage in his right hand from being handcuffed so violently. He did not receive any treatment for his hand. While detained at Folkston, he did not receive adequate care for chest pain from his aneurysm. He was transferred to several other facilities, but instead of approving necessary operations to address his aneurysm, ICE continues to only medicate his symptoms. At Irwin,

120. Mr. Thompson is critically vulnerable to COVID-19 because of his significant health problems. Upon his release he will self-quarantine at his U.S. Citizen sister's home in Snellville, Georgia.

121. **Ansumana Jammeh.** Mr. Jammeh is a 43-year-old citizen of Gambia. He has been detained by ICE at Irwin since March 2019. His Board of Immigration Appeals (BIA) appeal of his removal order is currently pending.

122. Mr. Jammeh suffers from diabetes for which he requires insulin pills and blood sugar checks, as well as a special diabetic diet that he is not provided at Irwin. He also has severe hemorrhoids that developed while in ICE custody, cause

hygiene products each week, including soap, and was told by staff that he had to clean his own room while he was bedridden from the hemorrhoids surgery.

124. Due to his significant health problems, Mr. Jammeh is critically vulnerable to COVID-19. Upon his release he plans to self-quarantine at the home

exacerbated her asthma greatly, and she has not been able to get a necessary inhaler from ICE. While detained, she also had a painful ovarian cyst, and needed to be taken to the hospital.

131. Ms. Hernandez is critically vulnerable to COVID-19 because of her asthma, and greatly concerned not only about her own health but her brother's health. Upon their release she looks forward to being reunited with him, and they will self-quarantine at their U.S. citizen aunt's home in Port Richey, Florida.

132. **Nilson Barahona Marriaga.** Mr. Barahona Marriaga is a 38-year-old citizen of Honduras. 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. Mr. Barahona Marriaga also has a U.S. Citizen father, a mother who is a Legal Permanent Resident, and two U.S. Citizen sisters.

133. Mr. Barahona Marriaga has been detained by ICE at Irwin since approximately October 2019. He is eligible for adjustment of status through a

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-19 because he knows there are detained people in quarantine at Irwin.

135. Mr. Barahona Marriaga is critically vulnerable to COVID-19 because of his significant health problems. Upon his release, he would self-quarantine in his home in Lawrenceville, Georgia, where his wife and child eagerly await his return.

136. **Shelley Dingus.** Ms. Dingus is a 52-year-old citizen of England. She has lived in the U.S. for over nine years, and has been married for 21 years to a U.S. citizen who is a U.S. Air Force veteran. She has five children, ages 17 to 28 years old. Prior to detention, she lived in Norton, Virginia and worked as a senior healthcare specialist.

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medications, or provides her with improper medications. Her requests for medical care are also often ignored or delayed, and she is not provided enough hygiene products.

138. Ms. Dingus is critically vulnerable to COVID-19 because of her age and her significant health problems. Her husband and two younger sons await her return; upon her release she plans self-quarantine at their home in Virginia.

139. **Jenner Benavides.** Jenner Benavides is a 27-year-old transgender woman and citizen of Mexico. She entered the U.S. at the age of 10 and later became a DACA recipient. 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.

140. Ms. Benavides has been in ICE custody since May 2019 and is currently detained at Folkston. 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. An immigration attorney submitted a parole request on her behalf on April 2, 2020.

141. 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.

142. 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.

143. **David Fernandez.** Mr. Fernandez is a 45-year-old citizen of Mexico. He has lived in the United States for nearly 18 years, and has worked consistently in labor jobs, including farming, construction, and roofing.

144. Mr. Fernandez has been detained at Folkston since December 2019. He is seeking asylum in the United States.

145. 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.

146. 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.

147. **Gerardo Arriaga.** Mr. Arriaga is a 24-year-old citizen of Peru. He is married to a U.S. Citizen and lived in Atlanta, Georgia before being detained. He is eligible for adjustment of status.

148. Mr. Arriaga is currently detained at Folkston. He 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.

149. 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.

150. **Aristoteles Sanchez Martinez.** Mr. Sanchez Martinez is a 47-year-old citizen of Venezuela. His family lives in Queens, New York.

151. Mr. Sanchez Martinez is detained by ICE at Stewart, and has been in ICE custody since approximately September 2018. Before Stewart, he was detained at the Houston Contract Detention Facility in Houston, Texas, and at Folkston. Mr. Sanchez Martinez's BIA appeal of his removal order was denied in November 2019, but it is unlikely that he will be removed to Venezuela.

152. Mr. Sanchez Martinez has Type II diabetes, hypertension, neuropathy, avascular necrosis, non-palpable pulses in the lower extremities, and venous insufficiency, among other conditions. His sugar levels have at times been dangerously high while in ICE custody. He is currently in a wheelchair due to his conditions. He is also currently recovering from a hernia repair surgery after which he was brought back to Stewart within a day instead of remaining in intensive care.

neglected to care for Mr. Sanchez Martinez's health—he has only received Tylenol to treat his severe pain and ICE often fails to check his sugar levels.

153. Mr. Sanchez Martinez is critically vulnerable to COVID-19 because of his significant health problems. Upon his release he plans to self-quarantine with his family in Queens with the support of a Lutheran Church in Brooklyn, New York.

154. **Michael Robinson.** Mr. Robinson is a 54-year-old citizen of Jamaica. He has six U.S. citizen children, and has family in both Florida and New York.

155. Mr. Robinson has been detained by ICE at Stewart since February 2020. He is seeking asylum, Withholding of Removal, and protection under the Convention Against Torture, based on persecution he experienced as a bisexual man.

156. Mr. Robinson suffers from hypertension, asthma, cardiac murmur, high blood pressure, and benign prostatic hyperplasia. He was recently told by a doctor that the “left side of [his] heart is swollen.” He also recently experienced an incident during which he was exposed to pepper spray, which made him cough blood. His

quarters, is not provided enough soap, and is fearful of the confirmed case of COVID-19 at the facility.

157. 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.

158. **Tomas Hernandez.** Mr. Hernandez is an 18-year-old citizen of Honduras. He fled with his older sister, Petitioner Sarai Hernandez, to seek asylum in the United States in June 2019. As noted, they were released from custody then to live with their sister in Atlanta, but re-detained on March 4, 2020 when they attended a scheduled court date only to learn the hearing had been moved to a month earlier. Although they hadn't been notified of the change, the judge ordered them deported, and Mr. Hernandez and his sister were both detained that day. Mr. Hernandez is currently detained at Stewart, while his sister is detained at Irwin.

159. Mr. Hernandez has an intellectual disability that makes it nearly impossible for him to communicate with people and understand people. He also has a speech impediment and is deaf in one ear. His sister is his legal guardian and primary caretaker, and their current detention by ICE is the first time the two have been separated.

160. Mr. Hernandez has also suffered from asthma his entire life, has ADHD, and has a history of seizures. As he is unable to communicate his needs to others, his sister believes he it is likely that he is not getting the medical care he needs.

161. Mr. Hernandez is critically vulnerable to COVID-19 because of his significant health problems as well as his intellectual disability and inability to communicate clearly with staff at the detention center without the help of his sister. Upon their release he and his sister Sarai will self-quarantine at their U.S. citizen aunt's home in Port Richey, Florida.

162. **Peter Owusu.** Mr. Owusu is a 40-year-old citizen of Ghana. He is seeking asylum, Withholding of Removal, and protection under the Convention Against Torture based on persecution he experienced in Ghana.

163. 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.

164. 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.

165. As discussed above, 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.

166. 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

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.*

168. 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*

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).

171. “[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*

available to a convicted prisoner.”); *see also Hale v. Tallapoosa County*, 50 F. 3d 1579, 1582 n.4 (11th Cir. 1995).

173. 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).

174. 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).

175. 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).

176. “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.

177. 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.”)

178. 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).

179. 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.

180. 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,

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.

181. 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).

182. 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)).

183. 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 Amer v. Obama*, 742 F.3d 1023, 1031-38 (D.C. Cir. 2014) (surveying history, purpose and Supreme Court jurisprudence and “

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)

185. 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.

186. Respondents' continued detention of Petitioners during the COVID-19 pandemic is excessive in relation to any legitimate governmental purpose. Less harsh

acts with deliberate indifference when it knowingly exposes an individual in its custody to a substantial risk of serious harm.

188. 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.

189.

194. 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.