

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 MARITZA DEL CARMEN VALLE;

Case No. _____

5 FERNANDO FERNANDEZ SEGURA,

Agency File Nos. A 203 601 133
A 090 076 984

6 *Petitioners,*

7
8 v.

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241; REQUEST
FOR OSC AND FOR ORDER
DIRECTING SERVICE**

9
10 RANDY TATE, *in his official*
11 *capacity as Warden, Joe Corley Detention*
12 *Facility, The GEO Group, Inc.;*

13 PATRICK CONTRERAS, *in his official*
14 *capacity as Houston Field Office Director,*
15 *United States Department of Homeland*
Security;

16 CHAD WOLF, *in his official*
17 *capacity as Acting Secretary, United States*
18 *Department of Homeland Security*

19 WILLIAM P. BARR, *in his official*
20 *capacity as Attorney General, U.S.*
21 *Department of Justice*

22 *Respondents*

23
24 **INTRODUCTION**

25 **1.** This is a petition for a Writ of Habeas Corpus filed on behalf of
26 Petitioners Maritza Del Carmen Valle (hereinafter Ms. Valle) and Fernando
27 Fernandez Segura (hereinafter Mr. Fernandez) to remedy their unlawful detention.
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1 Both Petitioners suffer from medical conditions that make them uniquely vulnerable
2 to COVID-19. They have also been denied access to necessary medication, further
3 compromising their immune systems. Petitioners are currently detained in Joe
4 Corley detention Facility in Conroe, Texas where they are both currently detained
5 in DHS custody in a facility operated by GEO Group Inc.
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8 **2.** Petitioner Maritza Del Carmen Valle (hereinafter “Petitioner”), a
9 native and citizen of El Salvador, entered without inspection on May 26th near or
10 around Otay, California. Petitioner indicated her intent to apply for asylum and was
11 then unlawfully placed into the “Migrant Protection Protocols” (MPP) or “Remain
12 in Mexico Program.” Petitioner had her Merits hearing on October 11th, 2019 where
13 the Immigration Judge denied her application for Asylum, withholding of removal
14 and protection under the Convention Against Torture. Petitioner was then
15 transferred to Otay Mesa Detention Center pending appeal. In this time, Petitioner
16 retained the undersigned counsel and the appeal has been filed. Petitioner has since
17 been transferred to the Joe Corley Detention Facility in Conroe, Texas where she
18 currently is detained in DHS custody in a facility operated by GEO Group Inc.
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22 There is no hearing pending in the instant case.

23 **3.** Petitioner Fernando Fernandez Segura (Hereinafter Mr. Fernandez)
24 entered the United States lawfully in 1987 and obtained his green card in 1990. Mr.
25 Fernandez has been with his wife Ms. Juliet Vasquez Saldana for 32 years and
26 together they have 2 U.S. Citizen children. Mr. Fernandez has lived in the same
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1 home for two decades. Driven by a series of business misfortunes and the needs of
2 his family, Mr. Fernandez attempted to and was caught by CBP trafficking
3 marijuana across the Border. Mr. Fernandez pled guilty to one count of importation
4 of controlled substances in violation of 8 USC §§ 952, 960, in exchange for
5 cooperating with the investigation. After completing his sentence, petitioner was
6 transferred to DHS custody and has remained detained since then. Mr. Fernandez
7 was issued an NTA on November 14th, 2018 and indicated his intention to apply for
8 withholding of removal and relief under CAT. On August 27th, the Immigration
9 Judge (IJ) denied his request for relief and on February 12th, the BIA dismissed Mr.
10 Fernandez's appeal. On February 12th, 2020, Mr. Fernandez filed a Petition for
11 Review with the 9th Circuit regarding the Board's Decision denying his appeal. On
12 February 6th, 2020 Mr. Fernandez filed a motion for a stay of removal.
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17 **4.** The Petitioners bring this habeas petition under the Suspension
18 Clause, U.S. Const. art. I, § 9, cl. 2, to challenge their continued prolonged unlawful
19 detention by Respondents as well as their continued detention during the COVID-
20 19 pandemic.
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22 **5.** Petitioners' constitutional rights have been violated on account of acts
23 taken by the Respondents in disregard of substantive and procedural due process
24 rights mandated by the fifth amendment. In addition to being detained for an
25 unconstitutionally prolonged period of time --11 months in the case of Ms. Valle
26 and 17 months for Mr. Fernandez -- the Petitioner also moves the court to issue an
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1 emergency order against the Respondents ordering their immediate release as both
2 are medically vulnerable to the COVID-19 infection.

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4 **6.** While detained, Ms. Valle has been deprived of the treatment needed
5 to address her stress induced facial paralysis. Recently, and in Respondent's
6 custody, Ms. Valle had the flu and a fever. She was not allowed any medication for
7 her fever. The psychological stress of detention compounded with her inability to
8 access the proper treatment for her conditions makes her immune system heavily
9 compromised. Were Ms. Valle to contract COVID-19, she would be in grave danger
10 of dying before her proceedings have reached a conclusion.

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13 **7.** Mr. Fernandez suffers from diabetes, depression, and herniated disks.
14 He is also 55 years old. Mr. Fernandez has been on disability since 2003 due to a
15 2001 work related accident. Mr. Fernandez has been taking prescribed medication
16 to help him with the herniated disks and depression, but both have been made
17 inaccessible during his 17-month detention, making him critically vulnerable to the
18 COVID-19 pandemic.

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21 **8.** Respondents' continued detention of the Petitioners under unsafe
22 conditions in violation of public health recommendations is unconstitutional. The
23 Joe Corley Detention Facility has had 12 confirmed cases as of May 5th, 2020¹,
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27 ¹ <https://www.houstonchronicle.com/neighborhood/moco/news/article/Conroe-detention-facility-reports-14-COVID-19-15248900.php>
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1 putting the lives of Petitioners squarely at risk of contraction and death. The
2 petitioners have both already been made medically vulnerable through Respondents'
3 lack of adequate medical care and are now being housed in inherently contagious
4 quarters, exposed to the virus. This high probability of contraction while detained
5 for their removal purposes is in clear violation of Respondents' Rights to Due
6 Process.
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9 **9.** On March 11, 2020, the World Health Organization declared the
10 global outbreak of COVID-19, the disease caused by a novel coronavirus, a
11 pandemic. Since then, in the span a little more than a month, confirmed cases of the
12 disease in the United States surged from just over a thousand to over a million as of
13 April 30, 2020. Over 60,000 of those people have died.
14

15 **10.** As of April 14, 2020, the first immigrant detainee in a Texas
16 detention facility tested positive for COVID-19, even though now there are
17 widespread reports of the Virus in South Texas Detention Facility, El Paso
18 Processing Center and the Joe Corley Detention center in question.^{2, 3} Perhaps
19 equally concerning is the mismanagement by ICE and its contractors in handling
20 the Virus, as ICE has been caught underreporting the virus' effect on its
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25 ² <https://www.expressnews.com/news/us-world/border-mexico/article/Immigrants-in-detention-near-San-Antonio-fear-15241307.php>

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27 ³ <https://kfoxtv.com/news/local/eight-detainees-at-el-paso-processing-center-in-ice-custody-test-positive-for-covid-19>

1 employees.⁴

2 **11.** This mismanagement contributes to public health considerations that
3 extend beyond the walls of the Corley Detention Facility. In Pearsall Texas, every
4 single case of Corona that has reached the citizens ICE and DHS are sworn to
5 protect, stemmed from the detention center.⁵ These risks are mirrored by the
6 Stewart Detention Center located in Lumpkin, Georgia, where more than 40
7 employees have tested positive for COVID-19⁶.

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10 **12.** Otay Mesa Detention Center in San Diego serves a chilling warning
11 to anyone entrusted with the safety and well-being of detainees. After leading the
12 nation in COVID-19 cases, the Facility recorded its first death on May 6th, 2020.
13 This rapid spread of the virus and subsequent death of a detainee within these
14 facilities demonstrates two things: 1. Respondents are not properly implementing
15 the CDC's guidelines; and/or 2. the CDC's guidelines are insufficient to keep
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20 ⁴ <https://www.texasobserver.org/ice-immigrant-detention-centers-coronavirus-positive/>

21 ⁵ <https://www.ksat.com/news/local/2020/05/05/every-positive-covid-19-case-in-pearsall-traced-to-immigration-detention-center-officials-say/>

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23 ⁶ https://www.wabe.org/more-than-40-employees-at-ga-immigrant-detention-center-test-positive-for-covid-19/?fbclid=IwAR1QIxSLiuLhbleZDaX0H5uPCoXXPW_mqPrfUykpANbf-3c4nToaOBBU8E8

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25 ⁷ <https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center;>
26 https://www.washingtonpost.com/national/coronavirus-ice-detainee-death/2020/05/06/3be3852e-8ff2-11ea-9e23-6914ee410a5f_story.html

1 detained people safe and healthy during a contagious deadly viral pandemic.

2 **13.** There is no specific treatment, vaccine, or cure for COVID-19, and
3 no one is immune. The only way to prevent the chance of serious illness or death
4 from COVID-19 is to practice scrupulous hygiene and social distancing – two
5 things which public health experts maintain are not possible within the detained
6 setting. The United States now has the most confirmed COVID-19 cases in the
7 world, even though access to testing remains limited.
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10 **14.** The COVID-19 pandemic has fundamentally changed most aspects
11 of everyday life, with public and private institutions dramatically altering daily
12 operations. In contrast, ICE has failed to meaningfully respond to protect the health
13 and safety of people in its custody.
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15 **15.** COVID-19 is a highly contagious virus causing respiratory distress,
16 fever and potentially death. As stated above, the COVID-19 pandemic has
17 infiltrated the detention centers – with respect to the facilities it has not yet
18 infiltrated, given the nature and operation of these facilities and the woefully
19 inadequate precautions of ICE, it is only a matter of time before all detention
20 facilities are overtaken by this virus.
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23 **16.** Because the CDC-recommended “social distancing” practice is
24 inherently impossible in the detention centers – and because COVID-19 has proven
25 so incredibly contagious – COVID-19 will imminently spread like wildfire within
26 the detention centers resulting in varying levels of illness, including many deaths.
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1 **17.** There is no vaccine or cure for COVID-19 and it can be deadly.
2 COVID-19 is highly contagious and has a mortality rate ten times greater than
3 influenza. These factors, combined with the circumstances under which
4 Respondents are continuing to detain Petitioners (namely, in close quarters without
5 providing masks or gloves or hand sanitizer), place the Petitioners' health and safety
6 at risk and mitigate in favor of the Petitioners immediate release.
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9 **18.** Courts across the state and country are ordering the release of people
10 in civil immigration custody in recognition of the threat posed by COVID-19. E.g.,
11 *Dada v. Witte*, No. 1:20-cv-00458-DDD-JMP, ECF No. 17 (W.D. La. Apr. 30,
12 2020); *Alcantara v. Achambeault et. Al*, No. 3:20-cv-00756-DMS-AHG, ECF No.
13 38 (S.D. Ca, Apr. 30, 2020); *Gayle v. Michael Meade et al*, No. 1:20-cv-21553-
14 MGC ECF No. 76 (S.D. Fl Apr. 30 2020); *Coreas v. Bounds et al.*, No. 8:20-cv-
15 00780-TDC, ECF No. 87 (Md, Apr. 30 2020);. *MALAM V. ADDUCCI*, NO. 2:20-
16 CV-10829-JEL-APP. Dkt. No. 23 (E.D. Mich. Apr. 6, 2020); *Xochihua-Jaimes v.*
17 *Barr*, No. 18-71460, 2020 WL 1429877 (9th Cir. Mar. 24, 2020); *Castillo v. Barr*,
18 No. CV2000605TJHAFMX, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020); *Fraihat*
19 *v. Wolf*, No. ED-CV2000590-TJH, ECF No. 18 (C.D. Cal. Mar. 30, 2020);
20 *Hernandez v. Wolf*, No. 20-cv-00617, ECF No. 17 (C.D. Cal. Apr. 1, 2020);
21 *Velasquez v. Wolf*, No. 20-cv-00627, ECF No. 32 (C.D. Cal. Apr. 2, 2020); *Basank*
22 *v. Decker*, No. 20-cv-02518, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Thakker*
23 *v. Doll*, No. 20-cv-00480, ECF No. 47 (M.D. Pa. Mar. 31, 2020); *Calderon Jimenez*
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1 v. *Wolf*, No. 18-cv-10225, ECF No. 507 (D. Mass. Mar. 26, 2020). These orders
2 recognize that “[t]he risk of contracting COVID-19 in tightly-confined spaces,
3 especially jails, is now exceedingly obvious” and that “public health authorities
4 predict [COVID-19] will especially impact immigration detention centers.” *Basank*,
5 2020 WL 1481503, at *6; *Xochihua-Jaimes*, 2020 WL 1429877, at *1.
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8 **19.** Activists and public health experts all across the country, including in
9 Conroe, are calling for the release of detainees in immigrant detention centers. Ranit
10 Mishori, senior medical advisor for Physician for Human Rights, said people simply
11 cannot protect themselves in detention centers. “The only defenses that we have
12 against coronavirus — social distancing, meticulous hygiene practices, self-
13 quarantine - are not possible in immigration detention centers.” Releasing detainees
14 during a global pandemic “will save the lives of immigrants, of facility staff, of
15 vendors, their families and the broader public in the surrounding communities,”
16 Mishori said.⁸
17

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19 **20.** Petitioners have retained the undersigned counsel and respectfully
20 submit they will demonstrate constitutional violations of law by Respondents by
21 way of this petition.
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23 CUSTODY

24 **21.** Petitioners are currently in the physical custody of Respondents,
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27 ⁸ <https://www.keranews.org/post/el-paso-leaders-call-release-nonviolent-detainees>
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1 namely, specifically in the custody of ICE. Petitioner is detained at the Joe Corley
2 Detention Facility in Conroe, Texas. This facility is run by The GEO Group, Inc.
3 which contracts with Respondents to do so. Petitioner is under the direct control
4 and custody of Respondents and Respondents' agents.
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7 **PARTIES**
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9 **22.** Petitioner Maritza Del Carmen Valle (hereinafter "Ms. Valle"), a
10 native and citizen of El Salvador, entered without inspection on May 26th, 2019 near
11 or around Otay, California. Petitioner is currently in the physical and legal custody
12 of Respondents at the Joe Corley Detention Facility in Conroe, Texas.
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14 **23.** Petitioner Fernando Fernandez Segura (hereinafter Mr. Fernandez), a
15 native and citizen of Mexico, first entered the United States lawfully in 1987. Mr.
16 Fernandez has been in DHS custody since November of 2018. Mr. Fernandez was
17 ordered removed on August 27th, 2019. He has a pending stay of removal with the
18 9th Circuit. Petitioner is currently in the physical and legal custody of Respondents
19 at the Joe Corley Detention Facility in Conroe, Texas.
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22 **24.** Respondent WILLIAM BARR is sued in his official capacity as the
23 Attorney General of the United States. In that capacity, he has responsibility for the
24 administration and enforcement of the immigration laws pursuant to 8 U.S.C. §
25 1103 and is a legal custodian of Petitioner.
26

27 **25.** Respondent Chad Wolf is the Acting Secretary of DHS, an agency of
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1 the United States with several components responsible for enforcing United States
2 immigration laws pursuant to 8 U.S.C. § 1103. Respondent Wolf is a legal
3 custodian of Petitioner. He is sued in his official capacity.
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5 **26.** Respondent Patrick Contreras is the Houston Field Office Director
6 for ICE Enforcement and Removal Operations (“ERO”), a federal law enforcement
7 agency within the U.S. Department of Homeland Security (“DHS”). The Houston
8 Field Office is responsible for, among other things, carrying out ICE’s immigration
9 detention operations at the Joe Corley Detention Facility. Respondent Patrick
10 Contreras is a legal custodian of Petitioner. He is sued in his official capacity.
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13 **27.** Respondent Randy Tate is the Warden of the Joe Corley Detention
14 Facility. Respondent Randy Tate is the immediate physical custodian of Petitioner.
15 He is sued in his official capacity.
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17 **JURISDICTION**

18 **28.** This action arises under the United States Constitution and the
19 Immigration and Nationality Act of 1952, 8 U.S.C. § 1101 *et seq.* (“INA”). This
20 Court has jurisdiction over this petition for writ of habeas corpus under 28 U.S.C.
21 § 2241 (habeas corpus, which provides that “[w]rits of habeas corpus may be
22 granted by . . . the district courts.” This Court also has jurisdiction under 28 U.S.C.
23 § 1331 because this is a “civil action arising under the . . . laws . . . of the United
24 States.” (federal question). Furthermore, this Court has jurisdiction under 28 U.S.C.
25 § 1361 (mandamus); art. I, § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”);
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1 U.S. Const. amend. V (the Due Process Clause of the U.S. Constitution); and
2 jurisdiction over declaratory judgment, brought pursuant to 28 U.S.C. §§ 2201-02.
3
4 Petitioner is presently in custody under color of the authority of the United States,
5 and such custody is in violation of the Constitution, laws, or treaties of the United
6 States. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). This Court may grant relief
7 pursuant to 28 U.S.C. §§ 2201-02, 28 U.S.C. § 2241, and the All Writs Act, 28
8 U.S.C. § 1651.
9

10 VENUE

11 **29.** Venue in this District is proper under 28 U.S.C. § 1391(e)(2) because
12 the Officer in Charge who makes custody decisions in Petitioner’s case is located
13 within this judicial district and Petitioner is detained within this judicial district.
14 Moreover, venue is proper under § 1391(b)(2) because a substantial part of the
15 events giving rise to these claims occurred in this District.
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18 EXHAUSTION OF ADMINISTRATIVE REMEDIES

19 **30.** Exceptions to the exhaustion requirement are appropriate where the
20 available administrative remedies either are unavailable or wholly inappropriate to
21 the relief sought, or where the attempt to exhaust such remedies would itself be a
22 patently futile course of action." *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir.
23 2018); (quoting *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curium)); see
24 also *Alexis v. Sessions*, CIVIL ACTION No. H-18-1923, at *10 (S.D. Tex. Nov. 13,
25 2018). Furthermore, an action is futile if the BIA’s view is “already set” or the
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1 outcome is “very likely.” *El Rescate Legal Servs. , Inc. V. Exec Office of*
2 *Immigration Review*, 959 F.2d 742, 74748 (9th Cir. 1991) (holding petitioner need
3 no exhaust administrative remedies to challenge a translation policy which the BIA
4 had announced and affirmed).

6 **31.** Ms. Valle has been in detention since May 26th, 2019, more than 11
7 months. On October 11th, 2019 her merits claim was denied, and she was transferred
8 from detention pursuant to MPP to Otay Mesa Detention Center. A timely appeal
9 was filed with the BIA an Immigration Judge. On April 3rd, an Immigration Judge
10 conducted an initial custody redetermination hearing pursuant to section 236 (a) of
11 the Immigration and Nationality act (INA).
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14 **32.** Despite Ms. Valle’s clear and convincing evidence proving her
15 identity and that she was not a danger to the community, the Immigration judge
16 denied bond on April 9th, 2020. Remedies available to petitioner are in the form of
17 her BIA appeals and a possible redetermination hearing pursuant to 8 C.F.R. §
18 1003.19(e). Given the outbreak of the COVID-19, both those forms of remedy are
19 subject to delay so severe, that the relief offered by the Government is futile in the
20 instant case.
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23 **33.** The administrative remedy held out by the government in the case of
24 Petitioner Ms. Valle – i.e. a successful appeal of either case, of a subsequent
25 redetermination hearing pursuant to 8 C.F.R. § 1003.19(e) – is illusory. In light of
26 the global problems presented by COVID-19, the idea that Petitioner will receive a
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1 timely response to her bond appeal filing is unlikely, whereas the possibility of
2 contracting COVID-19 and suffering undue harm is extremely likely. Per the
3 guidelines set forth in 8 C.F.R. § 1003.19(e), Petitioner would have to prove that
4 her circumstances had materially changed. Because the basis of the appeal is the
5 legal standard the Immigration Judge adhered to, it is very likely that Petitioner
6 would be denied bond. Thus, because of the wholesale delays in BIA procedure and
7 the likelihood of a subsequent bond denial, the administrative remedies proffered
8 by the government are illusory and the requirement should be waived.
9

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11 **34.** While the Petitioner can submit a parole request to Respondent ICE,
12 there is no mechanism – other than the instant habeas petition – ensuring that the
13 Petitioner’s urgent request will be granted or even responded to.
14

15 **35.** Mr. Fernandez has been in detention since November 14th, 2018, over
16 17 months at the time of filing. On August 27th, 2018, the Immigration judge (IJ)
17 denied his request for relief under withholding of removal and CAT. Mr. Fernandez
18 filed from EOIR-26 and supporting brief indicating his intent to appeal the decision
19 of the IJ. On February 12th, 2020 the Board dismissed the appeal. There is currently
20 a Petition for Review pending and motion for a Stay of Removal pending with the
21 9th Circuit
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24 **36.** As an alien seeking admission at a designated port of entry is
25 classified as an “arriving alien” pursuant to 8 C.F.R. 1001.1(q), immigration judges
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1 are divested from jurisdiction relating to Petitioner’s custody redetermination.⁹ See
2 *Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1998). As such, the sole administrative
3 remedy offered by the government—i.e., being released from custody pursuant to a
4 parole request—is illusory and thus exhaustion is not necessary. “Exceptions to the
5 exhaustion requirement are appropriate where the available administrative remedies
6 either are unavailable or wholly inappropriate to the relief sought, or where the
7 attempt to exhaust such remedies would itself be a patently futile course of action.”
8 *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018); (quoting *Fuller v. Rich*, 11
9 F.3d 61, 62 (5th Cir. 1994) (per curium)); see also *Alexis v. Sessions*, CIVIL
10 ACTION No. H-18-1923, at *10 (S.D. Tex. Nov. 13, 2018).

14 **37.** Petitioner did, however, request parole. If a noncitizen establishes a
15 credible fear, “[p]arole . . . may be considered . . . in accordance with section
16 212(d)(5) of the Act and [8 C.F.R.] § 212.5.” 8 C.F.R. § 208.30(f). Noncitizens
17 detained for further consideration of an asylum claim may generally be “parole[d]
18 into the United States . . . for urgent humanitarian reasons or significant public
19 benefit.” INA §§ 212(d)(5)(A), 235(b)(1)(B)(ii), and § 235(b)(1)(B)(iii)(IV).
20 Despite Mr. Fernandez’s extensive family ties to the United States, his ownership
21 of property, his dying wife and father and extensive and documented medical
22 conditions, Mr. Fernandez’s parole request, his parole request continues to sit on
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28 ⁹ Nevertheless, Petitioner’s prior immigration counsel did file a “bond” motion with the El Paso
Immigration Court, however, it was denied due to the Court’s lack of jurisdiction. *See* Exhibit B

1 her home country of El Salvador, and her intention to apply for asylum relief. In
2 the normal course of action DHS would subject Ms. Valle to INA section 235
3 expedited removal proceedings. Since she had expressed a fear of persecution, Ms.
4 Valle would be referred to a trained Asylum Officer within U.S. Citizenship and
5 Immigration Services (USCIS), as required by federal laws.
6

7
8 **43.** Instead, bypassing the entirety of this long-established process, DHS
9 chose to place Ms. Valle in ordinary “Section 240(a)” removal proceedings in front
10 of an immigration judge. Defendants then immediately returned Ms. Valle to
11 Mexico to await her future immigration court hearings under the “Migrant
12 Protection Protocols” (MPP) or “remain in Mexico” program. Ms. Valle remained
13 detained in Mexico pursuant to 8 C.F.R.
14

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16 **44.** On October 11th, 2019, the Immigration Judge conducted Ms. Valle’s
17 individual merits hearing, in which Ms. Valle was not represented by counsel, and
18 after the Petitioner had been transported from Tijuana, Mexico, at the San Ysidro
19 Port of Entry to the aforementioned hearing in San Diego. Following Petitioner’s
20 testimony, the Immigration Judge denied her application of asylum, withholding of
21 removal and protection under the Convention Against Torture.
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24 **45.** Ms. Valle was detained in Otay Mesa Detention Center immediately
25 following the afore-mentioned decision by the Immigration Judge. Ms. Valle was
26 then transferred to Joe Corley Detention Center in Conroe, Texas where she has
27 remained until present time.
28

1 **46.** Ms. Valle filed her notice of appeal of the Immigration Judge’s
2 decision in her merits hearing with the Board on November 12, 2019. Her brief was
3 submitted January 8th, 2020 by undersigned counsel.
4

5 **47.** Counsel submitted a Motion for Custody Redetermination on March
6 23rd, 2020. The hearing was set to April 3rd, 2020. In this hearing, Ms. Valle was
7 denied bond on the sole basis that she has “lost her case.” Ms. Valle was denied
8 bond despite the lack of clear and convincing evidence that she is a flight risk, or a
9 danger to the community and in spite of the burden of proof being on the DHS to
10 prove those factors.
11

12 **48.** In response to the above-referenced custody redetermination denial,
13 Counsel filed an appeal on this decision on April 28th, 2020. This appeal was filed
14 on the grounds that the IJ ignored BIA precedent and that his findings were based
15 solely on the fact that Petitioner had lost her asylum claim. Further grounds included
16 this misplacement of the burden of proof on Ms. Valle.
17

18 **49.** Ms. Valle has been in detention for over 11 months (e.g. since May,
19 2020th 2020).
20

21 **50.** Ms. Valle has a well-founded fear of future persecution by the
22 criminal organizations of El Salvador on account of her religious convictions and
23 membership in the particular social group of religious activists teaching young
24 children religion.
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26 **51.** The persecution must be inflicted under government sanction,
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1 including persecution by groups "the government is unable or unwilling to control."
2 *See Adebisi v. INS*, 952 F.2d 910, 914 (5th Cir. 1992) (quotation marks omitted).
3
4 Here, the Petitioner was persecuted – via physical attacks and threats on her life –
5 by governmental actors on account of her religion and membership in particular
6 social groups.

7
8 **52.** As such, Ms. Valle has a well-founded fear of future persecution due
9 to more than one protected ground. Relocation is also impossible for the Ms. Valle
10 and the burden would be on Respondents to show she can both safety and
11 reasonable relocated. *Lopez-Gomez v. Ashcroft*, 263 F.3d 442, 445 (5th Cir. 2001)
12 (“We have held that “[w]hen a party seeking asylum demonstrates that a national
13 government is the persecutor, the burden should fall upon the INS to show that this
14 government's prospective actions are truly limited to a clearly delineated and
15 limited locality and situation, so that the applicant for asylum therefore need not
16 fear a likelihood of persecution elsewhere in the nation.”)

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18
19 **53.** As stated above, Ms. Valle’s request for custody redetermination was
20 denied by Immigration Judge on April 9th despite the fact that she has no criminal
21 record, is an asylee escaping criminal persecution on account of her Christian faith,
22 has a sponsor here in the U.S. ready and willing to sponsor her through the pendency
23 of her removal proceedings, and that the DHS attorney argued nothing but that Ms.
24 Valle “lost her case.”
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27 **54.** Ms. Valle has suffered stress-facial-paralysis and has been deprived
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1 of the medication and vitamins needed to address her condition. She caught the flu
2 while subjected to MPP and has already had a fever while in the Corley Detention
3 Facility. Her condition is tentative at best and psychological stress weakens her
4 immune system and her ability to fight COVID-19.
5

6 **55.** Mr. Fernandez is a 55-year-old citizen and national of Mexico. He
7 seeks relief from removal for withholding of removal and under the Convention
8 Against Torture.
9

10 **56.** Mr. Fernandez first entered the United States lawfully in 1987 and
11 obtained his green card in 1990. He and Ms. Juliet Vasquez Saldana have been
12 together for roughly 32 years. Together they have two U.S. citizen children,
13 Fernando Fernandez Jr., 29 years old, and Juliet Fernandez Vasquez, 24 years old.
14 Prior to being detained, Mr. Fernandez and his wife shared their home with their
15 29-year-old son and 24-year-old daughter, her husband and their child. Mr.
16 Fernandez's identity is shaped in part by his core value of being a provider for his
17 family. Indeed, he fell into a depression after going on disability in 2003 as a pillar
18 of his identity, being his family's provider, was usurped by his medical condition.
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22 **57.** Mr. Fernandez's desire to ensure that his children had a form of
23 income that was more reliable than what their father could provide propelled him
24 to invest in and start a trucking business. The business plan did not go as originally
25 planned and the debts soon started to pile on. This eventually took a toll on Mr.
26 Fernandez's well-being, which was exacerbated by the truck breaking down and
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1 requiring additional funds to repair it so it could be operational.

2 **58.** Mr. Fernandez became desperate for money, not just to pay his debts,
3 but more importantly to get the truck in an operational state so he could make money
4 to start paying those same debts. The business and the truck were losing money.
5 The truck needed repairs and a trailer was needed to complete jobs, which equated
6 to more money. After shouldering the responsibilities of the business and debts
7 alone, his son's failure to follow through was the last straw for Mr. Fernandez. Mr.
8 Fernandez believed that if he could rally enough money, then he could repair the
9 truck, obtain the trailer he needed and get the trucking business off the ground.
10

11 **59.** In desperation he reached out to a long-time friend, Jonathan. In his
12 desperation to make Fernandez Son Transportation, LLC, work, Mr. Fernandez
13 turned to the only person whom he had not yet borrowed money from: Jonathan.
14 After a telephone conversation, Mr. Fernandez agreed to meet Jonathan in Mexicali,
15 where Jonathan would take Mr. Fernandez 's truck, load it with the marijuana and
16 return it to Mr. Fernandez. Mr. Fernandez then attempted to reenter the United
17 States and was caught. Mr. Fernandez was apprehended by Customs and Border
18 Protection on or about November 27, 2017, and on May 17, 2018, he pled guilty to
19 one count of importation of controlled substance in violation of 8 USC §§ 952, 960,
20 in exchange for providing the U.S. Attorney's Office information, including
21 Jonathan's full name, his date of birth, telephone number and the details of their
22 arrangement.
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1 **60.** Mr. Fernandez failed to successfully smuggle the marijuana he agreed
2 to smuggle, and he became a U.S. government informant against Jonathan. Mr.
3 Fernandez 's fears are based on the fact that Jonathan has known Mr. Fernandez and
4 his family for years, as the two go back to high school. Jonathan knows where Mr.
5 Fernandez lives. Unlike Mr. Fernandez, Jonathan has a lot more to lose, his U.S.
6 citizenship and entire drug trafficking operation. Jonathan is a drug trafficking,
7 naturalized U.S. citizen. Mr. Fernandez knows that Jonathan has been smuggling
8 drugs into the United States since he was about 20 years old. Mr. Fernandez 's
9 knowledge and cooperation with the US Government against Jonathan could
10 essentially jeopardize his marijuana operation and his legal status in the US.
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14 **61.** Mr. Fernandez 's fears became true when his sister, Carolina,
15 observed a strange vehicle outside his home on multiple occasions. It was the fact
16 that he cooperated with the US authorities, snitched on Jonathan, followed by the
17 surveillance at his home that gave rise to Mr. Fernandez fear of returning to Mexico.
18

19 **62.** After completing his sentence, Mr. Fernandez was transferred to the
20 Department of Homeland Security custody around November 2018. He remains
21 detained since then. On November 14, 2018, Mr. Fernandez was issued a Notice to
22 Appear ("NTA") charging him inadmissible pursuant 8 USC 1182(a)(2)(C) (illicit
23 trafficker of a controlled substance) 8 USC 1182(a)(2)(A)(i)(II) (convicted of a
24 controlled substance offense) At the January 14, 2019 master calendar hearing, Mr.
25 Fernandez, through counsel, admitted the allegations, conceded removability, and
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1 indicated his intention to apply for withholding of removal and relief under CAT.
2 On August 27, 2019, after two hearings, the Immigration Judge ("IJ") denied his
3 request for relief pursuant to 8 USC § 1231(b)(3) finding that Mr. Fernandez was
4 not eligible for such relief and he failed to meet his burden of demonstrating that he
5 will be tortured to merit relief under CAT pursuant to 8 CFR § 1208.16(c).
6

7
8 **63.** Mr. Fernandez timely filed Form EOIR-26 to appeal the IJ's decision,
9 and filed a brief in support of his appeal. On February 12, 2020, the Board dismissed
10 the appeal. On February 12, 2020, Mr. Fernandez timely filed a Petition for Review
11 to this Court regarding the Board's decision denying his appeal.
12

13 **64.** Mr. Fernandez has a well-founded fear of future persecution by the
14 criminal organizations of Mexico, specifically his friend Johnathan who has already
15 made his threatening presence known.
16

17 **65.** The persecution must be inflicted under government sanction,
18 including persecution by groups "the government is unable or unwilling to control."
19 *See Adebisi v. INS*, 952 F.2d 910, 914 (5th Cir. 1992) (quotation marks omitted).
20 Here, Mr. Fernandez's fear of future persecution is well founded as the Mexican
21 Government's impotency in stopping these criminals is well documented. The
22 administration has even considered designating Mexican drug cartels as Foreign
23 Terrorist Organizations (FTOs).
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26 **66.** As such, the Mr. Fernandez has a well-founded fear of future
27 persecution. Relocation is also impossible for the Mr. Fernandez and the burden
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1 would be on Respondents to show he can both safety and reasonable relocated.
2 *Lopez-Gomez v. Ashcroft*, 263 F.3d 442, 445 (5th Cir. 2001) (“We have held that
3 ‘[w]hen a party seeking asylum demonstrates that a national government is the
4 persecutor, the burden should fall upon the INS to show that this government's
5 prospective actions are truly limited to a clearly delineated and limited locality and
6 situation, so that the applicant for asylum therefore need not fear a likelihood of
7 persecution elsewhere in the nation.’”)

10 **67.** The outbreak of COVID-19, a disease caused by a novel coronavirus,
11 has reached pandemic status. Because COVID-19 is easily transmitted, and because
12 testing is increasingly available, the number of confirmed cases is expected to grow
13 exponentially in the near term. The death toll of COVID-19 in U.S. is growing
14 exponentially. The need for care, including intensive care, and the likelihood of
15 death, is about ten times higher from COVID-19 infection than from influenza.

18 **68.** On May 6th, 2020 the urgent warnings of immigration lawyers, human
19 rights activists, health care professionals and the detainees themselves came to a
20 terminal head as Carlos Ernesto Escobar Mejia died in ICE custody. Mr. Escobar
21 Mejia suffered from diabetes and was on a hunger strike protesting the conditions
22 at Otay Mesa Detention Facility. He was vulnerable as are the Petitioners in the
23 instant case, to the worst outcomes of COVID-19.

26 **69.** The death of Mr. Escobar Mejia was at the same time preventable and
27 inevitable. Mr. Escobar Mejia had a bond hearing just weeks before his death in
28

1 which the IJ declared he needed more time to asses Mr. Escobar Mejia’s flight risk.
2 Because of that decision, Mr. Escobar Mejia languished in detention, his status the
3 only thing standing in the way of his ability to live¹⁰.
4

5 **70.** All human beings share a risk of contracting, and upon contraction,
6 transmitting the virus that causes COVID-19. Any adult who contracts the virus
7 may experience life-threatening symptoms.
8

9 **71.** For those who contract COVID-19 and survive, the virus can severely
10 damage lung tissue, requiring extensive rehabilitation, and even a permanent loss
11 of respiratory capacity. COVID-19 may also target the heart muscle, causing
12 myocarditis, or inflammation of the heart muscle.
13

14 **72.** People of all ages and medical backgrounds have had symptoms
15 including vomiting, severe diarrhea, relentless shivering, and suffocating shortness
16 of breath. Emerging evidence suggests that COVID-19 can also trigger an
17 overresponse of the immune system, further damaging tissues possibly resulting in
18 widespread damage to other organs.
19

20 **73.** People can also spread COVID-19 but be asymptomatic. Most people
21 in high risk categories who contract the virus will need advanced support. This level
22 of supportive care requires highly specialized equipment that is in limited supply,
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27 ¹⁰ [https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-](https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center)
28 [dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center](https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center)

1 and an entire team of care providers, including 1:1 or 1:2 nurse to patient ratios,
2 respiratory therapists, and intensive care physicians. This level of support is quickly
3 overwhelming local health care resources.
4

5 **74.** People who experience serious cases of COVID-19 who do not die
6 from COVID-19 should expect a prolonged recovery, including the need for
7 extensive rehabilitation for profound reconditioning, neurologic damage, and the
8 loss of respiratory capacity.
9

10 **75.** There is no vaccine against COVID-19, nor is there any known
11 medication to prevent or treat infection. The only known effective measures to
12 reduce the risk for vulnerable people from injury or death from COVID-19 are to
13 prevent them from being infected in the first place, and to limit spread via social
14 distancing measures (e.g., staying a minimum of 6 feet apart).
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17 **76.** Social distancing or remaining physically separated from known or
18 potentially infected individuals, and vigilant sanitation and hygiene, including
19 repeatedly and thoroughly washing hands with soap and water, are the only known
20 effective measures for protecting vulnerable people from COVID-19.
21

22 **77.** In the past weeks, the number of reported cases of infection in many
23 parts of the country have shown a frightening increase. The death toll has similarly
24 skyrocketed, up to over four thousand from just over a hundred two weeks prior.
25

26 **78.** Detention centers are tinderboxes for rapid widespread infection
27 within and beyond the facilities. Because of how detention centers necessarily
28

1 operate, it is almost inevitable that many will experience an outbreak of COVID-
2 19. New people are introduced frequently into the detained population, exacerbating
3 the risk that the COVID-19 virus will make its way into these facilities.
4

5 **79.** In order for detention centers to operate, numerous staff, contractors,
6 and vendors also must circulate through the facilities daily. Given the difficulty in
7 accurately identifying people infected with COVID-19, many of whom only have
8 mild symptoms or are asymptomatic, even detention centers that implement
9 screening mechanisms may unwittingly permit contagious individuals inside.
10

11 **80.** Moreover, the screening procedures performed with respect to
12 detainees – not the many others going in and out of the facilities daily – and
13 include a verbal questionnaire regarding travel, exposure to others with COVID-
14 19 and a screening for fever or respiratory illness. The many vendors and staff and
15 other third parties going in and out of the detention facilities daily are merely
16 temperature checked, which is a woefully inadequate screening measure given
17 how long the virus can remain incubated with infected individuals having no
18 symptoms. It is only a matter of time before COVID-19 infiltrates the Conroe
19 Processing Center – and every detention center in the U.S.
20
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22 **81.** Simply put, immigration detention facilities have a greater risk and
23 likelihood of infectious spread because of crowding, the proportion of vulnerable
24 people detained, and often scant medical care resources. Because COVID-19 is
25 easily spread between people in close proximity, any outbreak will be nearly
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1 impossible for detention centers to control after the COVID-19 virus is
2 introduced. A case in point is the Otay Mesa Detention Center in San Diego,
3 California.¹¹ Also relevant is the possible spread outside the facility, as has
4 already happened at the Stewart Detention Center in Lumpkin, Georgia.¹²

6 **82.** Social distancing measures cannot be implemented in carceral
7 settings, where detained people must share close quarters at almost all times. And
8 given the number of people sharing the same space, keeping surfaces in detention
9 centers adequately sanitized to prevent transmission of COVID-19 is not realistic.

11 **83.** People like Petitioners endure inadequate hygiene and sanitation
12 which raises the risk of infection and an outbreak. Toilets, sinks, and showers are
13 shared, without disinfection between each use. Detainees frequently report not
14 having sufficient access to soap. Hand sanitizer, if provided at all, is available
15 only through communal dispensers, which often run empty.

18 **84.** Housing quarters are cramped, making social distancing virtually
19 impossible. Food preparation and service is communal with little opportunity for
20 surface disinfection. Detainees must wait in line together to get their meals and
21 cannot sit and eat in a manner that allows for six feet of space in between them.
22 Outside of housing units, detainees also are often clustered together in hallways,
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26 ¹¹ [https://www.sandiegouniontribune.com/news/immigration/story/2020-04-12/coronavirus-spread-in-otay-mesa-detention-center.](https://www.sandiegouniontribune.com/news/immigration/story/2020-04-12/coronavirus-spread-in-otay-mesa-detention-center))

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28 ¹² https://www.wabe.org/more-than-40-employees-at-ga-immigrant-detention-center-test-positive-for-covid-19/?fbclid=IwAR1QIxSLiuLhbleZDaX0H5uPCoXXPW_mqPrfUykpANbf-3c4nToaOBBU8E8

1 where they are made to wait in line as they are moved between different areas in
2 the facility. Staff arrive and leave on a shift basis, new detainees are introduced
3 into shared environments daily, and there is limited ability, and little effort, to
4 adequately screen staff, contractors, and visitors for new, asymptomatic infection.
5

6 **85.** ICE's belated measures to prevent the spread of COVID-19 within
7 the detention centers fall miserably short of what public health professionals say is
8 required to mitigate the risk to the public at large. Detained people do not have
9 access to masks or gloves or even hand sanitizer, and as stated repeatedly herein,
10 are not able to practice social distancing. To make matters worse, immigration
11 detention facilities lack adequate medical infrastructure to address the spread of
12 infectious disease and treatment of people most vulnerable to illness in detention.
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15 **86.** If many detainees in a facility contract COVID-19 they will require
16 hospitalization in the community, threatening to overwhelm the community's
17 resources and rendering them unable to provide adequate medical treatment to
18 infected persons. Overwhelming local public health systems will prevent facilities
19 from providing treatment to all who require it, increasing the likelihood that
20 individuals with serious cases will die.
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23 **87.** Risk mitigation is the only known strategy that can protect
24 vulnerable groups from COVID-19, and ICE has demonstrated over and over
25 again that it is both unwilling and unable to implement meaningful risk mitigation
26 measures. Public health experts advise that reducing the overall number of people
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1 in detention centers will help facilities implement social distancing for those still
2 detained and lessen the burden of protecting the health of detainees and staff.

3
4 **88.** Courts agree that release of high-risk detainees is “absolutely in the
5 public’s best interest.” *Castillo*, 2020 WL 1502864, at *6; see also *Basank*, 2020
6 WL 1481503, at *6. Since February, DHS’s own medical experts, who have
7 personally investigated numerous detention facilities, have urged swift mitigation
8 measures, including decreasing the number of immigrant detainees in response to
9 COVID-19’s risks of harm. Alarmed by ICE’s failure to take appropriate action,
10 the experts became whistleblowers, writing to Congress, “regarding the need to
11 implement social distancing to reduce the likelihood of exposure to detainees,
12 facility personnel, and the general public, it is essential to consider releasing all
13 detainees who do not pose an immediate risk to public safety.”
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16
17 **89.** Immigration judges, prosecutors and attorneys nationwide are in
18 agreement that EOIR’s refusal to physically close the courts puts public health at
19 risk. On March 22, the National Association of Immigration Judges (NAIJ), the
20 Immigration and Customs Enforcement Professionals Union and the American
21 Immigration Lawyers Association (AILA) warned that “failure to close all of the
22 nation’s Immigration Courts will exacerbate a once-in-a-century health crisis and
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1 lead to a greater loss of life.”¹³ On March 30, NAIJ reiterated its call for detained
2 courts to close, stating that “there is no safe way to run the detained immigration
3 courts during a pandemic because of the amount of social interactions that the
4 courts require.”¹⁴

6 **90.** As discussed above, Ms. Valle’s bond motion was denied and Mr.
7 Fernandez’s parole request is not even acted upon, and the Petitioners have not been
8 released. Moreover, the Petitioners’ detention (already 11 and 17 months,
9 respectively, as of the filing of this petition) has no foreseeable end in sight. The
10 threat of COVID-19 only makes their already prolonged detention that much more
11 of a due process violation. As such, the Petitioners have been left with no other
12 recourse other than this petition for a writ of habeas corpus for their immediate
13 release.
14
15

17 **LEGAL AUTHORITIES AND FRAMEWORK**

18 **91.** Respondents have unlawfully detained the Petitioners in the Joe
19 Corley Detention Facility amidst the worst pandemic in modern consciousness.
20 Unless this Court intervenes, they will languish in Respondents’ custody for the
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23 ¹³ NAIJ, AILA and ICE Professionals Union, As COVID-19 Rapidly Spreads, So Does Health
24 Risk Created by Keeping the Nation’s Immigration Courts Open, March 22, 2020.
25 <https://www.naij-usa.org/images/uploads/newsroom/2020.03.22.02.pdf>

26 ¹⁴ NAIJ, The National Association of Immigration Judges Urgently Calls for Implementation of
27 Required Health and Safety Measures for the Immigration Courts During the Coronavirus
28 Pandemic, March 30, 2020. <https://www.naij-usa.org/images/uploads/newsroom/2020.03.30.01.pdf>

1 duration of their proceedings — which could take months or years — without an
2 opportunity for a neutral arbiter to determine the necessity of their detention.

3
4 **92.** Pursuant to 28 U.S.C. § 2241, Petitioners file this habeas petition on
5 the grounds that their detention is unlawful because they have been denied
6 administrative remedy in spite of the clear and convincing evidence that neither
7 petitioner is a flight risk, nor a danger to their community. Furthermore, Petitioners’
8 continued detention while denied medical treatment for pre-existing vulnerabilities
9 and in a facility incapable of protecting them from COVID-19 presents grave risks
10 to their Right to Due Process. The Petitioners has thus been unconstitutionally held
11 in prolonged detention for 11 and 17 months respectively by the Respondents with
12 no foreseeable end in sight. As such, and as described further herein, this Court has
13 the power to grant a writ of habeas corpus in that the Petitioner is being held in
14 violation of the Constitution per 28 U.S.C. § 2241(c)(3).
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18 **93.** Petitioner Ms. Valle’s case is pending before the BIA and the
19 Petitioner fully intends on pursuing all relief and appeals options available. This
20 would include appealing to the Circuit Courts and requesting a stay. This process
21 could take months or years.
22

23 **94.** As Ms. Valle has no scheduled hearing date, the fate of her decisions
24 rest solely in the hands of the BIA. The BIA operations have also been delayed by
25 the omnipresent COVID-19. If remanded, the proceedings will have to start all the
26 way from “square one.” Absent this court’s injunctive relief, Petitioner will face an
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1 almost indefinite stay of detention, confined and exposed while the most intense
2 global pandemic in history unfolds.

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4 **95.** Petitioner Mr. Fernandez has just begun the process of a circuit court
5 appeal and request for a stay. This process will take years, especially considering
6 all of the other pressing matters before Circuit Courts in this time of unprecedented
7 logistic and legal confusion. There is absolutely no guarantee, absent this Court's
8 relief, that those decisions will be made before Mr. Fernandez, who is suffering
9 depression, diabetes and herniated disks, falls ill and died of COVID-19.
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12 **96.** Continued detention of Petitioners for an indefinite amount of time
13 violates their right to be free of prolonged non-criminal detention without adequate
14 justification and sufficient procedural safeguards, as guaranteed by the Due Process
15 Clause of the Fifth Amendment to the United States Constitution.
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18 **97.** More importantly, Respondents' continued detention of Petitioners
19 has become so prolonged that it is no longer reasonably related to its purpose of
20 effecting removal and therefore violates the Due Process Clause of the Fifth
21 Amendment to the U.S. Constitution.

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23 **98.** Moreover, the Petitioner's detention is unnecessary because they pose
24 no danger to the community (Ms. Valle has no criminal record whatsoever and Mr.
25 Fernandez has one non-violent offense in an otherwise spotless history of
26 residency) and are not flight risks. The Petitioners merely seek the right to preserve
27 their health and fight their asylum case in a non-detained setting, while quarantining
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1 with their sponsors in order to keep themselves and their community safe.

2 **99.** Due process permits the government to restrain an individual’s liberty
3 only where the government’s justification for such restraint bears a “reasonable
4 relation” to permissible purposes. *Jackson v. Venezuelana*, 405 U.S. 715, 738
5 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas v. Davis*,
6 533 U.S. 678, 690 (2001). In the immigration context, those purposes are “ensuring
7 the appearance of [noncitizens] at future immigration proceedings and preventing
8 danger to the community.” *Zadvydas*, 533 U.S. at 690 (citations omitted). Those
9 substantive limitations on detention are closely intertwined with procedural due
10 process protections. *Foucha*, 504 U.S. 78-80. Noncitizens such as Ms. Valle have a
11 right to adequate procedures to determine whether their detention serves the
12 purposes of protecting the community or ensuring their appearance. *Id.* at 49.

13 **100.** Here, the government can demonstrate neither the necessity of
14 Petitioners’ detention nor its use of adequate procedures to arrive at the ongoing
15 decision to confine them. Consequently, ongoing detention violates both their
16 substantive and procedural rights to due process.

17 **101.** In *Jennings v. Rodriguez*, --- U.S. ----, 138 S. Ct. 830 (2018) the U.S.
18 Supreme Court remanded to the Ninth Circuit to address the constitutional
19 question—whether due process itself permits for prolonged detention of a
20 noncitizen. The Ninth Circuit has, post-*Jennings*, expressed “grave doubts that any
21 statute that allows for arbitrary prolonged detention without any process is
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1 constitutional or that those who founded our democracy precisely to protect against
2 the government’s arbitrary deprivation of liberty would have thought so.”
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4 *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

5 **102.** In *Alexis v. Sessions*, CIVIL ACTION NO. H-18-1923 (S.D. Tex.
6 Nov. 13, 2018), the court in the Southern District of Texas granted a habeas petition
7 on the grounds that *Jennings v. Rodriguez* did not authorize indefinite detention.
8 (See *Jennings*, 138 S. Ct. at 852; see also *Maldonado v. Macias*, 150 F. Supp. 3d
9 788, 805 (W.D. Tex. 2015) (“civil detention of aliens is subject to a reasonable time
10 limitation”); see also *Rosales – Garcia v. Holland* , 322 F.3d 386, 412 (6th
11 Cir.2003) (en banc) (explaining that “constitutional concerns ... compel us to
12 construe IIRIRA’s post-removal-period detention provision to contain a
13 reasonableness limitation”).)

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17 **103.** Moreover, in *Zadvydas v. Davis*, 533 U.S. 678, 696 (2001), the
18 Supreme Court noted that “basic purpose” of immigration detention was to
19 “assur[e] the alien’s presence at removal,” and that this basic purpose would not be
20 served by detaining aliens whose removal was not “reasonably foreseeable.” *Id.* at
21 699. The Court decided the case in favor of the aliens on statutory grounds, but
22 noted that the detention statute would “raise a serious constitutional problem,” if it
23 operated to “authorize long-term detention of unremovable aliens.” *Id.* at 697, 690.

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26 **104.** Due process requires that the nature and duration of noncriminal
27 confinement bear “some reasonable relation to the purpose for which the individual
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1 is committed.” Jackson v. Case 4:20-cv-01241 Document 1 Filed on 04/08/20 in
2 TXSD Page 22 of 32 23 Indiana, 406 U.S. 715, 738 (1972); Brown v. Taylor, 911
3 F.3d 235, 243 (5th Cir. 2018). The only legitimate purpose, consistent with due
4 process, for federal civil immigration detention is to prevent flight risk and ensure
5 the detained person’s attendance for a legal hearing adjudicating their status or
6 potential removal, or to otherwise ensure the safety of the community. *Zadvydas*,
7 533 U.S. at 699.
8

9
10 **105.** In the very recent case of *Ali v. DHS et al.*, which is out of this district,
11 this Court granted the release of a Pakistani National subject to a final order of
12 removal on the grounds that since his removal was no longer possible, his detention
13 no longer served its intended purpose and was thus unreasonable. See *Ali v DHS et*
14 *al.*, 4:20-cv-00140 ECF No. 37 (S.D. Tx Apr. 2nd, 2020) at 6. (“With no significant
15 likelihood of removal in the foreseeable future, Petitioner’s detention, the sole
16 purpose of which was to effectuate imminent removal, no longer serves its intended
17 purpose, and thus, is unreasonable”)
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21 **106.** In light of the understandable global caution against air travel and
22 Petitioners’ prospect of a year or more in appeal processes, there is similarly no
23 “significant likelihood that the Government will be able to remove Petitioners to
24 [Honduras/Mexico] in the foreseeable future.” It could be similarly concluded that
25 under 8 U.S.C. § 1231 (a)(6) and *Zadvydas*, such unreasonable detention is
26 unauthorized.
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1 **107.** In addition, “[n]early all district courts that have considered the issue
2 agree that ‘prolonged mandatory detention pending removal proceedings, without
3 a bond hearing, ‘will—at some point—violate the right to due process.’” *Banda v.*
4 *McAleenan*, 385 F. Supp. 3d 1099, 1116 (W. D. Wash. 2019) (citing cases); see also
5 *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *11-*12 (S.D.N.Y.
6 May 23, 2018) (granting relief because the alien had been confined for 8 months,
7 prolonged by the government's failure to process and send documents to his
8 counsel).

9 **108.** In addition to the Petitioners’ prolonged indefinite detention through
10 no fault or delay of their own, their continued detention during the COVID-19
11 pandemic compounds the due process violations even more so. Respondents’
12 unnecessary prolonged continued detention of the already traumatized Petitioners
13 and puts them at risk of exposure to a highly contagious disease. Ms. Valle has
14 recently caught the flu and has had a fever, compromising her immune system. She
15 has also suffered severe psychological stress and trauma. Mr. Fernandez is a
16 diabetic and depressive, who has been deprived of his life saving medication. By
17 placing these vulnerable people in the path of a rapidly escalating pandemic –
18 indeed by housing them together in close quarters – Respondents are violating their
19 due process rights under the Fifth Amendment.

20 **109.** Immigration detainees, even those with prior criminal convictions,
21 are civil detainees whose constitutional protections while in custody derive from
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1 the Fifth Amendment due process clause. *Zadvydas v. Davis*, 533 U.S. 678, 690
2 (2001). Civil detainees, however, are entitled to greater rights than convicted
3 prisoners or criminal pretrial detainees. *Jones v. Blanas*, 393 F.3d 918, 933–34 (9th
4 Cir. 2004), cert. denied, 546 U.S. 820 (2005); see also *King v. Cnty. of Los Angeles*,
5 885 F.3d 548, 557 (9th Cir. 2018) (finding presumption of punitive, and thus
6 unconstitutional, treatment where conditions of confinement for civil detainees are
7 similar to those faced by pre-trial criminal detainees). The constitutional protections
8 to which civil immigration detainees are entitled are more comprehensive than those
9 afforded to imprisoned people.

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13 **110.** Even the Eighth Amendment imposes on the government an
14 affirmative duty to provide conditions of reasonable health and safety to those it
15 detains or incarcerates. “When the State takes a person into its custody and holds
16 him there against his will, the Constitution imposes upon it a corresponding duty to
17 assume some responsibility for his safety and general well-being.” *DeShaney v.*
18 *Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199–200 (1989). As a result,
19 the government must provide those in its custody with “food, clothing, shelter,
20 medical care, and reasonable safety.” *Id.* at 200. The Eighth Amendment requires
21 that “inmates be furnished with the basic human needs, one of which is ‘reasonable
22 safety.’” *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (quoting *DeShaney*, 489 U.S.
23 at 200).

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27 **111.** The Supreme Court has explicitly recognized that the risk of
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1 contracting a communicable disease may constitute such an “unsafe, life-
2 threatening condition” that threatens “reasonable safety.” Id. While the Eighth
3 Amendment prohibits punishment that is “cruel and unusual,” the Due Process
4 Clause of the Fifth Amendment prohibits any punishment at all. Conditions that
5 would violate the Eighth Amendment rights of a criminal prisoner are more than
6 enough to violate the Fifth Amendment due process rights of a civil detainee. Unlike
7 an Eighth Amendment claim, there is no requirement for civil detainees to prove
8 “deliberate indifference” of government officials in order to establish a violation.
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11 **112.** Conditions of confinement violate the Fifth Amendment when they
12 deprive people in civil custody of a basic human need, including safety, and the risk
13 of deprivation cannot be justified by a legitimate governmental interest or is
14 excessive despite a legitimate governmental interest. The conditions of Petitioner’s
15 prolonged confinement (especially under the current circumstances) violate
16 Petitioner’s due process rights.
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19 **113.** Even as this public health crisis rapidly develops, courts throughout
20 the country have already recognized that continued confinement, particularly of
21 vulnerable populations, in the face of COVID-19 raises serious due process
22 concerns. See e.g., *Dada v. Witte*, No. 1:20-cv-00458-DDD-JMP, ECF No. 17 at
23 *2 (“Petitioners have established that their detention poses a grave and
24 unconstitutional risk while failing to meaningfully serve ICE’s of the public’s
25 interest.”); *Gayle v. Michael Meade et al*, No. 1:20-cv-21553-MGC ECF No. 76 at
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1 *6 (“Thus, to the extent that ICE fails to commit to addressing the conditions
2 complained of, ICE has demonstrated deliberate indifference”); *Castillo*, 2020 WL
3 1502864, at *5 (“Under the Due Process Clause, a civil detainee cannot be subject
4 to the current conditions of confinement at Adelanto.”); *Basank*, No. 20-cv-02518,
5 ECF No. 11, at 13 (“Confining vulnerable individuals such as Petitioners without
6 enforcement of appropriate social distancing and without specific measures to
7 protect their delicate health ‘pose[s] an unreasonable risk of serious damage to
8 [their] future health,’ and demonstrates deliberate indifference.”) (quoting *Phelps v.*
9 *Kapnolas*, 308 F.3d 180, 185 (2d Cir. 2002)); *Thakker*, No. 20-cv-00480, ECF No.
10 47, at 22 (“Physical detention itself will place a burden on community healthcare
11 systems and will needlessly endanger Petitioners, prison employees, and the greater
12 community. We cannot see the rational basis of such a risk.”); *United States v.*
13 *Martin*, No. CR PWG-19-140-13, 2020 WL 1274857, at *2 (D. Md. Mar. 17, 2020)
14 (“[T]he Due Process Clauses of the Fifth or Fourteenth Amendments, for federal
15 and state pretrial detainees, respectively, may well be implicated if Respondents
16 awaiting trial can demonstrate that they are being subjected to conditions of
17 confinement that would subject them to exposure to serious...illness.”).

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23 **114.** The Court’s authority to order Petitioners’ release to ensure their
24 constitutional rights are protected is well-established. “Federal courts possess
25 whatever powers are necessary to remedy constitutional violations because they are
26 charged with protecting these rights.” *Stone v. City & Cnty. of San Francisco*, 968
27

1 F.2d 850, 861 (9th Cir. 1992); see also *Califano v. Yamasaki*, 442 U.S. 682, 702
2 (1979). “When necessary to ensure compliance with a constitutional mandate,
3 courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*,
4 563 U.S. 493, 511 (2011).

6 **115.** Courts have regularly exercised this authority to remedy
7 constitutional violations caused by overcrowding. *Duran v. Elrod*, 713 F.2d 292,
8 297–98 (7th Cir. 1983), cert. denied, 465 U.S. 1108 (1984). The same principle
9 applies here. As the constitutional principles and public health experts make clear,
10 releasing Petitioners is the only viable remedy to ensure their safety as well as the
11 safety of other detainees in light of the health threat that COVID-19 poses.
12

14 **116.** In the face of this threat, social distancing and hygiene measures are
15 Petitioner’s only defense against COVID-19. Respondents’ actions make such
16 protective measures impossible in the environment of an immigration detention
17 center, where employees and vendors and other third parties go in and out with
18 inadequate screening taken for a virus that lies dormant, is very contagious and has
19 the potential to be deadly. Petitioner shares toilets, sinks, and showers, eats in
20 communal spaces and is in close contact with the many other detainees and officers
21 around her. It is only matter of time before the Joe Corley Detention Facility is
22 infiltrated by COVID-19, if it has not been already.
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26 **117.** Respondents are subjecting Petitioners, medically vulnerable
27 individuals with family ties to the United States and strong characters to
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1 unreasonable harm from their continued 11 and 17-month prolonged detentions
2 which have no end in sight. Release is the only effective remedy to protect the well-
3 being of not only Petitioners and other detainees but of the community of Conroe
4 at large. If COVID-19 is allowed unmitigated spread in the detention centers, the
5 local medical facilities and hospitals will ultimately become overburdened and
6 unable to provide care for all infected. The release of the Petitioners, and as many
7 detainees as possible, is the only possible remedy.
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10 **CLAIMS FOR RELIEF**

11 **FIRST CAUSE OF ACTION**

12 **Violation of Fifth Amendment Procedural Due Process**
13 **(Right to a Hearing)**

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

16
17 **119.** Respondents' continued detention of Petitioners without a hearing
18 to determine whether their prolonged detention is justified violates their right to be
19 free of prolonged non-criminal detention without adequate justification and
20 sufficient procedural safeguards, as guaranteed by the Due Process Clause of the
21 Fifth Amendment to the United States Constitution.
22

23 **SECOND CAUSE OF ACTION**

24 **Violation of Fifth Amendment Substantive Due Process**
25 **(Prolonged Detention; Unlawful Punishment; Freedom from Cruel Treatment**
26 **and Conditions of Confinement; Denial of Reasonable Safety)**

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

1 **121.** Constitutional due process concerns with prolonged detention apply
2 to aliens in removal proceedings. Though the Court in *Demore v. Kim*, 538 U.S.
3 510 (2003), permitted mandatory detention of aliens convicted of certain crimes for
4 five months during their removal proceedings, Justice Kennedy noted that even
5 mandatory detention for criminal aliens would violate due process “if the continued
6 detention became unreasonable or unjustified.” *Demore v. Kim*, 538 U.S. 510, 532
7 (Kennedy, J., concurring).
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10 **122.** Ms. Valle has been subject to the flu and fever while detained in the
11 custody of Respondents. She has not been allowed to take the medication she needs
12 from her facial paralysis. While not part of the classes recognized as vulnerable,
13 Ms. Valle is distinctly vulnerable to COVID-19 as her system has spent its time
14 fighting illness and being weakened by the psychological pressures of her 11-month
15 detention.
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18 **123.** Mr. Fernandez currently suffers from diabetes, depression and slipped
19 disks. His prolonged detention has made it impossible for him to receive any of the
20 proper medication for his physical or mental illnesses. Depression and Diabetes are
21 both among the categories of recognized vulnerabilities to COVID-19.
22

23 **124.** Ms. Valle has currently been detained for over eleven months, Mr.
24 Fernandez for 17. Petitioners both have cases with pending decisions and are
25 nowhere near final decisions with regards to their appeals. Indeed, due to COVID-
26 19, all immigration court cases are delayed more than they usually are – and there
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1 is already a considerable delay.

2 **125.** As referenced above, in *Ali v. DHS et al.* this Court granted the
3 release of a Pakistani National subject to a final order of removal on the grounds
4 that since his removal was no longer possible, his detention no longer served its
5 intended purpose and was thus unreasonable. See *Ali v DHS et al.*, 4:20-cv-00140
6 ECF No. 37 (S.D. Tx Apr. 2nd, 2020) at 6. (“With no significant likelihood of
7 removal in the foreseeable future, Petitioner’s detention, the sole purpose of which
8 was to effectuate imminent removal, no longer serves its intended purpose, and thus,
9 is unreasonable”)

10 **126.** There is no significant likelihood of removal in the instant case. Ms.
11 VALLE currently has an appeal pending with the BIA and fully intends to appeal
12 the decisions if they are not in her favor while Mr. FERNANDEZ has just begun a
13 lengthy Petition for Review and a Stay of Removal. Furthermore, if these cases are
14 remanded, Petitioners would be made to start their immigration proceedings *de*
15 *novo*. Both of these outcomes imply a course of at least a year, implying Petitioners’
16 detention no longer serves its intended purpose and is thus unreasonable.

17 **127.** Respondents’ continued detention of Petitioners has become so
18 prolonged (and also dangerous in light of COVID-19) that it is no longer reasonably
19 related to its purpose of effecting removal and therefore violates the Due Process
20 Clause of the Fifth Amendment to the U.S. Constitution.

21 **128.** The Fifth Amendment to the U.S. Constitution also guarantees that
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1 civil detainees, including all immigrant detainees, may not be subjected to
2 punishment. The federal government violates this substantive due process right
3 when it subjects civil detainees to conditions of confinement that amount to
4 punishment or create an unreasonable risk to detainees' safety and health.

6 **129.** Respondents' conditions of confinement subject the Petitioners to
7 heightened risk of contracting COVID-19, for which there is no vaccine, known
8 treatment, or cure. In addition to the prolonged detention of the Petitioners for 10
9 and 17 months respectively with no end in sight, the Respondents are subjecting the
10 Petitioners to a substantial risk of serious harm, including severe illness and death.

13 **THIRD CAUSE OF ACTION**
14 **Violation of Immigration and Nationality Act**
15 **(Arbitrary and Capricious Denial of Relief)**

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

18 **131.** In the case of Ms. Valle, Respondents' continued detention of the
19 Petitioner and their failure to apply the appropriate legal standards in determining
20 whether to release her on bond is arbitrary and capricious in contravention of 8
21 U.S.C. § 1182(d)(5), 8 C.F.R. 212.5, and Immigration and Nationality Act 236(a).

23 **132.** In the case of Mr. Fernandez, Respondent's continued detention of
24 the Petitioner and their failure to apply the appropriate legal standards in
25 determining whether to release him on parole is arbitrary and capricious in
26 contravention of 8 U.S.C. § 1182(d)(5), 8 C.F.R. 212.5, and any other authorities
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1 that authorize Respondents' parole authority.

2 **133.** Moreover, since the decision on the respective reliefs of the
3 Petitioners were denied, there have been confirmed reports of COVID-19 in the Joe
4 Corley Detention Facility. Because social distancing is inherently impossible in the
5 detention centers and because COVID-19 has proven so incredibly contagious,
6 COVID-19 will spread like wildfire within the detention center.
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9 **134.** There is no vaccine for COVID-19, it is extremely contagious, and it
10 can be deadly. These factors combined with Petitioner's unlawful prolonged
11 detention of an indefinite amount of time as well as Petitioner's trauma-based
12 psychological conditions all mitigate in favor of the Petitioner's immediate release.
13

14 **135.** On March 23, 2020, the Ninth Circuit ordered, sua sponte and
15 without further explanation, the release of an immigration petitioner "[i]n light of
16 the rapidly escalating public health crisis, which public health authorities predict
17 will especially impact immigration detention centers." *Xochihua-Jaimes v. Barr*,
18 2020 WL 1429877, No. 18- 71460 (9th Cir. Mar. 23, 2020).
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21 **136.** As such and in light of the foregoing, it is an abuse of discretion to
22 refuse to release the Petitioners in light of such continued detention clearly being
23 against the public interest.
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PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court:

(1) issue a writ of habeas corpus and order the immediate release of the Petitioners, with appropriate precautionary public health and safety measures, on the ground that their continued detention violates the Due Process Clause of the Fifth Amendment;

(2) in the alternative, issue an Order to Show Cause against Respondents as to why the Petitioners should not immediately be released with precautionary measures;

(3) in the alternative, this Court schedule a telephonic bond hearing for the Petitioners in which the Respondents must prove by clear and convincing evidence that the Petitioners pose a flight risk or danger to the community, with the Petitioners being released in the interim if such bond hearing is not able to occur immediately;

(4) in the alternative, issue injunctive relief ordering Respondents, their officers, agents, employees, attorneys and contractors to immediately release the Petitioners, with appropriate precautionary measures, on the grounds that their continued detention violates the Due Process Clause of the Fifth Amendment;

(5) issue an order providing for an award of attorney's fees and costs; and

(6) issue an order providing for such other relief as may be just and reasonable.

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1 Dated: May 7, 2020

Respectfully submitted,

2 /s/ Bashir Ghazialam

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8 Dated: May 7, 2020

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13 **Motion for pro hac vice admission*
14 *forthcoming*

15 Attorneys for Petitioner