

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROGER ERNESTO LA O MUNOZ; JORGE
LUIS MORALES-DIAZ; HUGO SANCHEZ-
VALDES; KELVIN ARMANDO ULLOA
ESCOBAR,

Petitioners-Plaintiffs,

vs.

CHAD F. WOLF, in his official capacity as
Acting Secretary, U.S. Department of
Homeland Security; U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT;
PATRICK CONTRERAS, in his official
capacity as Field Office Director, Houston Field
Office, Enforcement and Removal Operations,
U.S. Immigration & Customs Enforcement;
WILLIAM P. BARR, in his official capacity as
Attorney General of the United States; RANDY
TATE, in his official capacity as Warden, Joe
Corley Detention Facility,

Respondents-Defendants.

Case No. 4:20-cv-2206

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO
28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. Petitioners are civil immigration detainees who—by virtue of their participation in the Migrant Protection Protocols (“MPP”) and their status as citizens and nationals of countries that are not currently accepting deportees from the United States—face unwarranted, prolonged detention at the Joe Corley Detention Facility (“JCDF”) in Conroe, Texas, in the midst of the COVID-19 pandemic. These four men—three citizens of Cuba and one of Honduras, none of whom have a criminal record of any kind in any country—have each been detained by U.S. Immigration and Customs Enforcement (“ICE”) for at least six months pursuant to a discretionary detention

statute, and are now trapped in a facility that has seen a surge in COVID-19 infections rivaling that of any other detention facility nationwide. As has been well-documented in the media—and by ICE itself—the COVID-19 virus runs rampant in such facilities, creating a risk of harm to Petitioners that is both unconscionably high and entirely preventable. Indeed, the pandemic has wrecked particular devastation on those, like Petitioners, detained at JCDF: as of June 22, 2020, at least 42 detainees at JCDF have tested positive for COVID-19 and at least one detainee there has died as a result of the virus. As COVID-19 cases spike in Texas, the risks that Petitioners face at JCDF are more acute than ever.

2. Infectious disease specialists warn that no conditions of confinement can adequately mitigate or reduce the risk of harm to detainees during the COVID-19 pandemic. Packed into overcrowded, close quarters with other detainees and correctional staff; forced to share necessities like showers, toilets, sinks, and telephones with dozens of others; and deprived of basic forms of preventative hygiene such as soap, hand sanitizer, or adequate personal protective equipment, Petitioners are helpless to take the only risk-mitigation steps known to limit transmission of the virus.

3. Medical experts agree that reducing populations in prisons, jails, and detention centers is a necessary component of risk mitigation during the COVID-19 pandemic. A failure to heed public health advice to reduce inmate and detainee populations will not only harm the inmates and detainees, but will also have ripple effects across communities as rapid transmission of the disease taxes already overburdened hospitals and healthcare systems—indeed, it already has.

4. It is against this backdrop that ICE has refused to release Petitioners on parole without any meaningful explanation, despite Petitioners' demonstrated ties to the United States and despite their lack of any criminal record whatsoever. Faced with a global pandemic that has upended virtually every aspect of life, ICE remains steadfast in its unwillingness to act, despite the reality that its failure to do so exacerbates the risks faced by Petitioners and many more civil detainees in its custody at JCDF and elsewhere.

5. Indeed, ICE has detained Petitioners indefinitely despite their strong ties to the United States and their lack of criminal history. Release from custody is the only effective means to protect Petitioners from the heightened risk they face of contracting the virus that causes COVID-19 at JCDF. Accordingly, this suit seeks immediate release of Petitioners from civil immigration detention. Their continued, prolonged detention violates their due process rights by constituting deliberate indifference to the health and safety risks they face as detainees at JCDF and by failing to provide constitutionally adequate safeguards commensurate with the deprivation of life and liberty that they face.

PARTIES

6. Petitioner-Plaintiff Roger Ernesto La O Munoz is a 35-year-old citizen and national of Cuba who seeks asylum in the United States as protection against physical and psychological abuse inflicted upon him by the Cuban authorities as a consequence of his political views and his opposition to the Castro regime. Mr. La O Munoz is a college graduate with a degree in hygiene and epidemiology who first entered the United States on or about July 15, 2019, at which point he was detained for two days in an ICE facility before being sent to Juarez, Mexico as part of the MPP program. Mr. La O Munoz returned to the United States on or about December 3, 2019 after being beaten and robbed by Mexican officials. After demonstrating a credible fear of returning to Mexico during his non-refoulement interview,¹ Mr. La O Munoz was sent to the ICE Service Processing Center in El Paso, Texas, where he was detained from on or about December 3, 2019 until on or about March 12, 2020, at which point (and while exhibiting symptoms of COVID-19 for which he did not receive treatment) he was transferred to JCDF, where he remains in custody of ICE under 8 U.S.C. § 1226(a), a discretionary detention statute. Mr. La O Munoz has no known criminal history in any country and has close community and family ties to the United States such

¹ The principle of non-refoulement—which is included in (among other sources of international human rights law) the Convention Against Torture (“CAT”)—prohibits countries from “transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.” Office of the High Comm’r, United Nations Human Rights, *The Principle of Non-Refoulement Under International Human Rights Law*, available at <https://bit.ly/31flmjf>.

that he is not a flight risk. Mr. La O Munoz's individual merits hearing before the immigration court is scheduled for July 2, 2020.

7. Petitioner-Plaintiff Jorge Luis Morales-Diaz is a 53-year-old citizen and national of Cuba who seeks asylum in the United States due to persecution he has suffered in Cuba on account of his political opinions. Mr. Morales-Diaz has been in custody of ICE under 8 U.S.C. § 1226(a), a discretionary detention statute, since on or about November 4, 2019, and has been detained at JCDF since on or about March 12, 2020. Mr. Morales-Diaz has no known criminal history in any country and has close community and family ties to the United States such that he is not a flight risk. Mr. Morales-Diaz's individual merits hearing before the immigration court is scheduled for July 9, 2020.

8. Petitioner-Plaintiff Hugo Sanchez-Valdes is a 31-year-old citizen and national of Cuba who seeks asylum—or, alternatively, withholding of removal or protection under CAT—in the United States as protection against persecution he suffered in Cuba as a result of his status as a political dissident and opponent of the Castro regime. Mr. Sanchez-Valdes presented himself for inspection at El Paso, Texas on November 6, 2019, at which point he was detained and sent to Mexico as part of the MPP program. He re-entered the United States on February 12, 2020 after demonstrating a credible fear of returning to Mexico during a non-refoulement interview. Mr. Sanchez-Valdes has been detained in ICE facilities since that time, first in the Service Processing Center in El Paso and subsequently at JCDF, where he remains in custody of ICE under 8 U.S.C. § 1226(a), a discretionary detention statute. Mr. Sanchez-Valdes has no known criminal history in any country and has close community and family ties to the United States such that he is not a flight risk. His individual merits hearing before the immigration court is scheduled for July 7, 2020.

9. Petitioner-Plaintiff Kelvin Armando Ulloa Escobar is a 26-year-old citizen and national of Honduras who seeks asylum in the United States due to physical and psychological persecution he has suffered in Honduras on account of his political opinions. Mr. Ulloa Escobar entered the United States on or about April 30, 2019, at which time he was detained and sent to Mexico as part of the MPP program. After suffering additional violence in Mexico and being

denied assistance by the Mexican authorities, Mr. Ulloa Escobar re-entered the United States on or about October 30, 2019 and demonstrated a credible fear of returning to Mexico during a non-refoulement interview. Since that time, Mr. Ulloa Escobar has been detained at the ICE Service Processing Center in El Paso, Texas, at the Cibola County Correctional Center in Milan, New Mexico, and at JCDF, where he remains in custody of ICE under 8 U.S.C. § 1226(a), a discretionary detention statute. Mr. Ulloa Escobar has no known criminal history in any country and has close community and family ties to the United States such that he is not a flight risk. Despite the looming health and safety risks he faces while detained at JCDF, Mr. Ulloa Escobar does not have an individual merits hearing scheduled before the immigration court.

10. Respondent-Defendant Chad F. Wolf is named in his official capacity as Acting Secretary of the U.S. Department of Homeland Security (“DHS”). In his official capacity, Respondent-Defendant Wolf is responsible for administering the immigration laws pursuant to 8 U.S.C. § 1103(a); routinely transacts business in the Southern District of Texas; supervises Respondent-Defendant Patrick Contreras; and is legally responsible for the pursuit of non-citizens’ detention and removal. As such, he is a legal custodian of Petitioners.

11. Respondent-Defendant ICE is a federal law enforcement agency within DHS. ICE is responsible for the criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. Enforcement and Removal Operations (“ERO”), a division of ICE, manages and oversees the immigration detention system. As such, Respondent-Defendant ICE is a legal custodian of Petitioners.

12. Respondent-Defendant Patrick Contreras is named in his official capacity as Director, Houston Field Office, ICE ERO, a federal law enforcement agency within DHS. The Houston Field Office is responsible for, among other things, carrying out ICE’s immigration detention operations at JCDF, and Respondent-Defendant Contreras is responsible for administering the immigration laws and the execution of detention and removal determinations for individuals under the jurisdiction of the Houston Field Office. As such, he is a legal custodian of Petitioners.

13. Respondent-Defendant William P. Barr is named in his official capacity as Attorney General of the United States. In this capacity, he is responsible for administering the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Southern District of Texas and is legally responsible for administering removal and bond proceedings and the standards used in those proceedings. As such, he is a legal custodian of Petitioners.

14. Respondent-Defendant Randy Tate is named in his official capacity as Warden of JCDF. In this capacity, he is the immediate custodian of Petitioners.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and the laws of the United States, including the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* This Court also has subject matter jurisdiction over the habeas petition pursuant to 28 U.S.C. § 2241.

16. This Court has the authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–02 and 28 U.S.C. § 1651.

17. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and because the officer who makes custody determinations regarding Petitioners is located within this judicial district and Petitioners are detained within this judicial district. Additionally, venue is proper under 28 U.S.C. § 2241 because Petitioners are currently detained in this jurisdiction under, or by color of, the authority of the United States.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. No statutory exhaustion requirement applies to Petitioners' claims of unlawful detention because no administrative agency exists to adjudicate Petitioners' constitutional challenges. Nonetheless, Petitioners have submitted to ICE multiple requests for release in light of the dangers presented by the COVID-19 pandemic. These requests were submitted in January 2020

(Mr. Ulloa Escobar); on March 25, 2020 (Mr. La O Munoz); and on March 27, 2020 (Mr. Morales-Diaz and Mr. Sanchez-Valdes).

19. ICE swiftly denied these requests, as well as Mr. Sanchez-Valdes' request for redetermination, which he submitted through counsel on April 16, 2020. ICE has failed to act upon Mr. Ulloa Escobar's redetermination request, which he submitted through counsel on April 15, 2020. In failing to release Petitioners, ICE invites the very harm that Petitioners seek to avoid.

STATEMENT OF FACTS

A. COVID-19 Poses a Grave Risk of Harm to Petitioners

20. On March 11, 2020, the World Health Organization ("WHO") classified the spread of COVID-19, the disease caused by the novel coronavirus, as a pandemic.² On March 13, 2020, President Trump declared the COVID-19 outbreak a national emergency under the National Emergencies Act, 50 U.S.C. § 1601 *et seq.*³ At the time, there were approximately 1,600 confirmed cases of COVID-19 in the United States and at least 46 deaths. Just over three months later, the number of confirmed cases and deaths has exploded: as of June 23, 2020, more than 2.3 million people in the United States have tested positive for the virus, and more than 120,000 have died.⁴

21. To combat the disease, and to halt its advance, the White House and the Centers for Disease Control and Prevention ("CDC") have urged people in the United States to take basic preventive actions, such as avoiding crowds or large groups, staying six feet away from others, keeping surfaces disinfected, and frequently washing hands or using hand sanitizer.⁵

22. Although these efforts appear to have helped slow the spread of the disease in some states where case counts have leveled off or even begun to fall, new daily infections continue to rise in Texas (among other states), which *just yesterday*—on June 22, 2020—reported its highest

² World Health Org., *WHO Characterizes COVID-19 as a Pandemic* (Mar. 11, 2020), <https://bit.ly/2W8dwpS>.

³ White House, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://bit.ly/35x86aT>.

⁴ U.S. Cntrs. for Disease Control & Prevention ("CDC"), *Coronavirus Disease 2019 (COVID-19): Cases in the US* (last visited June 23, 2020), <https://bit.ly/2SyyE6k>.

⁵ See Sheri Fink, *White House Takes New Line After Dire Report on Death Toll*, *New York Times* (Mar. 17, 2020), <https://nyti.ms/3dl2yD4>; CDC, *Coronavirus Disease 2019 (COVID-19): Clinical Questions About COVID-19: Questions and Answers* (June 4, 2020), <https://bit.ly/2y6X6Eh>; CDC, *Coronavirus Disease 2019 (COVID-19): Social Distancing* (last visited June 17, 2020), <https://bit.ly/2N4b5PF>.

one-day increase in new confirmed cases (5,489) in any single day in the course of the pandemic.⁶ In fact, the last eight days have been the eight worst on record in Texas, as measured by new reported infections.⁷ In total, as of June 23, 2020, Texas has reported 120,370 cases—and 2,220 deaths—in 242 of its 254 counties.⁸ Montgomery County, where JCDF is located, has reported 1,647 cases and 34 deaths.⁹

23. As a highly contagious infectious disease, COVID-19 has proven particularly pernicious in enclosed, high-density environments like detention and correctional facilities, which have become “hotbeds for the virus.”¹⁰ Indeed, even as the United States’ overall infection rate has remained relatively constant, new infections in prisons and jails “have soared in recent weeks,” doubling since mid-May to more than 68,000, with coronavirus-related deaths also rising by 73 percent since that time.¹¹ According to media sources, the five largest known clusters of the virus in the United States are in correctional institutions, and Texas alone has reported more than 7,500 confirmed cases among inmates and staff at correctional facilities in the state.¹²

24. ICE facilities fare no better than prisons and jails. As of June 2, 2020, ICE reported that more than half of the nearly 2,800 detainees in its custody who had been tested were confirmed to have had the virus, and ICE facilities in Texas have reported more positive cases than facilities in any other state.¹³ JCDF is no exception: as of June 22, 2020, at least 42 detainees at JCDF—or nearly *15 percent* of the overall detainee population at the facility—had tested positive for COVID-

⁶ See Texas Dep’t of State Health Servs., *Texas Case Counts: COVID-19* (last visited June 23, 2020), <https://bit.ly/37BFIWa>; see also *Face Mask Requirements Grow Contentious, with States and Businesses Taking Divergent Paths*, N.Y. Times (June 19, 2020), <https://nyti.ms/3hNnhT1>; cf. *Florida, Texas and Arizona All Set Records for the Most Cases They Have Reported in a Single Day*, N.Y. Times (June 16, 2020), <https://nyti.ms/2YHysUB>.

⁷ Texas Dep’t of State Health Servs., *Texas Case Counts: COVID-19* (last visited June 23, 2020), <https://bit.ly/37BFIWa>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Tammy La Gorce, *‘Everybody Was Sick’: Inside an ICE Detention Facility*, N.Y. Times (May 15, 2020), available at <https://nyti.ms/2UUqF4F>.

¹¹ Timothy Williams, Libby Seline & Rebecca Griesbach, *Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide*, N.Y. Times (June 16, 2020), available at <https://nyti.ms/3fwXKeT>.

¹² See *id.*

¹³ See ICE, *ICE Guidance on COVID-19: ICE Detainee Statistics* (last visited June 23, 2020), <https://bit.ly/2YB9BBS>; Olivia P. Tallet, *1 in 5 Immigrants at ICE Detention in Houston Has COVID-19*, Houston Chronicle (June 3, 2020), available at <https://bit.ly/2C2tidZ>.

19.¹⁴ Tragically, at least one immigrant being held at JCDF has died from the virus.¹⁵ That JCDF has emerged as a COVID-19 hotspot is hardly surprising in light of reports of abysmal conditions at the facility.¹⁶

25. Public health officials have long warned that prisons, jails, and detention facilities were positioned to “become vectors in the pandemic because they are often overcrowded, unsanitary places where social distancing is impractical, bathrooms and day rooms are shared by hundreds of [people], and access to cleaning supplies is tightly controlled.”¹⁷ Indeed, individuals who are incarcerated or detained have limited ability to take the precautionary steps that public health officials recommend as a means to guard against infection and spread, such as social distancing, mask wearing, regular hand washing, and use of adequate ventilation. They also have no control over the movements of others with whom they live in close proximity, and share spaces and resources.

26. The design and operation of detention facilities, including JCDF, make it impossible for those inside to engage in these and other prophylactic measures. If anything, facilities that house pre-trial detainees, like JCDF, are at a particularly high-risk for contagion because of substantial daily turnover among the population inside. Nor are detainees in such facilities safe from infection by a virus that originates outside the facility itself, in light of the large number of staff, contractors, and vendors who come and go on a daily basis. Moreover, detention facilities typically are not well-equipped to contain the spread of, or to treat inmates or detainees sick with, a hyper-contagious infectious disease like COVID-19.

¹⁴ See ICE, *ICE Guidance on COVID-19: ICE Detainee Statistics* (last visited June 23, 2020), <https://bit.ly/2YB9BBS>; see also Olivia P. Tallet, *1 in 5 Immigrants at ICE Detention in Houston Has COVID-19*, Houston Chronicle (June 3, 2020), available at <https://bit.ly/2C2tidZ>.

¹⁵ Olivia P. Tallet, *Immigrant Held at Conroe Detention Center Died from COVID-19, Family Says*, Houston Chronicle (May 14, 2020), available at <https://bit.ly/3ecuxFW>.

¹⁶ See, e.g., Elizabeth Trovall, *Inmate Dies of COVID-19 at Facility ICE Detainees Call Cramped and Unsanitary*, Houston Pub. Media (May 14, 2020), <https://bit.ly/3hMrkPj> (describing “inhumane conditions” at JCDF, “including poor medical care, minimal protective equipment and unsanitary and crowded dorms”).

¹⁷ Timothy Williams, Libby Seline & Rebecca Griesbach, *Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide*, N.Y. Times (June 16, 2020), available at <https://nyti.ms/3fwXKeT>.

27. Accordingly, medical and public health experts agree that reducing the number of detainees is a critical component of risk mitigation in a pandemic.¹⁸ To that end, correctional systems and institutions nationwide have announced (and implemented) efforts to reduce their detained populations.¹⁹ Even ICE has recognized the importance of reducing the number of detainees in its facilities.²⁰ And courts across the country have ordered inmates and detainees freed en masse, including from ICE facilities.²¹ As of June 18, 2020, ICE has released 486 detainees pursuant to court order.²²

28. And yet, problems persist, particularly in Texas (and at JCDF). Of the 486 ICE detainees released pursuant to court order as of June 18, 2020, only *two* were detained in Texas.²³ That is so even though nearly *half* of all ICE detainees are detained at facilities in Texas.²⁴ Moreover, ICE has acknowledged that, as of June 22, 2020, 837 of the approximately 24,000 individuals detained in its facilities have tested positive for the virus.²⁵

B. Conditions at JCDF Increase the Risk of Infection from COVID-19

29. Conditions at JCDF place immigrant detainees like Petitioners at risk of infection from COVID-19.

30. As noted herein, COVID-19 is spreading rapidly through ICE detention centers nationwide. If anything, the 837 individuals whom ICE describes as “COVID-19 positive cases currently in custody” understates the true scope of the pandemic’s reach in ICE facilities because,

¹⁸ See United Nations News, *Take ‘All Appropriate Public Health Measures’ to Protect Detainees from Coronavirus, UN Urges* (May 13, 2020), <https://news.un.org/en/story/2020/05/1063862>.

¹⁹ See, e.g., Timothy Williams, Benjamin Weiser & William K. Rashbaum, *‘Jails Are Petri Dishes’: Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020), available at <https://nyti.ms/37FKMZz>.

²⁰ See E-mail from Peter B. Berg, Assistant Dir., Field Operations, ICE, to ICE Field Office Dirs. and Deputy Field Office Dirs. (Apr. 4, 2020) (recommending release of detainees with certain medical conditions).

²¹ See, e.g., *Dada v. Witte*, No. 20-cv-458, 2020 WL 2614616 (W.D. La. May 22, 2020); *Gayle v. Meade*, No. 20-21553, 2020 WL 2086482 (S.D. Fla. Apr. 30, 2020); *Roman v. Wolf*, No. 20-768, 2020 WL 1952656 (C.D. Cal. Apr. 23, 2020); *Fraihat v. ICE*, No. 19-1546, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020); *In re Request to Commute or Suspend County Jail Sentences*, No. 084230, 2020 WL 2831186 (N.J. Mar. 22, 2020).

²² See ICE, *ICE Guidance on COVID-19: Judicial Releases* (last visited June 23, 2020), <https://www.ice.gov/coronavirus>.

²³ See *id.*

²⁴ See Emily Ryo & Ian Peacock, Am. Immigration Council, *The Landscape of Immigration Detention in the United States* 12 (Dec. 2018), available at <https://bit.ly/3hQwMRe>.

²⁵ See ICE, *ICE Guidance on COVID-19: ICE Detainee Statistics* (last visited June 23, 2020), <https://www.ice.gov/coronavirus>.

although that number “includes detainees who tested positive for COVID-19 and are currently in ICE custody under isolation or monitoring,” it “*excludes* detainees who previously tested positive for COVID-19 and were either returned to the general population after a discontinuation of medical monitoring/isolation or are no longer in ICE custody.”²⁶ Indeed, ICE does not report the total number of detainees who have tested positive for COVID-19 (although it was at least 1,406 as of June 2, 2020).²⁷

31. JCDF alone has had at least 42 confirmed COVID-19 cases, equating to an infection rate among detainees of nearly 15 percent.²⁸

32. Like other detention facilities, JCDF is an enclosed environment in which contagious diseases spread quickly and easily. Detainees live in close quarters and are subject to security measures that make it impossible for them to take the precautionary steps that medical and public health officials recommend as a means of guarding against infection. For example, the design and operation of JCDF is such that detainees are unable to practice effective (and necessary) social distancing. Further, detainees are rarely let outside, and are instead confined indoors in a facility with inadequate ventilation and where they are unable regularly to wash their hands or use hand sanitizer. Moreover, they have no control over the movements of (i) the other detainees with whom they live in close proximity and share spaces and resources, or (ii) the guards and other staff at the facility who are themselves potential carriers of the virus.²⁹

33. It is no surprise, then, that correctional institutions and detention facilities like JCDF have become incubators for the virus. As of June 16, 2020, more than 68,000 people in state

²⁶ *Id.* (emphasis added).

²⁷ Olivia P. Tallet, *1 in 5 Immigrants at ICE Detention in Houston Has COVID-19*, Houston Chronicle (June 3, 2020), available at <https://bit.ly/2C2tidZ>.

²⁸ See ICE, *ICE Guidance on COVID-19: ICE Detainee Statistics* (last visited June 23, 2020), <https://bit.ly/2YB9BBS>; see also Olivia P. Tallet, *1 in 5 Immigrants at ICE Detention in Houston Has COVID-19*, Houston Chronicle (June 3, 2020), available at <https://bit.ly/2C2tidZ>.

²⁹ Nomaan Merchant, *2 Guards at ICE Jail Die After Contracting Coronavirus*, ABC News (Apr. 29, 2020), <https://abcn.ws/3dm9JdC>; see also John Hudak and Christine Stenglein, *As COVID-19 Spreads in ICE Detention, Oversight Is More Critical Than Ever*, Brookings Inst. (May 14, 2020), available at <https://brook.gs/2AMJdNv>.

and federal prisons nationwide had tested positive for COVID-19,³⁰ and more than 520 had died.³¹ With approximately 7,500 inmates in its state-run prisons having tested positive, Texas has more confirmed cases of COVID-19 among prisoners than any other state—or the federal government.³² And Texas’ 54 COVID-19-related deaths among prisoners ranks third highest among all states, behind only Ohio and Michigan.³³

34. Petitioners are especially vulnerable to infection because of the particularly unsanitary and hazardous conditions at JCDF, which has a history of ignoring detainees’ concerns regarding their health and safety and of providing inadequate medical treatment.³⁴ Detainees have described “inhumane conditions” at JCDF, including “poor medical care, minimal protective equipment and unsanitary and crowded dorms.”³⁵ As a result, Petitioners, who have echoed these sentiments, including in an op-ed by Mr. La O Munoz in the *Houston Chronicle*,³⁶ face imminent and irreparable harm.

35. Petitioners report that they are unable to practice social distancing at JCDF. *See* Parker Decl. ¶¶ 6, 9. They live in small, poorly ventilated dormitories that hold as many as 36 detainees, and they sleep in bunk beds that are placed fewer than six feet apart. *See* Parker Decl. ¶¶ 9-10. They share a communal bathroom with few sinks, toilets, and showers, and they have sporadic—and inadequate—access to soap and no access to hand sanitizer, making it impossible for them to follow CDC guidance regarding frequent hand washing and personal hygiene.³⁷ *See* Parker Decl. ¶¶ 7-9. They have little, if any, access to personal protective equipment like face

³⁰ Timothy Williams, Libby Seline & Rebecca Griesbach, *Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide*, N.Y. Times (June 16, 2020), available at <https://nyti.ms/3fwXKeT>.

³¹ *See* Marshall Project, *A State-by-State Look at Coronavirus in Prisons* (last updated June 18, 2020), <https://bit.ly/2NkLI4>.

³² *See id.*

³³ *See id.*

³⁴ *See* Jay R. Jordan, *Former Inmate Suing Joe Corley Detention Facility*, Courier of Montgomery Cnty. (Apr. 16, 2016), available at <https://bit.ly/2Bo15hv>.

³⁵ Elizabeth Trovall, *Inmate Dies of COVID-19 at Facility ICE Detainees Call Cramped and Unsanitary*, Houston Pub. Media (May 14, 2020), <https://bit.ly/3hMrkPj>; *see also* Olivia P. Tallet, *1 in 5 Immigrants at ICE Detention in Houston Has COVID-19*, Houston Chronicle (June 3, 2020), available at <https://bit.ly/2C2tidZ> (noting that, at JCDF, units “with a capacity of 10 or more detainees have only one toilet”).

³⁶ Roger Ernesto La O Munoz, Op-Ed., *Cuban ICE Detainee Exposes Unsafe Texas Facilities, Pleads for Release to Help Battle Coronavirus*, Houston Chronicle (May 19, 2020), available at <https://bit.ly/2CmhC5Y>.

³⁷ CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 27, 2020), available at <https://bit.ly/2YnNFuZ>.

masks and gloves, or to medical care. *See* Parker Decl. ¶¶ 6, 8, 12. And they are rarely, if ever, allowed to leave their poorly ventilated dormitories or to go outside. *See* Parker Decl. ¶ 10.

36. These crowded and unsanitary conditions increase the risk that Petitioners will be infected.

37. As described by Petitioners, detainees at JCDF are deprived of the supplies necessary for them to maintain basic hygiene, let alone the supplies necessary to guard against infection from COVID-19, which (according to the CDC) include no-cost access to soap, running water, hand dryers or disposable paper towels, and, where possible, hand sanitizer.³⁸ To make matters worse, ICE does not clean the bathrooms at JCDF or provide the cleaning supplies necessary to do so properly, instead requiring detainees to do it themselves—using the soap and/or shampoo that they are supposed to use for bathing. *See* Parker Decl. ¶¶ 7, 9.

38. Finally, Petitioners report that guards and staff at JCDF have flouted CDC guidance regarding the use of personal protective equipment such as face masks and gloves,³⁹ wearing them irregularly and thereby increasing the risk of exposure to COVID-19 for detainees such as Petitioners. *See* Parker Decl. ¶ 11. Furthermore, guards regularly go back and forth between rooms at JCDF, increasing the number of detainees with whom they interact—and the risk that they will become vectors for the virus. *See* Parker Decl. ¶ 11.

39. Ultimately, Petitioners have described a facility in which it is not possible for them to take adequate precautions to guard against infection from COVID-19, and in which ICE continues to exhibit a flagrant disregard for the guidance of medical and public health officials. Nevertheless, Respondents continue to hold Petitioners in conditions in which they cannot adequately protect themselves from infection, and to do so indefinitely under a discretionary detention statute.

³⁸ *See id.*

³⁹ CDC, *Recommendation Regarding the Use of Cloth Face Coverings* (Apr. 10, 2020), available at <https://bit.ly/2zW7r7w>.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Violation of the Right to Substantive Due Process

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

41. The Due Process Clause of the Fifth Amendment to the United States Constitution guarantees persons in civil immigration detention the right to reasonable safety and to be free from punitive conditions of confinement, and requires the government to put forth a constitutionally adequate, non-punitive purpose for continued detention.

42. The government violates this right to substantive due process when it fails to satisfy its affirmative duty to provide conditions of reasonable health and safety to the people it holds in its custody, and violates the Constitution when it fails to provide for basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety for those in custody. The government also violates the right to substantive due process when, acting with deliberate indifference, it subjects civil detainees to objectively unreasonable risks to their health and safety, to cruel treatment, or to conditions of confinement that amount to punishment.

43. By continuing to detain Petitioners at JCDF—for periods of six months or more (and counting) under a discretionary detention statute—Respondents are subjecting Petitioners to an unreasonable risk of contracting COVID-19, a sometimes lethal disease for which there is no vaccine or cure. In so doing, Respondents are acting with deliberate indifference to serious and irreparable harm.

44. By subjecting Petitioners to these risks, Respondents are maintaining detention conditions that amount to punishment and are failing to ensure Petitioners' safety and health in violation of Petitioners' substantive due process rights. Respondents are aware of the serious risk posed by COVID-19 and are failing to take the only action that can adequately protect Petitioners from contracting the disease, which is to release them from custody.

45. Petitioners' ongoing confinement is by now so prolonged that it lacks a reasonable relationship to any legitimate government purpose, including effectuating removal. Petitioners do not pose a danger to the community or a risk of flight and, in any case, these considerations alone are insufficient to countervail the risk of serious illness or death that Petitioners face if they are not released.

46. Absent judicial relief in the form of release from detention, Petitioners are suffering—and will continue to suffer—irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Petitioners-Plaintiffs pray that this Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Issue a Writ of Habeas Corpus and order Respondents to immediately release Petitioners from custody, with appropriate precautionary public health and safety measures, on the grounds that their continued, prolonged detention violates the Due Process Clause of the Fifth Amendment to the United States Constitution;
- C. In the alternative, issue an Order to Show Cause against Respondents as to why Petitioners should not immediately be released from custody, with appropriate precautionary public health and safety measures;
- D. In the alternative, enter a declaration that Respondents' conduct is unconstitutional and unlawful and issue an injunction ordering Respondents to immediately release Petitioners from custody, with appropriate precautionary public health and safety measures, on the grounds that their continued, prolonged detention violates the Due Process Clause of the Fifth Amendment to the United States Constitution;
- E. Award Petitioners their reasonable attorneys' fees and costs in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other statute; and
- F. Any other and further relief that this Court deems just, equitable, and proper.

Dated: June 23, 2020

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Andrew LeGrand

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Attorneys for Petitioners-Plaintiffs

**VERIFICATION BY SOMEONE ACTING ON PETITIONERS' BEHALF
PURSUANT TO 28 U.S.C. § 2242**

We are submitting this verification on behalf of Petitioners as their attorneys. We have each discussed with Petitioners the events described in this Petition. On the basis of those discussions, we hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of our knowledge.

Dated: June 23, 2020

/s/ Nicholas M. Parker
Nicholas M. Parker, Attorney for Petitioners

/s/ Alayna Monroe
Alayna Monroe, Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Petition for Writ of Habeas Corpus via the Court's ECF filing system and via email to the office of the United States Attorney for the Southern District of Texas. A paper copy is also being mailed to the Civil Process Clerk, United States Attorney's Office, 1000 Louisiana Street, Suite 2300, Houston, Texas 77002.

Dated: June 23, 2020

/s/ Nicholas M. Parker
Nicholas M. Parker