

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

MARIUS AGBA ACHE,  
MICHAEL ATEMBESHU,  
ALBERT NJENDA NJOMENI,  
STEPHAN OMAN,  
Pine Prairie ICE Processing Center  
1133 Hampton Dupre Road  
Pine Prairie, LA 70576,

FOGAP IVO ATEMAFAC,  
BERTRAND ATENEKARA AWANAYA,  
ALIEN CASTILLO GONZALEZ,  
PRISO DALLE DURCHIEN,  
HYSON SAMA MOMA,  
YANNICK ALPHA NDELELA,  
PAULINUS DOH NDUNGMBOWO,  
ERICK PEREZ CARPIO,  
ODLANIER REYES MIERES,  
LaSalle ICE Processing Center  
830 Pine Hill Road  
Jena, LA 71342,

*Petitioner-Plaintiffs*

v.

DIANNE WITTE, *in her official capacity as Interim New Orleans Field Office Director*;  
TONY H. PHAM, *in his official capacity as Senior Official Performing the Duties of the Director of the U.S. Immigration and Customs Enforcement*; CHAD WOLF, *in his official capacity as Acting Secretary, U.S. Department of Homeland Security*; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; ERIC STAIGER, *in his official capacity as Warden, Pine Prairie ICE Processing Center*; SHAD RICE, *in his official capacity as Warden, LaSalle ICE Processing Center*.

*Respondent-Defendants*

**PETITION FOR A WRIT OF  
HABEAS CORPUS AND  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Civil Action No. \_\_\_\_\_

**PETITION FOR WRIT OF HABEAS CORPUS  
AND COMPLAINT FOR INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This case presents a request for immediate relief on behalf of thirteen Petitioner-Plaintiffs (“Petitioners”), who are highly vulnerable to serious injury or death if they contract COVID-19, the lethal disease that has swept the globe. Respondent-Defendants (“Respondents”) are holding Petitioners in civil immigration detention in the Pine Prairie ICE Processing Center (“Pine Prairie” or “PPIPC”) in Pine Prairie, Louisiana and at LaSalle ICE Processing Center (“Jena” or “LIPC”) in Jena, Louisiana. Louisiana has seen an especially grave outbreak of the coronavirus, including a second spike of cases with Acadiana a hotspot. The coronavirus feeds on precisely the unsafe, congregate conditions in which Petitioners are being held at Pine Prairie and Jena, where social distancing and proper hygiene are impossible, and where responsible officials are still chronically failing to adhere even to the most basic CDC guidelines calling for increased social distancing, masks, vigilant hygiene, surveillance testing, and restricting transfers between facilities, among other failures – even months after a court in this District released several people from Pine Prairie and Jena, citing many of the same problems. These problems produce an acute risk of harm to medically vulnerable people, even as COVID-19 recently made an alarming resurgence in Louisiana and state health officials warn of another spike coinciding with flu season. Petitioners are therefore at imminent risk of contracting the lethal COVID-19 disease.

2. The ongoing risks and consequences of COVID-19 cannot be overstated. COVID-19 has long since reached global pandemic status. As of October 7, 2020, over 35 million individuals worldwide have confirmed diagnoses, including more than 7.3 million in the United

States.<sup>1</sup> More than 1 million people worldwide have died as a result of COVID-19, including over 208,000 in the United States.<sup>2</sup> Those numbers continue to grow exponentially, with over 188,000 new cases worldwide in the past day alone.<sup>3</sup> COVID-19 has not been controlled, and public health experts are warning of another surge in cases in the United States this fall. Louisiana State Health Officer Jimmy Guidry recently predicted another dangerous spike in Louisiana during flu season.<sup>4</sup> By the time the Court reads this complaint, there will be more confirmed cases, and more death, with no end in sight.

3. As of October 6, 2020, there were nearly 170,000 COVID-19 cases in Louisiana.<sup>5</sup> More than 5,400 people in Louisiana have died from the disease.<sup>6</sup> In Evangeline Parish, where PPIPC is located, there have been over 1,300 cases and 34 deaths.<sup>7</sup> LaSalle Parish, where LIPC is located, has seen over 430 cases and ten deaths. Immigration and Customs Enforcement (“ICE”) reports that there are currently seven active cases at LIPC, with a total of 40 cases, and that there have been 65 total cases at PPIPC.<sup>8</sup> Because ICE does not engage in regular testing or report cases

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<sup>1</sup> *Coronavirus Disease 2019 (COVID-19) Dashboard*, World Health Org. (updated Oct. 7, 2020), <https://covid19.who.int/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Sam Karlin, *What we know about coronavirus in Louisiana: A few trends have emerged as schools open*, The Advocate (Oct. 3, 2020), [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_6a74664a-04ed-11eb-b81b-070cb4d53f12.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_6a74664a-04ed-11eb-b81b-070cb4d53f12.html).

<sup>5</sup> *Coronavirus (COVID-19)*, Louisiana Department of Health (updated Oct. 6, 2020), <http://ldh.la.gov/coronavirus/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *ICE Guidance on COVID-19, ICE Detainee Statistics*, ICE (updated Oct. 7, 2020), <https://www.ice.gov/coronavirus>.

of the contractors primarily responsible for operations at both facilities,<sup>9</sup> the total number of those infected (staff and detained people) must be assumed to be far higher.

4. Pine Prairie and Jena are both under the jurisdiction and direction of the New Orleans ICE Field Office. As of October 7, 2020, ICE reports that over 1,025 people (detained people and detention center staff) within the jurisdiction of the New Orleans ICE Field Office have tested positive for COVID-19.<sup>10</sup> This too does not include staff employed by contractors.

5. To date, at least nine people have died of COVID-19 while in immigration detention.<sup>11</sup> But that statistic masks the true number of deaths ICE's practices have caused: ICE has been criticized for only reporting those who have died while in ICE custody and not those whom ICE released just prior to their death.<sup>12</sup> The most recent COVID-19 death in ICE custody occurred not even two weeks ago, on September 26, 2020; the person who died was detained at Winn Correctional Center, here in Louisiana, under the jurisdiction of the New Orleans ICE Field Office. At least five immigration detention staff members - three at New Orleans ERO Field Office detention centers - have died from COVID-19, although ICE does not report this number either.<sup>13</sup>

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<sup>9</sup> Monique D. Madan, *Two workers at ICE detention center in Miami-Dade test positive for coronavirus*, Miami Herald (Apr. 7, 2020), <https://www.miamiherald.com/news/local/immigration/article241791511.html>.

<sup>10</sup> *ICE Guidance on COVID-19, ICE Detainee Statistics*, ICE (updated Oct. 7, 2020), <https://www.ice.gov/coronavirus>.

<sup>11</sup> Camilo Montoya-Galvez, *Third immigrant detained by ICE dies after contracting coronavirus*, CBS News (July 13, 2020), <https://www.cbsnews.com/news/third-immigrant-dies-in-ice-custody-after-contracting-the-coronavirus/>; *Deaths in Adult Detention Centers*, American Immigration Lawyers' Association, AILA Doc. 16050900 (updated Sept. 26, 2020), <https://www.aila.org/infonet/deaths-at-adult-detention-centers>.

<sup>12</sup> Dan Glaun, *How ICE Data Undercounts COVID-19 Victims*, PBS FRONTLINE (Aug. 11, 2020), <https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-victims/>.

<sup>13</sup> Noah Lanard, *A Fourth Guard at an ICE Detention Center Has Died of COVID-19*, Mother Jones (Jun, 10, 2020), <https://www.motherjones.com/politics/2020/06/a-fourth-guard-at-an-ice-detention-center-has-died-of-covid-19/>; *Eloy ICE Guard Dies From COVID-19 Cases Up Dramatically-in-CG*; Pinal Central (updated Sept. 4, 2020), [https://www.pinalcentral.com/covid-19/eloy-ice-guard-dies-from-covid-19-cases-up-dramatically-in-cg/article\\_1a6e0047-a90d-55c7-90ac-bbaca157e430.html](https://www.pinalcentral.com/covid-19/eloy-ice-guard-dies-from-covid-19-cases-up-dramatically-in-cg/article_1a6e0047-a90d-55c7-90ac-bbaca157e430.html).

6. Petitioners fear for their lives because they have medical conditions which make them vulnerable to serious injury or death should they be infected with COVID-19. And for good reason: they are trapped in facilities which can only be described as a breeding ground for the disease. Despite months of warnings and pleas for release from public health experts and advocates, Respondents have chosen to continue to confine Petitioners in close proximity, without adequate soap and/or hand sanitizer; to refuse to implement cleaning and protection procedures adequate to combat COVID-19; and to resist releasing even the most medically vulnerable individuals. The conditions and treatment at Pine Prairie and Jena have created a dangerous situation that threatens their lives, as well as the well-being of staff, others in the surrounding community, and the general public.

7. Moreover, the New Orleans ICE Field Office frequently transfers the people it detains – including people who are COVID-19 positive – from its other facilities in Louisiana, Mississippi, Alabama, Tennessee, and Arkansas to both Jena and Pine Prairie, which also continue to receive transfers from other parts of the United States as well.<sup>14</sup> ICE is knowingly and

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<sup>14</sup> See, e.g., Lisa Riordan Seville and Hannah Rappleye, *ICE keeps transferring detainees around the country, leading to COVID-19 outbreaks*, NBC News (May 31, 2020), <https://www.nbcnews.com/politics/immigration/ice-keeps-transferring-detainees-around-country-leading-covid-19-outbreaks-n1212856>; Gaby del Valle and Jack Herrera, *'Like Petri Dishes for the Virus': ICE Detention Centers Threaten the Rural South*, Politico (May 5, 2020), <https://www.politico.com/news/magazine/2020/05/05/coronavirus-ice-detention-rural-communities-186688>; Yeganeh Torbati, Dara Lind & Jack Gillum, *In a 10-Day Span, ICE Flew This Detainee Across the Country Nine Times*, ProPublica (Mar. 27, 2020), <https://www.propublica.org/article/coronavirus-ice-flights-detainee-sirous-asgari> (documenting transfer of man through several facilities, including those within jurisdiction of New Orleans Field Office); Hamed Aleaziz, *ICE Moved Dozens Of Detainees Across The Country During The Coronavirus Pandemic. Now Many Have COVID-19*, BuzzFeed News (Apr. 29, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-transfer-jail-coronavirus>; Monique O. Madan, *Instead of releasing detainees, ICE is transferring them to other detention centers*, Miami Herald (May 5, 2020), <https://www.miamiherald.com/news/local/immigration/article242485081.html>.

intentionally bringing COVID-19 into Pine Prairie and Jena, dramatically increasing the risk of exposure for Petitioners.

8. There is no known treatment for or vaccine against COVID-19, and there is no known cure. The only known effective measures to reduce the risk of COVID-19 are to prevent infection through social distancing and vigilant hygiene. Yet “social distancing” is a meaningless term in both Pine Prairie and Jena, where detained people are in constant close contact with each other and with facility staff. Increased and vigilant hygiene is similarly unavailable at either facility.

9. From the beginning of the pandemic, federal court rulings ordering release have explained the health risks—to those who are detained, staff, and the outside community at large—created by large prison and detention populations. *See, e.g.*, Report and Recommendation, *Menjivar v. Staiger*, No. 6:20-CV-00807 SEC P (W.D. La. Sept. 2, 2020), ECF No. 22; *Dada v. Witte*, No. 1:20-CV-00458, 2020 WL 2614616, at \*1 (W.D. La. May 22, 2020) (releasing high-risk detained immigrants in ICE detention facilities across Louisiana due to COVID-19 risks); *Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 1904497, at \*10 (S.D. Tex. Apr. 17, 2020) (releasing detained immigrants from Montgomery Processing Center due to COVID-19 risk); *Frailhat v. Wolf*, No. ED CV 20-00590 TJH (KSx) (C.D. Cal. Mar. 30, 2020) (ordering release of individual from immigration detention facility because COVID-19 “can spread uncontrollably with devastating results in a crowded, closed facility”); *Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 26, 2020) (ordering release of detained immigrant in the midst of the COVID-19 pandemic and noting that “being in a jail enhances risk” and that in jail “social distancing is difficult or impossible”); *Basank v. Decker*, No. 1:20-cv-02518-AT (S.D.N.Y. Mar. 26, 2020) (ordering the release of ten people from three immigration detention facilities in New Jersey

because “confining vulnerable individuals . . . without enforcement of appropriate social distancing and without specific measures to protect their delicate health ‘pose[s] an unreasonable risk of serious damage to [their] future health’”) (internal citation omitted); *Thakker v. Doll*, No. 1:20-cv-00480-JEJ, 2020 WL 1671563, at \*8 (M.D. Pa. Mar. 31, 2020) (ordering release of 13 people from three immigration detention facilities in Pennsylvania because “preventative measures” against the “grave consequences” of COVID-19 cannot be practiced in “tightly confined, unhygienic spaces”); *United States v. Ramos*, No. 18-CR-300009-FDS, 2020 WL 14778307, at \*1 (D. Mass. Mar. 25, 2020) (stating that “it is not possible for a medically vulnerable inmate . . . to isolate himself in this institutional setting as recommended by the CDC, and guards and newly arrested individuals must enter the facility on a daily basis”); *Coronel v. Decker*, No. 20-cv-2472 (AJN), 2020 WL 1487274, at \*3 (S.D.N.Y. Mar. 27, 2020) (noting that “being in immigration detention places petitioners at significantly higher risk of contracting COVID-19”); *United States v. Kennedy*, No. 18-20315, 2020 U.S. Dist. LEXIS 53359, at \*4 (E.D. Mich. Mar. 27, 2020) (stating that the CDC “acknowledged that correctional detention facilities ‘present unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.’”).

10. As the coronavirus has gained velocity throughout the country, it has become clear that prisons, jails and detention centers, where social distancing is all but impossible, have become major vectors of COVID-19, with extraordinarily high percentages of detained people testing positive for the disease in prisons that have conducted widespread testing.<sup>15</sup> These facilities remain especially vulnerable during the coming surge, especially because it will coincide with the flu.

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<sup>15</sup> See, e.g., *Coronavirus in the U.S.: Latest Map and Case Count*, New York Times (updated Oct. 7, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#clusters>.

11. The spread of coronavirus is not limited to those detained, but has also reached staff who live in the communities where prisons, jails and detention centers are located. As of October 2, 2020, more than 30,000 prison staff across the country – in addition to over 138,000 inmates – have tested positive for the coronavirus.<sup>16</sup>

12. As a result, law enforcement officials nationwide have released thousands of individuals in both civil and criminal detention and incarceration, because of the threat COVID-19 poses inside jails, prisons, and detention centers. On March 22, Attorney General William Barr issued a directive to the Board of Prisons urging reduction of the prison population through the use of home confinement, and on April 3, he urged “dispatch” and particular prioritization for three federal prison facilities, including the Federal Correctional Institution in Oakdale, Louisiana.<sup>17</sup> State officials and legislators have looked to release thousands from state prisons and jails. California has been planning releases of up to 17,600 persons from its prison system.<sup>18</sup> On August 25, 2020, Kentucky commuted the sentences of 646 people because of COVID-19 concerns. Other

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<sup>16</sup> *A State-by-State Look at Coronavirus in Prisons*, The Marshall Project (updated Oct. 2, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons#staff-cases>.

<sup>17</sup> See William Barr, *Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic* (Mar. 26, 2020), <https://www.politico.com/f/?id=00000171-1826-d4a1-ad77-fda671420000>; William Barr, *Increasing Use of Home Confinement at Facilities Most Affected by COVID-19* (Apr. 3, 2020), <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>.

<sup>18</sup> See, e.g., Tracey Tulley, *About 20% of N.J. Prisoners Could Be Released to Avoid Virus*, New York Times (July 30 2020), <https://www.nytimes.com/2020/07/30/nyregion/New-jersey-inmate-release-Covid.html>; *17,600 California inmates may be released early due to COVID-19, officials say*, Associated Press (Aug. 6, 2020), <https://abc30.com/california-prisons-coronavirus-updates-state-prison-inmates-released/6357785/>; Kevin Dayton, *Inmates Are Released as COVID-19 Spreads Inside Hawaii’s Largest Jail*, Honolulu Civil Beat (Aug. 20, 2020), <https://www.civilbeat.org/2020/08/inmates-are-released-as-covid-19-spreads-inside-hawaiis-largest-jail/>.



states, like West Virginia, Michigan, and Maryland have required universal testing or limited transfers in their jails and prison systems.<sup>19</sup>

13. Likewise, carceral facilities under the jurisdiction of the State of Louisiana have also acted to reduce prison population and reduce the spread of the virus. The Louisiana Department of Corrections (“DOC”) “limited new intakes to only those who must be housed in state prison.”<sup>20</sup> DOC also created a COVID-19 Furlough Review Panel to consider certain “inmates, who are within the last six months of their prison sentence, for temporary furloughs,” and has released people.<sup>21</sup> On April 2, 2020, Louisiana Supreme Court Chief Justice Bernette Joshua Johnson published a letter calling on Louisiana’s district court judges to “safely minimize the number of people detained in jails where possible,” and asking judges to “conduct a comprehensive and heightened risk-based assessment of all [criminal] detainees” based on certain guidelines, in order to reduce inmate populations.<sup>22</sup>

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<sup>19</sup> *COVID-19 UPDATE: Gov. Justice orders all corrections facility inmates and employees statewide to be tested for COVID-19*, West Virginia Office of the Governor (May 28, 2020), <https://governor.wv.gov/News/press-releases/2020/Pages/COVID-19-UPDATE-Gov.-Justice-orders-all-corrections-facilities-fully-tested.aspx>; *COVID-19 Updates*, Maryland Department of Public Safety and Correctional Services (Aug. 24, 2020), <https://news.maryland.gov/dpscs/covid-19/>; Grace Blair, *Executive order slowing movement in prisons and jails*, FOX UP (Aug. 24, 2020), <https://www.uppermichiganssource.com/2020/08/24/executive-order-slowing-movement-in-prisons-and-jails/>.

<sup>20</sup> *Summary of COVID-19 Response*, La. Dep’t of Public Safety and Corrections (2020), <https://doc.louisiana.gov/wp-content/uploads/2020/04/DOC-Summary-of-COVID-19-Response-for-WEBSITE.pdf>.

<sup>21</sup> Secretary James M. LeBlanc, *DOC Creates COVID-19 Furlough Review Panel* (April 14, 2020), <https://myemail.constantcontact.com/DOC-Creates-COVID-19-Furlough-Review-Panel.html?soid=1125804998217&aid=wmjU0Lgveg0> (accessed Aug. 25, 2020); *Responses to the COVID-19 pandemic*, Prison Policy Initiative (updated July 8, 2020), <https://www.prisonpolicy.org/virus/virusresponse.html>. The panel was suspended in June. *Id.*

<sup>22</sup> Chief Justice Bernette J. Johnson, *Letter to Louisiana District Court Judges* (April 2, 2020), <https://www.lasc.org/COVID19/2020-04-02-LASC-ChiefLetterReCOVID-19andjailpopulation.pdf>.

14. Releases not only protect the people with the greatest vulnerability to serious illness and death from COVID-19, they also protect all those in custody or working in a prison, jail, or detention center, and reduce the burden on the surrounding region's health care infrastructure, as they lessen the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time. This is particularly significant here, as the rural communities in which PPIPC and LIPC are located have very limited health care infrastructure.

15. On March 19, 2020, two Department of Homeland Security ("DHS") medical experts for sent a whistleblower letter to Congress, to highlight "the need to implement immediate social distancing to reduce the likelihood of exposure to detainees, facility personnel, and the general public," and explaining that "*it is essential to consider releasing all detainees who do not pose an immediate risk to public safety.*"<sup>23</sup> On multiple occasions since at least February 25, 2020, these experts had sounded the alarm within the agency about the impending risks to the health of those in immigration detention and the public at large unless swift mitigation measures, including releasing persons in immigration detention, are taken. Yet absent court intervention – and sometimes despite it – ICE has stubbornly refused to heed the advice of even their own public health experts.<sup>24</sup>

16. Despite ample and ongoing warning of the risks posed to those detained, Respondents' response to the threats the pandemic poses to immigrants in detention has been

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<sup>23</sup> Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to Congressional Committee Chairpersons (Mar. 19, 2020), <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

<sup>24</sup> See, e.g., Aditi Shah, *The Role of Federal Courts in Coronavirus-Related Immigration Detention Litigation*, Lawfare (June 29, 2020), <https://www.lawfareblog.com/role-federal-courts-coronavirus-related-immigration-detention-litigation>; Jacob Soboroff, *Despite judge's order, migrant children remain detained amid COVID outbreak*, NBC News (July 23, 2020), <https://www.nbcnews.com/politics/immigration/despite-judge-s-order-migrant-children-remain-detained-amid-covid-n1234705>.

abysmal and haphazard. Inside both Pine Prairie and Jena, Respondents are not consistently adhering to or enforcing even the measures ICE claims it is taking. Social distancing is not enforced. Large groups (of up to nearly 100 at Pine Prairie) are forced to sit together in shared eating areas which are not disinfected after each sitting. Respondents do not enforce mask wearing throughout the facilities, by either staff or detained people, and they limit access to the flimsy, single-use paper masks they provide to detained people (often distributing them only weekly at Pine Prairie). Indeed, many staff only intermittently wear masks and gloves, and often do so improperly. Detained individuals are required to clean their own sleeping areas, bathrooms, and common areas, with whatever supplies they can obtain from guards, which only sometimes includes disinfectant. Alcohol-based hand sanitizers are unavailable, and Respondents limit access to basic hygiene products such as soap (often distributing it only weekly as well at Pine Prairie). Respondents frequently run out of soap, requiring Petitioners to buy it (if they can afford to).

17. Respondents routinely ignore CDC guidance limiting transfers; ICE continues to transfer people into both Pine Prairie and Jena frequently and in large numbers. Indeed, ICE is an outlier among law enforcement agencies in its insistence on continuing to regularly transfer people between detention centers. The federal Bureau of Prisons has restricted transfers during the pandemic,<sup>25</sup> as has the Louisiana Department of Corrections.<sup>26</sup> The transfers themselves are extraordinarily dangerous. People recently transferred from Pine Prairie to Jena report spending hours in a bus packed full with dozens of people. Only a few detained people were wearing masks; the guards had masks, but were wearing them improperly, around their necks.

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<sup>25</sup> *BOP Implementing Modified Operations*, Federal Bureau of Prisons, [https://www.bop.gov/coronavirus/covid19\\_status.jsp](https://www.bop.gov/coronavirus/covid19_status.jsp).

<sup>26</sup> *Summary of COVID-19 Response*, La. Dep't of Public Safety and Corrections (Apr. 9, 2020), <https://doc.louisiana.gov/wp-content/uploads/2020/04/DOC-Summary-of-COVID-19-Response-for-WEBSITE.pdf>.

18. Further, Respondents are not testing in accordance with CDC guidelines. Although the CDC recommends testing of close contacts of positive cases,<sup>27</sup> some at Pine Prairie who had identified themselves as having been in close contact with an individual who tested positive were refused tests when they requested them. CDC and ICE quarantine and isolation rules are not strictly enforced either. At Pine Prairie, some people who have tested positive have been returned to work, including in the cafeteria, or simply returned to their dorms, after as little as roughly a week in isolation – including some still complaining of symptoms. Others have been taken to medical visits and legal calls only shortly after testing positive, and were made to wait near people who had not tested positive. Recent transfers to Jena were not isolated, but appear to have been placed directly into general population dorms. Additionally, Respondents do not provide education regarding when and how to wear masks; when and how to clean and disinfect shared and high-contact surfaces; or the frequency or method of handwashing required to prevent the spread of the virus. Most troublingly, Respondents generally provide no education as to what symptoms to report or how to report them.

19. Inexplicably, it has been months since Magistrate Judge Joseph H. L. Perez-Montes of this District found many of the same problems at both PPIP and LIPC that Petitioners allege still plague the facilities today. Those problems warranted the release of medically vulnerable people then, and do so today as well. *See* Report and Recommendation, *Dada v. Witte*, No. 1:20-CV-00458, 2020 WL 2614616, at \*30-38 (W.D. La. Apr. 30, 2020), ECF No. 17.

20. Petitioners are in civil immigration detention and cannot be subject to any form of punitive detention. But they are at risk of serious injury and death because of Respondents' reckless

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<sup>27</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC (updated July 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/index.html>.

choices and the conditions at Pine Prairie and Jena. Respondents' failure to follow public health guidance endangers the lives of those they have chosen to detain. The only way to effectively inhibit the spread of the coronavirus and to protect Petitioners and others from the risks posed by COVID-19 infection is to immediately release Petitioners, so that they can actually adhere to the guidance from public health experts and take the necessary steps to protect themselves.

21. Respondents cannot justify continuing to subject Petitioners to extraordinary risk of illness and death with any legitimate government objective, particularly in light of the alternatives to detention available to them. The danger posed by Petitioners' detention during COVID-19 pandemic is "so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk" and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993). Petitioners bring this action to remedy these grave violations of their constitutional rights, violations which imminently threaten them with serious illness and death. Immediate release is the only remedy that will address these violations, and that will protect Petitioners from the risks posed by COVID-19.

### **JURISDICTION AND VENUE**

22. This action arises under the Due Process Clause of the Fifth Amendment to the United States Constitution and this Court's inherent equitable power to remediate constitutional violations, the federal habeas corpus statute, 28 U.S.C. § 2241, and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*

23. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), 29 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act); 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

24. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies, and that agency's officers are sued in their official capacities. 5 U.S.C. § 702; 29 U.S.C. § 794.

25. Venue is proper in the Western District of Louisiana pursuant to 28 U.S.C. § 1391(b) and (e). Petitioners are all detained within the Western District of Louisiana, the wardens of the detention centers where Petitioners are detained reside in this District, and a substantial part of the events and omissions giving rise to Petitioners' claims occurred in this District.

### **PARTIES**

26. Petitioner Marius Agba Ache is currently detained by ICE at Pine Prairie. He is 26 years old and suffers from obesity and kidney disease. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Ache's medical conditions qualify as disabilities under the Rehabilitation Act. If released, he will reside with his aunt and brother in Silver Spring, Maryland.

27. Petitioner Fogap Ivo Atemafac is currently detained by ICE at Jena. He is 54 years old and suffers from uncontrolled hypertension and possible kidney disease. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Atemafac's medical conditions qualify as disabilities under the Rehabilitation Act. If released, he will reside with his friend in New Carrollton, Maryland.

28. Petitioner Michael Atembeshu is currently detained by ICE at Pine Prairie. He is 29 years old and suffers from asthma. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Atembeshu's medical condition qualifies as a disability under the Rehabilitation Act. If released, he will reside with his cousin in Upper Marlboro, Maryland.

29. Petitioner Bertrand Atenekara Awanaya is currently detained by ICE at Jena. He is 27 years old and suffers from hypertension. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Awanaya's medical condition qualifies as a disability under the Rehabilitation Act. If released, he will reside with his sister in Little Elm, Texas.

30. Petitioner Alien Castillo Gonzalez is currently detained by ICE at Jena. He is 37 years old and suffers from diabetes. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Castillo Gonzalez's medical condition qualifies as a disability under the Rehabilitation Act. If released, he will reside with his wife in Houston, Texas.

31. Petitioner Priso Dalle Durchien is currently detained by ICE at Jena. He is 26 years old and suffers from hepatitis B and possibly liver failure. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Durchien's medical conditions qualify as disabilities under the Rehabilitation Act. If released, he will reside with his cousin in Columbus, Ohio.

32. Petitioner Hyson Sama Moma is currently detained by ICE at Jena. He is 44 years old and suffers from hypertension and possibly kidney disease. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Moma's medical conditions qualify as disabilities under the Rehabilitation Act. If released, he will reside with his cousin in Baltimore, Maryland.

33. Petitioner Yannick Alpha Ndelela is currently detained by ICE at Jena. He is 33 years old and suffers from uncontrolled hypertension and asthma. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Ndelela's medical conditions qualify as disabilities under the Rehabilitation Act. If released, he will reside with his cousin in Greensboro, North Carolina.

34. Petitioner Paulinus Doh Ndungmbowo is currently detained by ICE at Jena. He is 29 years old and suffers from hypertension. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Ndungmbowo's medical condition qualifies as a disability under the Rehabilitation Act. If released, he will reside with his uncle in Oklahoma City, Oklahoma.

35. Petitioner Albert Njenda Njomeni is currently detained by ICE at Pine Prairie. He is 28 years old and suffers from hypertension. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Njomeni's medical condition qualifies as a disability under the Rehabilitation Act. If released, he will reside with his brother and cousin in Oklahoma City, Oklahoma.

36. Petitioner Stephan Oman is currently detained by ICE at Pine Prairie. He is 52 years old and suffers from hypertension and heart disease. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Oman's medical conditions qualify as disabilities under the Rehabilitation Act. If released, he will reside with his brother-in-law in Gallatin, Tennessee.

37. Petitioner Erick Perez Carpio is currently detained by ICE at Jena. He is 45 years old and suffers from asthma and high blood pressure. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Perez Carpio's medical conditions qualify as disabilities under the Rehabilitation Act. If released, he will reside with a friend in West Palm Beach, Florida.

38. Petitioner Odlanier Reyes Mieres is currently detained by ICE at Jena. He is 22 years old and suffers from uncontrolled asthma. He is therefore at high risk of severe illness or death if he contracts COVID-19. Mr. Reyes Mieres's medical condition qualifies as a disability under the Rehabilitation Act. If released, he will reside with his cousin in Tigard, Oregon.

39. Respondent Dianne Witte is the Interim ICE New Orleans Field Office Director for Enforcement and Removal Operations. She is responsible for carrying out ICE's immigration



detention operations at Pine Prairie and Jena. Respondent Witte is a legal custodian of all Petitioners and is authorized to release them. She is sued in her official capacity.

40. Respondent Tony H. Pham Senior Official Performing the Duties of the Director of ICE. Respondent Pham is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. He is responsible for ensuring that all people detained in ICE custody are detained in accordance with the law. Respondent Pham is a legal custodian of all Petitioners. He is sued in his official capacity.

41. Respondent Chad Wolf is the Acting Secretary of the U.S. Department of Homeland Security. He is responsible for enforcing federal laws concerning border control and immigration. Respondent Wolf has direct authority over ICE, which is responsible for the civil detention of immigrants in the United States. Respondent Wolf is a legal custodian of all Petitioners. He is sued in his official capacity.

42. Respondent ICE is a federal law enforcement agency within the U.S. Department of Homeland Security. 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. ICE detains Petitioners at Pine Prairie and Jena as part of a program or activity of an Executive agency.

43. Respondent Eric Staiger is the Warden of Pine Prairie ICE Processing Center, where Petitioners Ache, Atembeshu, Njomeni, and Oman are detained. Respondent Staiger is an employee of the GEO Group and a legal custodian of Petitioners Ache, Atembeshu, Njomeni, and Oman. He is sued in his official capacity.

44. Respondent Shad Rice is the Warden of LaSalle ICE Processing Center, where Petitioners Atemafac, Awanaya, Castillo Gonzalez, Durchien, Moma, Ndelela, Ndungbowo,

Perez Carpio, and Reyes Mieres are detained. Respondent Rice is an employee of the GEO Group and a legal custodian of Petitioners Atemafac, Awanaya, Castillo Gonzalez, Durchien, Moma, Ndelela, Ndungmbowo, Perez Carpio, and Reyes Mieres. He is sued in his official capacity.

### **FACTUAL BACKGROUND**

#### **A. COVID-19 Is an Unprecedented, Highly Contagious, and Lethal Global Pandemic That Continues Today to Pose an Acute Threat.**

45. COVID-19 is a disease caused by a novel coronavirus, known as SARS-CoV-2, which has reached global pandemic status and has killed more than 208,000 people in the United States alone. The Centers for Disease Control and Prevention (“CDC”) projects between 219,000 and 232,000 total COVID-19 related deaths in the United States by October 24, 2020.<sup>28</sup> Nationally, early CDC projections indicate that over 200 million individuals in the United States could be infected with COVID-19 over the course of the epidemic without effective public health intervention, with as many as 1.7 million deaths in the worst projections.<sup>29</sup> With more than 7.4 million people infected nationwide,<sup>30</sup> the spread of the virus, six months since its arrival in the United States, is by no means under control. Indeed, it appears to be spiking again, in a dangerous coalescence with flu season.

46. COVID-19 is a highly contagious airborne disease that is easily transmitted through respiratory droplets, especially when one is within six feet of an infected individual. COVID-19 may also be spread through airborne microdroplets containing COVID-19 particles created by

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<sup>28</sup> *Forecasts of Total Deaths*, CDC (updated Sept. 28, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html#anchor\\_1587397564229](https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html#anchor_1587397564229).

<sup>29</sup> James Glanz, et al., *Coronavirus Could Overwhelm U.S. without Urgent Action, Estimates Say*, N.Y. Times (Mar. 20, 2020), <https://www.nytimes.com/interactive/2020/03/20/us/coronavirus-model-us-outbreak.html>; Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. Times (Mar. 13, 2020), <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>.

<sup>30</sup> *Cases in U.S.*, CDC (updated Oct. 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

breathing, speaking, coughing or sneezing, even at distances far greater than six feet.<sup>31</sup> Its symptoms include fever, cough, and shortness of breath.<sup>32</sup> In addition to transmission by aerosolized droplets, COVID-19 can also be transmitted through aerosolized fecal contact.

47. People can spread COVID-19 but be pre-symptomatic and asymptomatic.<sup>33</sup> Pre-symptomatic and asymptomatic infections make up a large percentage of confirmed COVID-19 cases. This makes testing or seclusion of only those who are symptomatic an ineffective solution.

48. There is no vaccine against COVID-19, nor is there any known medication to prevent or cure infection from the virus.

49. The only known effective measure to reduce the risk of severe illness or death to vulnerable individuals is to prevent them from being infected in the first place. Social distancing, or remaining physically separated from known or potentially infected individuals, properly wearing masks, and vigilant hygiene, including frequently washing hands with soap and water and disinfecting commonly touched areas, are the only known effective measures to prevent infection.<sup>34</sup>

50. COVID-19 can result in respiratory failure, kidney failure, and death. Infected individuals who do not die from the disease can face serious damage to the lungs, heart, and other

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<sup>31</sup> *Transmission of SARS-CoV-2: implications for infection prevention precautions*, World Health Org. (Jul. 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

<sup>32</sup> *Coronavirus Disease 2019 (COVID-19)* CDC, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

<sup>33</sup> A study in Iceland, where COVID-19 testing is widespread, found that about half those who tested positive have no symptoms. Jason Gale, *Coronavirus Cases Without Symptoms Spur Call for Wider Tests*, Bloomberg (Mar. 22, 2020), <https://www.bloomberg.com/news/articles/2020-03-22/one-third-of-coronavirus-cases-may-show-no-symptom-scmp-reports>.

<sup>34</sup> *Coronavirus Disease 2019 (COVID-19), How to Protect Yourself and Others*, CDC (updated Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

organs, resulting in prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity.

51. COVID-19 patients can progress from mild or moderate disease to severe disease requiring intensive care unit admission and mechanical ventilation within hours. Adequately trained and appropriate level clinicians (advanced care practitioner or medical doctors) are required to closely monitor symptomatic patients, recognize signs of worsening clinical condition, and arrange for emergent and appropriate transportation to a higher level of care facility.

52. Even younger and healthy individuals who contract COVID-19 may require supportive care. And those who develop serious complications will need advanced support, including highly specialized equipment that is in very limited supply, and an entire team of care providers giving 24-hour care, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. This level of support is especially difficult to provide to detained individuals, particularly at unsafe and under-resourced ICE detention facilities.

53. Older individuals and those with certain medical conditions face dramatically higher chances of serious illness or death from COVID-19. Certain underlying medical conditions increase the risk of serious COVID-19 disease for individuals of any age, including those which Petitioners suffer from: diabetes, kidney disease, hypertension, asthma, heart disease, and obesity.<sup>35</sup> Moreover, individuals detained in immigration detention centers are also more susceptible to experiencing complications from infectious diseases than the population at large. This is especially true for individuals with underlying conditions such as diabetes, asthma, lung disease, kidney disease, or other illness. Because Petitioners suffer from conditions which put them

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<sup>35</sup> *People with Certain Medical Conditions*, CDC (updated Oct. 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

at elevated risk for COVID-19 and are detained in Pine Prairie and Jena, where social distancing and vigilant hygiene are impossible, they are at high risk for contracting and experiencing severe complications, even death, from COVID-19.

**B. CDC Guidance and ICE’s Response.**

54. On March 23, 2020, the CDC issued the first of several interim guidance documents for detention facilities, most recently updated on July 22, 2020. Detention facilities include “federal and state prisons, local jails, and detention centers.”<sup>36</sup> The CDC guidance states that “detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced” and warns that “[t]here are many opportunities for SARS-COV-2 to be introduced into a correctional or detention facility, including daily staff movements.”<sup>37</sup> Indeed, the July 22, 2020 CDC guidance takes particular note that “jails and detention centers . . . have high turnover, admitting new entrants daily who may have been exposed to SARS-CoV-2 in the surrounding community or other regions.”<sup>38</sup>

55. As the CDC guidance acknowledges, “[s]ocial distancing options within correctional and detention settings may be limited due to crowded living conditions.” Further, “[t]he ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent hand washing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.”<sup>39</sup>

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<sup>36</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC (updated July 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/index.html>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

56. The CDC guidance mandates that facilities “[e]nsure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies... are on hand and available... provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing” and that they “[r]estrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.”<sup>40</sup> The guidance also notes that because “many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.”<sup>41</sup>

57. The CDC also recommends testing for all symptomatic individuals (admitting that “symptom screenings cannot identify individuals with COVID-19 who may be asymptomatic or pre-symptomatic, and therefore will not prevent all individuals with COVID-19 from entering the facility”);<sup>42</sup> close contacts of those who have tested positive for COVID-19, including those without symptoms; and consideration of widespread and periodic testing of asymptomatic individuals in high-risk settings.<sup>43</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Interim Considerations for SARS-CoV-2 Testing in Correctional & Detention Facilities*, CDC, (updated Aug. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html>.

<sup>43</sup> *Id.*

58. In July 2020, the Louisiana COVID-19 Health Equity Task Force recommended mass universal testing in Louisiana’s prison system and staff testing at “prisons, jails and detention centers.”<sup>44</sup>

59. ICE issued an “Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19)” and has established a webpage entitled “ICE Guidance on COVID-19.” On April 10, 2020, ICE’s Enforcement and Removal Office, (“ERO”) issued a “COVID-19 Pandemic Response Requirements” (“PRR”) outlining recommendations for detention facilities, which was most recently updated on September 4, 2020.<sup>45</sup>

60. These documents (collectively the “ICE Protocols”) will not protect Petitioners. They do not fully implement the CDC’s guidelines for the management of the virus in correctional and detention settings, full implementation of which ICE’s own detention policies have long required.<sup>46</sup> While the protocols take note that those 55 and older and with certain underlying conditions face a higher risk of severe COVID-19 illness, PRR at 8-11,<sup>47</sup> these protocols do not address imminent shortages of medical supplies and staffing or education of detained people and staff about the virus. The PRR lacks deadlines, lacks information on how detention facilities can

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<sup>44</sup> *Subcommittee Reports*, Louisiana COVID-19 Health Equity Task Force (July 2020), <http://www.sus.edu/assets/sus/LAHealthEquityTaskForce/June-COVID-Task-Force-Subcommittee-Reports.pdf>

<sup>45</sup> *COVID-19 Pandemic Response Requirements*, ICE (Sept. 4, 2020), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

<sup>46</sup> National Detention Standards for immigration detention facilities were first promulgated in 2000 and renamed and reissued by ICE as Performance-Based National Detention Standards (“PBNDS”) in 2008. ICE again reissued these standards in 2011 and revised them in December 2016. The PBNDS govern the prisons ICE uses to detain people, including service processing centers, contract detention facilities, and state or local government facilities used by ERO to detain people for more than 72 hours pursuant to intergovernmental service agreements. Crucially, the PBNDS mandate that “Center for Disease Control and Prevention (“CDC”) guidelines for the prevention and control of infectious and communicable diseases *shall* be followed.” PBNDS §4.3 (II)(10) (emphasis added).

<sup>47</sup> The PRR direct detention facility staff to “evaluate” those age 55 and over and those with underlying conditions.

procure hygiene supplies, PPE, or medical supplies, and it acknowledges but then ignores the fact that the coronavirus can be transmitted by asymptomatic and pre-symptomatic individuals. It fails to outline specific actions to be taken regarding medical monitoring, the provision of medical care within the detention facility, or the transfer of an individual requiring more intensive medical services or hospitalization. Importantly, it lacks a reporting or oversight structure by which to monitor compliance by detention facilities even with what it does require.

61. Even when the PRR do comport with the CDC guidelines, Respondents are not ensuring compliance at Pine Prairie or Jena. For example, ICE's PRR urge that facilities "adhere to CDC recommendations for cleaning and disinfection during the COVID-19 response." PRR at 15-16. The CDC guidelines for correctional and detention facilities urge that "that "staff and incarcerated/detained people performing cleaning wear PPE."<sup>48</sup> Detained people at both Pine Prairie and Jena are expected to clean their shared living areas themselves (including bathrooms, showers, and sinks), but they are not provided with personal protective equipment ("PPE") for cleaning, beyond the meager disposable masks they are issued for everyday use, not even gloves. Indeed, they are frequently not even provided with cleanser or disinfectant. ICE further states that "social distancing may not be possible in congregate settings such as detention facilities," and instead, it recommends a number of alternative measures including directing detained people to "avoid congregating in groups of 10 or more, employing social distancing strategies at all times." PRR at 20-21. This is not possible at either Pine Prairie or Jena. Both the PBNDS and the PRR require facilities to have plans to address the management of infectious and communicable diseases that include "control, treatment and prevention strategies." PBNDS §4.3 (V)(C)(3); PRR at 6-7.

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<sup>48</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC (July 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.



Neither Pine Prairie nor Jena has ever publicly released such a plan. In addition, people are frequently transferred to, from, and between facilities, in violation of both the CDC guidelines and the PRR.<sup>49</sup>

62. The ICE Protocols do not even offer an effective way to determine who has the virus. Since many COVID-19 carriers can be asymptomatic or not show symptoms for weeks after exposure, “screening people based on observable symptoms is just a game of catch up.” *In re. Extradition of Alejandro Toledo Manrique*, No. 19-mj-71055, 2020 WL 1307109 (N.D. Cal. March 19, 2020) (ordering release on bond in part because the government’s management plan did not “say anything about testing”). Absent widespread testing – which the PRR do not require – the prevalence of the coronavirus is likely to be far greater than ICE reports, because “the virus is able to spread undetected among populations, given its long incubation period and asymptomatic presentation in some individuals.” *Vazquez Barrera v. Wolf*, 4:20-CV-1421, 2020 WL 1904497 at \*6 (S.D. Tex. Apr. 17, 2020) (ordering release of medically vulnerable individual from ICE detention).

63. Importantly, the COVID-19 pandemic—and ICE’s unreasonable response to it—will significantly strain ICE’s already broken medical care system. Recently, the Office of the Inspector General (“OIG”) of the Department of Homeland Security (“DHS”) issued a report concerning ICE’s handling of the COVID-19 pandemic. It reported that, “facilities reported concerns with their inability to practice social distancing among detainees, and to isolate or quarantine individuals who may be infected with COVID-19. Regarding staffing, facilities reported decreases in current staff availability due to COVID-19 but have contingency plans in place to ensure continued operations. The personnel at facilities also expressed concerns about the

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<sup>49</sup> *Id.*; PRR at 20.

availability of staff, as well as protective equipment for staff, if an outbreak of COVID-19 occurred in the facility.”<sup>50</sup>

64. This is yet another example of ICE’s long history of mishandling infectious and communicable diseases, struggling to contain them, and failing to follow nationally accepted standards. Long before the COVID-19 outbreak, numerous public reports, including by DHS itself, have identified serious and substantial flaws in ICE’s medical care system.

65. As recently as last year, ICE mishandled and failed to take adequate measures to protect detained individuals at Pine Prairie against outbreaks of chicken pox and mumps:<sup>51</sup> in late January and early February 2019, 300 inmates were quarantined after 18 detained people tested positive for mumps,<sup>52</sup> and in early March, about 300 detained people were again quarantined for at least 25 days due to the continuing threat of mumps infections.<sup>53</sup> Unlike COVID-19, mumps can be prevented with a vaccine.

66. A 2017 OIG report that assessed care at certain ICE facilities identified “lack of cleanliness and limited hygienic supplies” as well as “long waits for the provision of medical

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<sup>50</sup> *Early Experiences with COVID-19 at ICE Detention Facilities*, DHS Office of the Inspector General, OIG-20-42 at 1 (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>.

<sup>51</sup> Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (Jun. 14, 2019), [https://www.vice.com/en\\_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox](https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox).

<sup>52</sup> Maria Clark, *Mumps quarantine at Louisiana immigration detention centers affecting legal access, lawyers say*, NOLA.com, March 13, 2019, [https://www.nola.com/news/article\\_c7b600fd-bce5-53a5-86c7-2b15a461e7f9.html](https://www.nola.com/news/article_c7b600fd-bce5-53a5-86c7-2b15a461e7f9.html).

<sup>53</sup> The Associated Press, *2,200 quarantined over mumps outbreak at ICE immigration centers in Aurora and Louisiana*, The Denver Post (Mar. 12, 2019), <https://www.denverpost.com/2019/03/12/mumps-outbreak-quarantine-aurora-ice-immigration-center/>.

care[.]”<sup>54</sup> Other reports echo these alarming findings about substandard medical care in ICE facilities.<sup>55</sup>

67. DHIS’s OIG concluded in a 2019 report that ICE “does not adequately hold detention facility contractors accountable for not meeting performance standards,” “issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards,” and “does not adequately share information about ICE detention contracts with key officials.”<sup>56</sup>

68. Moreover, ICE has routinely failed to remedy inhumane conditions because, according to the OIG, “ICE does not adequately follow up on identified deficiencies or consistently hold facilities accountable for correcting them, which further diminishes the usefulness of inspections. . . . with some deficiencies remaining unaddressed for years.”<sup>57</sup>

69. ICE even publicly acknowledged the need to limit the spread of the virus and the number of people in its detention centers, when it announced that it would delay enforcement actions to arrest fewer immigrants and would use alternatives to detention as a response to the

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<sup>54</sup> *Concerns About ICE Detainee Treatment and Care at Detention Facilities*, DHS Office of the Inspector General, OIG-18-32 at 7 (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

<sup>55</sup> See, e.g., *Immigration Detention: Additional Actions Needed to Strengthen Mgmt. and Oversight of Detainee Med. Care*, U.S. Gov’t Accountability Off., GAO-16-23 (Feb. 2016), <https://www.gao.gov/assets/680/675484.pdf>; Human Rts. Watch *et al.*, *Code Red: The Fatal Consequences of Dangerously Substandard Med. Care in Immigration Detention*, at 15, 19, 25, 46 (June 2018), [https://www.hrw.org/sites/default/files/report\\_pdf/us0618\\_immigration\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/us0618_immigration_web2.pdf); J. David McSwane, *ICE Has Repeatedly Failed to Contain Contagious Diseases, Our Analysis Shows. It’s a Danger to the Public*, PROPUBLICA (Mar. 20, 2020), <https://www.propublica.org/article/ice-has-repeatedly-failed-to-contain-contagious-diseases-our-analysis-shows-its-a-danger-to-the-public>.

<sup>56</sup> *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, DHS Office of Inspector General, OIG-19-18, at 1 (Jan. 29, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

<sup>57</sup> *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, DHS Office of the Inspector General, OIG-18-67, at 1 (June 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

COVID-19 outbreak for new people arrested in the field.<sup>58</sup> But several months into the pandemic, and despite multiple lawsuits, the agency still refuses to release vulnerable individuals who are currently in custody and has not stopped bringing new people into the detention centers.

70. ICE's slow response to the pandemic, coupled with its incomplete adoption of CDC guidance, and inability – or refusal – to enforce even its own meager policies within Pine Prairie and Jena are entirely consistent with its past bungling of infectious disease outbreaks in its detention centers (including in Pine Prairie) and put Petitioners at grave risk for contracting COVID-19.

### C. COVID-19 in Detention Centers

71. The social distancing, mask wearing, and vigilant hygiene that we have all come to practice over the past several months are not possible in detention facilities, where large numbers of people are housed in close quarters in congregate settings, with minimal access to sinks, showers, toilets, water, personal hygiene and facility cleaning supplies. Even if social distancing, hygiene, and masks were possible and available, though, they may not be enough given the risk of airborne transmission in crowded spaces with poor ventilation.<sup>59</sup> Detained persons like Petitioners face inherent challenges to protect themselves from COVID-19 infection because they live, sleep, and use the bathroom in close proximity with others, and because “[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible.”<sup>60</sup>

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<sup>58</sup> See Maria Sacchetti and Arelis R. Hernández, *ICE to stop most immigration enforcement inside the U.S., will focus on criminals during coronavirus outbreak*, The Washington Post (Mar. 18, 2020), [https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab\\_story.html](https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab_story.html).

<sup>59</sup> Apoorva Mandavilli, *239 Experts With One Big Claim: The Coronavirus Is Airborne*, New York Times (Jul. 4, 2020), <https://www.nytimes.com/2020/07/04/health/239-experts-with-one-big-claim-the-coronavirus-is-airborne.html>

<sup>60</sup> Keri Blakinger & Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, The Marshall Project (Mar. 6, 2020), <https://www.themarshallproject.org/2020/03/06/when->

72. For example, the SARS-CoV-2 virus survives for prolonged periods of time on non-porous and metallic surfaces, which are commonly found in jails, prisons and detention facilities, making intensified and frequent cleaning and disinfection critical. Such hygiene measures are difficult, if not impossible, in many facilities, including both Pine Prairie and Jena.

73. Additionally, many toilets in jails, prisons and detention centers lack lids. This is problematic because COVID-19 transmission is possible through aerosolized fecal contact. Typical detention center toilets, then, pose a threat to anyone sharing a cell or common bathroom with a person who has COVID-19, even before that person becomes symptomatic.

74. Further, given the shortage of COVID-19 tests in the United States, as well as the slow processing of results, detention facilities cannot currently conduct aggressive, widespread testing to identify and track all COVID-19 cases.

75. It is thus equally impossible for detention facilities to consistently and adequately screen detained individuals and staff for new, asymptomatic infection.

76. As a result, when COVID-19 reaches a jail, the results can be explosive. In March 2020, seven incarcerated people at Oakdale Federal Correctional Institution tested positive for COVID-19.<sup>61</sup> By May 9, 2020, eight people died. In Louisiana prisons, about 38 percent of those tested for COVID-19 have tested positive and 29 have died.<sup>62</sup>

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purell-is-contraband-how-do-you-contain-coronavirus (describing, for example, limited access to hand sanitizer and other precautionary measures).

<sup>61</sup> Nicholas Chrastil, *Louisiana Federal Prison No Longer Testing Symptomatic Inmates for Coronavirus Due to ‘Sustained Transmission’*, The Lens (Mar. 31, 2020), <https://thelensnola.org/2020/03/31/louisiana-federal-prison-no-longer-testing-symptomatic-inmates-for-coronavirus-due-to-sustained-transmission>.

<sup>62</sup> *Covid-19 Inmate Positives*, La. Dep’t Public Safety and Corrections (updated Oct. 8, 2020), <https://doc.louisiana.gov/doc-covid-19-testing/>.

77. The coronavirus has spread widely inside U.S. prisons, jails, and detention centers. A study conducted by UCLA researchers found infection rates of incarcerated people to be 5.5 times the rate of those in the United States generally, with deaths occurring at three times the rate of those outside the federal and state prison systems.<sup>63</sup> The spread of the disease has not been limited to those confined. In early May, more than 5,000 corrections officers and staff had tested positive for COVID-19<sup>64</sup>; by October 2, over 30,000 had been reported to test positive.<sup>65</sup>

78. ICE detention facilities have not been spared. As of April 15, 2020, ICE had reported that 89 detained people and 21 staff at ICE facilities had confirmed cases of COVID-19. Nearly six months later, on October 7, 2020, even with only limited testing of those detained, ICE reported that 6,435 detained persons have had confirmed cases.<sup>66</sup> ICE stopped reporting the number of cases amongst its staff in June, but, as of June 18, 2020, 45 ICE staff working in detention facilities had tested positive.<sup>67</sup> However, with no reporting of testing among the employees of private prison contractors who operate the majority of ICE detention centers, this number certainly understates the spread of the illness at facilities like Pine Prairie and Jena, which are both operated by the Geo Group. Indeed, the true figure of infected people in ICE detention

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<sup>63</sup> Brendan Saloner, Kalind Parish, Julie Ward, et al., *COVID-19 Cases and Death in Federal and State Prisons*, Journal of the American Medical Association (July 8, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2768249>; Tonya Simpson, *Coronavirus infecting America's prison inmates five times more than outside, new study finds*, ABC News (July 8, 2020), <https://abcnews.go.com/Health/coronavirus-infecting-americas-prison-inmates-times-ucla-study/story?id=71668086>.

<sup>64</sup> Luke Barr, *More than 5000 corrections officers have contracted COVID-19*, ABC News (May 5, 2020), <https://abcnews.go.com/US/5000-corrections-officers-contracted-covid-19/story?id=70520117>.

<sup>65</sup> *A State-by-State Look at Coronavirus in Prisons*, The Marshall Project (August 22, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

<sup>66</sup> *ICE Guidance on COVID-19, Confirmed Cases*, ICE (updated Apr. 15, 2020), <https://www.ice.gov/coronavirus>; *ICE Guidance on COVID-19, ICE Detainee Statistics*, ICE, (updated Oct. 7, 2020), <https://www.ice.gov/coronavirus>.

<sup>67</sup> *ICE Guidance on COVID-19, Employee Confirmed Cases*, ICE (updated June 18, 2020), <https://www.ice.gov/coronavirus>.

centers is estimated to be up to 15 times higher.<sup>68</sup> COVID-19 outbreaks have likely resulted in the deaths of at least thirteen people working in or detained at ICE's detention facilities, including at least nine detained people.<sup>69</sup> Many others have been hospitalized.<sup>70</sup> The pandemic remains prevalent within ICE facilities as new daily infections remain steady.<sup>71</sup>

#### **D. COVID-19 at Pine Prairie and Jena.**

79. PPIP is located in Pine Prairie, Louisiana, and LIPC is located in Jena, Louisiana. As of October 7, 2020 there have been over 170,000 confirmed COVID-19 cases and more than 5,400 COVID-19 deaths in Louisiana.<sup>72</sup> There have been over 1,300 cases and 34 COVID-19 deaths in Evangeline Parish, where Pine Prairie is located. LaSalle Parish, where Jena is located, has seen 440 cases and ten deaths. After an earlier wave, the number of infected people in Louisiana recently spiked dramatically again, particularly in Acadiana, the region in which Pine

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<sup>68</sup> Dennis Kuo and Noelle Smart et. al, *The Hidden Curve*, Vera Institute of Justice (June 2020), <https://www.vera.org/the-hidden-curve-covid-19-in-ice-detention>.

<sup>69</sup> *ICE Guidance on COVID-19, ICE Detainee Statistics*, ICE (updated Oct. 7, 2020), <https://www.ice.gov/coronavirus>; *Deaths in Adult Detention Centers*, American Immigration Lawyers' Association, AILA Doc. 16050900 (updated Sept. 26, 2020), <https://www.aila.org/infonet/deaths-at-adult-detention-centers>; Daniel Gonzalez, *Guard at Eloy Detention Center may have died of COVID-19 as cases at facility soar*, Arizona Republic (June 15, 2020), <https://www.azcentral.com/story/news/politics/immigration/2020/06/15/coronavirus-cases-arizona-elay-detention-center-guard-covid-19-deaths/3193118001/>; Noah Lanard, *A Fourth Guard at an ICE Detention Center Has Died of COVID-19*, Mother Jones (Jun, 10, 2020), <https://www.motherjones.com/politics/2020/06/a-fourth-guard-at-an-ice-detention-center-has-died-of-covid-19/>.

<sup>70</sup> Monique Madam, *'Either he's dead or he's been kidnapped': ICE detainees go 'missing' amid coronavirus*, Miami Herald (Jun. 17, 2020), <https://www.miamiherald.com/news/local/immigration/article243545852.html>.

<sup>71</sup> Tom Jawetz and Nicole Prchal Svajlenka, *Data on the Coronavirus Outbreak in Immigration Detention Offer More Questions than Answers*, Center for American Progress (Jun. 16, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/06/16/486338/data-coronavirus-outbreak-immigration-detention-offer-questions-answers/>.

<sup>72</sup> *Coronavirus (COVID-19)*, La. Dep't of Health (updated Oct. 7, 2020), <http://ldh.la.gov/coronavirus/>.



Prairie and Evangeline Parish are situated.<sup>73</sup> The effects of Hurricane Laura on COVID-19 infection in the region are unknown. About 420 more people are projected to die across Louisiana in roughly the coming month.<sup>74</sup>

80. Savoy Medical Center and Mercy Regional Medical Center are the only two hospitals in Evangeline Parish. The Savoy Medical Center is a general hospital with 176 beds and only ten beds are designated for intensive care.<sup>75</sup> Mercy Regional Medical Center is a general hospital with 48 beds and only eight beds are designated for intensive care.<sup>76</sup> Evangeline Parish is part of the Louisiana Department of Health's "Region 4," which includes Acadia, Iberia, Lafayette, St. Landry, St. Martin, and Vermillion parishes.<sup>77</sup> On October 6, 2020, only 29 ICU beds and 153 ventilators remained available in the entirety of the seven parishes in Region 4, as we move into the fall flu season.<sup>78</sup>

81. LaSalle General Hospital and Hardtner Medical Center are the only two hospitals in LaSalle Parish. LaSalle General Hospital, located in Jena, is a general hospital with 49 acute medical beds and no ICU beds.<sup>79</sup> Hardtner Medical Center, in Olla, Louisiana, is a general hospital

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<sup>73</sup> Andrew Capps, *Louisiana COVID-19: Deaths continue unabated in Acadiana Tuesday as 185 new cases found*, Lafayette Daily Advertiser, (Aug. 25, 2020), <https://www.theadvertiser.com/story/news/local/2020/08/25/louisiana-covid-19-acadiana-deaths-continue-unabated-185-new-cases/5631771002/>.

<sup>74</sup> *US-Louisiana*, Covid19-Projections.com (updated Oct. 5, 2020), <https://covid19-projections.com/us-la>.

<sup>75</sup> *About Us*, Savoy Medical Ctr., <http://savoymedical.com/about-us/> (accessed Oct. 7, 2020).

<sup>76</sup> *About Us*, Mercy Regional Medical Ctr., <http://mercyregionalmedicalcenter.com/about-us/>; *Intensive Care*, Mercy Regional Medical Ctr., <http://mercyregionalmedicalcenter.com/intensive-care/> (both accessed Oct. 7, 2020).

<sup>77</sup> *Hospitals by Administrative Regions*, La. Dep't of Health, <http://ldh.la.gov/index.cfm/page/2665>.

<sup>78</sup> *Coronavirus in Louisiana*, NOLA.com (updated Oct. 6, 2020), [https://www.nola.com/news/coronavirus/article\\_7cb2af1c-6414-11ea-b729-93612370dd94.html](https://www.nola.com/news/coronavirus/article_7cb2af1c-6414-11ea-b729-93612370dd94.html).

<sup>79</sup> *About LaSalle General Hospital*, LaSalle General Hospital, <https://www.lasallegeneralhospital.com/about>; *In-Patient Acute Care*, LaSalle General Hospital (both accessed Oct. 7, 2020), <https://www.lasallegeneralhospital.com/patient-acute-care>.



with 35 beds.<sup>80</sup> LaSalle Parish is part of the Louisiana Department of Health's "Region 6," which also includes Vernon, Rapides, Avoyelles, Concordia, Catahoula, Grant, and Winn parishes. On October 6, 2020, 65 ICU beds and 107 ventilators remained available in the entirety of the eight parishes that make up Region 6.<sup>81</sup>

82. Social distancing is generally impossible in both Pine Prairie and Jena, and, even when possible, it is neither required nor enforced. Individuals detained at both Pine Prairie and Jena are housed in close quarters and forced to sleep just a few feet away from each other in immovable bunk beds.<sup>82</sup> Detained individuals at both facilities use common spaces together, sharing tables, telephones, toilets, sinks, and showers. Large groups share eating areas at both facilities - including groups up to nearly 100 people at Pine Prairie. Detained people at both facilities are required to sit close together, and dining areas are not disinfected after each sitting.<sup>83</sup> At both Pine Prairie and Jena, guards force people to sit at only a few tables, right next to each other. If people try to socially distance by spacing themselves out and sitting at other tables, the guards force them to go back to sit in the group. At least two food servers at the Pine Prairie have tested positive for COVID-19.<sup>84</sup> Bathrooms and showers are shared by several people and are not sanitized or disinfected after each use. Toilets do not have lids and are in close proximity to living

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<sup>80</sup> Hardtner Medical Center, *About*, Facebook, [https://www.facebook.com/pg/HardtnerMedicalCenter/about/?ref=page\\_internal](https://www.facebook.com/pg/HardtnerMedicalCenter/about/?ref=page_internal) (accessed Oct. 7, 2020).

<sup>81</sup> *Coronavirus in Louisiana*, *supra* note 78.

<sup>82</sup> Joe Penney, *Inside an ICE facility in Louisiana, detainees say ICE is depriving them of masks, under-testing for COVID-19, and moving migrants around the country*, Business Insider (May 1, 2020), <https://www.businessinsider.com/detainees-say-ice-undertesting-for-covid19-not-giving-them-supplies-2020-5>.

<sup>83</sup> Laura C. Morel, *Inside ICE lockup in Louisiana: Face masks made of socks, no hand sanitizer, growing tensions*, NOLA.com (Apr. 8, 2020), [https://www.nola.com/news/coronavirus/article\\_be360698-7911-11ea-a538-5361d68c8c9c.html](https://www.nola.com/news/coronavirus/article_be360698-7911-11ea-a538-5361d68c8c9c.html).

<sup>84</sup> Penney, *supra* note 82.

spaces, making aerosolized fecal transmission a very real threat. People in the hallways are constantly in very close proximity to each other. At Pine Prairie, the chapel and medical waiting are usually crowded, and the library easily becomes crowded.

83. Until mid-to-late April, Pine Prairie did not provide detained people with any masks.<sup>85</sup> At both facilities, Respondents limit access to the flimsy,<sup>86</sup> single-use paper masks they do provide to detained people, often distributing them only weekly at Pine Prairie. Respondents do not provide detained people with any education regarding when and how to wear masks and do not enforce mask wearing throughout the facilities, by either staff or detained people. Indeed, many facility staff at both Pine Prairie and Jena only intermittently wear masks and gloves, and often do so improperly.<sup>87</sup>

84. At both facilities, detained individuals are left to clean the sleeping areas, bathrooms, and common areas themselves, with whatever cleaning supplies they can obtain from guards. Although the facilities seem to have disinfectant, detained individuals are not always able to get it from the guards.<sup>88</sup> Detained people are not provided with PPE to clean. At Pine Prairie, commonly used items and surfaces like telephones in the visitation area are infrequently disinfected.<sup>89</sup> Indeed, Respondents do not educate detained people at either facility about how or how often to clean and disinfect shared and high-contact surfaces so as to prevent the spread of the virus.

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<sup>85</sup> *Id.*

<sup>86</sup> Morel, *supra* note 83.

<sup>87</sup> Penney, *supra* note 82.

<sup>88</sup> Rosemary Westwood, *'They Don't Care About Anything': Inside a COVID-19 Outbreak at One Louisiana ICE Facility*, Crescent to Capitol/WWNO/WRKF (Aug. 12, 2020), <https://crescenttocapitol.org/2020/08/12/they-dont-care-about-anything-inside-a-covid-19-outbreak-at-one-louisiana-ice-facility/>.

<sup>89</sup> Penney, *supra* note 82.

85. Alcohol-based hand sanitizers are unavailable at either Pine Prairie or Jena,<sup>90</sup> and Respondents limit access to basic hygiene products such as soap, often distributing it only weekly at Pine Prairie. Respondents frequently run out of soap, requiring Petitioners to buy it – if they can afford it.<sup>91</sup> Even if soap were readily available, Respondents make no efforts to educate detained people at either facility about the frequency or method of handwashing required to prevent the spread of the virus.

86. Staff arrive and leave both Pine Prairie and Jena on a shift basis, and asymptomatic staff could carry the infection into the facilities. Pine Prairie has had great difficulty retaining staff and has great turnover, even requiring staff to come in from other facilities at times.

87. Respondents routinely ignore CDC guidance limiting transfers as ICE continues to arrest people from the outside and bring them into its detention facilities and transfer detained people to, from, and between facilities, including Pine Prairie and Jena, and a high frequency and in great numbers.<sup>92</sup> People transferred to Pine Prairie have tested positive for COVID-19.<sup>93</sup> Indeed, the first case of COVID-19 at Pine Prairie happened when ICE accepted a COVID-19 positive individual who was transferred from BOP's Oakdale facility, which was in the midst of a serious COVID-19 outbreak at the time.<sup>94</sup>

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<sup>90</sup> Morel, *supra* note 83.

<sup>91</sup> Penney, *supra* note 82.

<sup>92</sup> Dennis Kuo and Noelle Smart *et. al*, *The Hidden Curve*, Vera Institute of Justice (June 2020), <https://www.vera.org/the-hidden-curve-covid-19-in-ice-detention>; Fernanda Echavarri and Noah Lanard, *A Doctor on ICE's Response to the Pandemic: "You Could Call It COVID-19 Torture"*, Mother Jones (Apr. 13, 2020), <https://www.motherjones.com/politics/2020/04/a-doctor-on-ices-response-to-the-pandemic-you-could-call-it-covid-19-torture/>; Morel, *supra* note 83.

<sup>93</sup> Penney, *supra* note 82; Westwood, *supra* note 88.

<sup>94</sup> Maria Clark, *ICE detainee tests positive for COVID-19 in Pine Prairie, Louisiana*, The Daily Advertiser (Apr. 3, 2020), <https://www.theadvertiser.com/story/news/american-south/2020/04/03/coronavirus-ice-detainee-tests-positive-pine-prairie-louisiana/2946110001/>.

88. Respondents' testing regime is insufficient to prevent COVID-19 from reaching Petitioners. Because some COVID-19 carriers can spread the virus even when asymptomatic, "screening people based on observable symptoms is just a game of catch up." *In re. Extradition of Alejandro Toledo Manrique*, No. 19-mj-71055, 2020 WL 1307109 at \*1 (N.D. Cal. March 19, 2020). On information and belief, Respondents do not perform COVID-19 tests on asymptomatic staff, contractors, and vendors, detained people running without high fevers, or asymptomatic or mildly symptomatic people confined in the same dorm as a confirmed COVID-19 case at either Pine Prairie or Jena. Anything short of aggressive screening and testing of all detained individuals, staff, officials and other care and service providers who enter the facilities is insufficient to prevent infection.

89. Instead, on information and belief, at Pine Prairie and Jena, Respondents isolate only new arrivals and those who are symptomatic and test only those who are symptomatic. Unless isolation is restricted to negative pressure rooms, however, it will be ineffective against transmission of COVID-19 because air continues to flow outward from the isolation rooms to the rest of the facility. But, to Petitioners' knowledge, Pine Prairie only has four single, negative pressure medical rooms which can be used for medical observation and isolation;<sup>95</sup> at Pine Prairie, it appears that both regular and solitary confinement dorms are used for isolation. ICE does not report any negative pressure isolation rooms at Jena.<sup>96</sup> Nor are new arrivals routinely isolated for fourteen days. Large groups have been transferred into both Pine Prairie and Jena and placed directly in the dorms. Moreover, pre-symptomatic and asymptomatic people also transmit the disease, and under Respondents' measures, they will neither be tested nor isolated. Nor will close

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<sup>95</sup> Decl. of John Hartnett, Dep. Field Office Director, New Orleans Field Office, *Dada v. Witte*, ECF No. 8-2, No. 1:20-cv-458 (W.D. La. Apr. 22, 2020).

<sup>96</sup> *Id.*

contacts of those who have tested positive routinely be tested themselves, in contravention of CDC guidance. The CDC recommends testing of close contacts of positive cases.<sup>97</sup> However, some detained people at Pine Prairie who had identified themselves as having been in close contact with an individual who tested positive were refused tests when they voluntarily came forward and requested them because of that previous contact.

90. Further, CDC and PRR quarantine and isolation rules are not strictly enforced either. For example, some people who have tested positive at Pine Prairie have been returned to work, including in the cafeteria, or simply returned to their dorms, after as little as roughly a week in isolation – including some still complaining of symptoms.<sup>98</sup> Others have been taken to medical visits and legal calls only shortly after testing positive, and were made to wait near people who had not tested positive.<sup>99</sup>

91. Disturbingly, policies at Pine Prairie and Jena discourage the reporting of symptoms. Although the CDC recommends explaining to detained people “the importance of reporting symptoms to staff” and “the purpose of quarantine and medical isolation,”<sup>100</sup> Neither Pine Prairie nor Jena appears to provide no such education. Moreover, Pine Prairie appears to be using solitary confinement dorms to house either COVID-19-positive or suspected cases (or both). Using such punitive tools to isolate COVID-19 cases, particularly when combined with a lack of education regarding reporting, effectively serves to disincentivize symptom reporting.

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<sup>97</sup> *Interim Considerations for SARS-CoV-2 Testing in Correctional and Detention Facilities*, CDC (updated Aug. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html>.

<sup>98</sup> Westwood, *supra* note 84.

<sup>99</sup> *Id.*

<sup>100</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* CDC, (updated Jul. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

92. Given the highly contagious nature of COVID-19, the possibility of pre-symptomatic, asymptomatic, and airborne transmission, and Respondents' failure to meet even bare minimum safety standards, not to mention those required by the CDC and its own PRR, Petitioners are at imminent risk for contracting COVID-19 and suffering severe complications or even death. ICE has the authority to release individuals from custody on medical grounds and has, in the past, routinely exercised its authority to release particularly vulnerable detained individuals like Petitioners. The former Acting Director of ICE, John Sandweg, has stated that "ICE can, and must, reduce the risk [COVID-19] poses to so many people, and the most effective way to do so is to drastically reduce the number of people it is currently holding."<sup>101</sup>

93. An outlier amongst law enforcement agencies nationwide, ICE stubbornly refuses to heed the advice of public health officials and experts – including its own – needlessly putting the lives of Petitioners at risk in violation of the Constitution and laws of the United States.

### **LEGAL FRAMEWORK**

#### **A. Petitioners have a Substantive Due Process Right to Protection from Serious Illness and Potentially Lethal Harm.**

94. Because Petitioners are in federal civil immigration detention, their constitutional rights flow from the Fifth Amendment. *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir. 1996); *Ortega v. Rowe*, 796 F.2d 765, 767 (5th Cir. 1986).

95. When the government holds individuals in its custody, it assumes the affirmative obligation to provide for their basic human needs, including medical care, reasonable safety, and

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<sup>101</sup> John Sandweg, *I Used to Run ICE. We Need to Release the Nonviolent Detainees*, *The Atlantic Monthly* (Mar. 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>; Camilo Montoya-Galvez, "Powder kegs": *Calls grow for ICE to release immigrants to avoid coronavirus outbreak*, *CBS News* (Mar. 19, 2020), <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>.

protection from harm. *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 200 (1989); *Hare*, 74 F.3d at 650 (5th Cir. 1996). A government “transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause” when it fails to satisfy its “affirmative duty to protect.” *DeShaney*, 489 U.S. at 200.

96. “Under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” *Hare*, 74 F.3d at 651. *See also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Therefore, persons detained civilly, including in immigration detention, like Petitioners, are entitled to “more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *In re Kumar*, 402 F. Supp. 3d 377, 384 (W.D. Tex. 2019).

97. Courts have held that the due process rights of a person detained for immigration purposes should be evaluated at an even higher standard than that of those detained pretrial in criminal proceedings. *In re Kumar*, 402 F. Supp. 3d at 384; *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004). But at the very least, the standard applicable in the pretrial criminal detention context applies here.

98. The government violates the due process rights of a person in civil detention when conditions confinement “amount to punishment.” *Garza v. City of Donna*, 922 F.3d 626, 632 (5th Cir. 2019), *cert. denied sub nom. Garza v. City of Donna, Texas*, 140 S. Ct. 651 (2019). Whether conditions are constitutional “depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose.” *Bell v. Wolfish*, 441 U.S. 520, 561 (1979); The *Wolfish* test is properly used to decide

“[c]onstitutional attacks on general conditions, practices, rules, or restrictions of pretrial confinement.” *Hare*, 74 F.3d at 638-639.<sup>102</sup>

99. A detained person need not demonstrate an official subjectively or maliciously intends to punish; instead “intent may be inferred from the decision to expose the detainee to an unconstitutional condition.” *Shepherd v. Dallas Cty.*, 591 F.3d 445, 452 (5th Cir. 2009). “[E]ven where a State may not want to subject a detainee to inhumane conditions of confinement or abusive jail practices, its intent to do so is nevertheless presumed when it incarcerates the detainee in the face of such known conditions and practices.” *Hare*, 74 F.3d at 644. “A pervasive pattern of serious deficiencies” that subjects a detainee to the risk of serious injury, illness or death “amounts to unconstitutional punishment.” *Shepherd*, 591 F.3d at 454. Such a pattern is evidenced by, for example, failing to provide adequate means to control a known risk of serious infections. *Duvall v. Dallas Cty., Tex.*, 631 F.3d 203, 208 (5th Cir. 2011).

100. A detained person “does not need to show that death or serious illness has yet occurred to obtain relief,” instead, they need only “show that the conditions pose a substantial risk of harm.” *Gates v. Cook*, 376 F.3d 323, 339 (5th Cir. 2004). Federal custodians may not ignore “a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

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<sup>102</sup> In addition, it is cruel and unusual punishment under the Eighth Amendment, and therefore necessarily a violation of the Fifth Amendment’s Due Process Clause (which is what is directly applicable here), for a federal official to show “deliberate indifference to a substantial risk of serious harm” to a detained person. *Doe v. Robertson*, 751 F.3d 383, 385 (5th Cir. 2014) (citing *Farmer v. Brennan*, 511 U.S. 825 (1994)); *Hare*, 74 F.3d at 649. This occurs, for example, when officials “know[] of and disregard[] an excessive risk to inmate health or safety.” *Doe v. Robertson*, 751 F.3d at 388. Similarly, because the Eighth Amendment is what applies to persons detained following a criminal conviction, a person detained civilly has due process rights that are “at least as great as the Eighth Amendment protections available to a convicted prisoner.” *Hare*, 74 F.3d at 639 (citations omitted). Petitioners allege that continued detention at Pine Prairie and Jena also constitutes deliberate indifference to a substantial risk of harm to Petitioners.



101. Specifically, housing detained persons in crowded conditions where they are at risk of infectious disease is unconstitutional, even when it “is not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.” *Helling v. McKinney*, 509 U.S. at 33 (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Nor can officials ignore “the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms.” *Helling*, 509 U.S. at 33.

102. Despite their awareness of the rapid spread of COVID-19; the importance of social distancing and sanitary practices for its prevention; the threat that it poses to the lives of those who, like Petitioners, have certain underlying medical conditions; and the impossibility of protecting the medically vulnerable under the conditions at Pine Prairie and Jena, Respondents continue to detain Petitioners. This amounts to a punitive condition of confinement, which violates due process and compels an order of release.

**B. ICE Lacks a Constitutionally Sufficient Purpose for Continued Detention of Medically Vulnerable Individuals.**

103. Non-criminal confinement “constitutes a significant deprivation of liberty that requires due process protection,” and, thus, the government “must have ‘a constitutionally adequate purpose for the confinement.’” *Jones v. United States*, 463 U.S. 354, 361 (1983) (quoting *O’Connor v. Donaldson*, 422 U.S. 563, 574 (1975)); *see also Foucha*, 504 U.S. at 80 (“We have always been careful not to ‘minimize the importance and fundamental nature’ of the individual’s right to liberty.” (quoting *United States v. Salerno*, 481 U.S. 739, 750 (1987))).

104. Due process requires that the nature and duration of a noncriminal confinement bear “some reasonable relation to the purpose for which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018).

105. The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person's attendance for a legal hearing adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

106. The purpose of ensuring attendance at a merits hearing is fundamentally eviscerated where detained persons, such as Petitioners, are exposed to coronavirus, become symptomatic, and are seriously ill, or even dead. Each Petitioner has a severe medical ailment. Given that the only established method to protect oneself from the virus is to self-isolate and maintain vigilant hygiene, the likelihood of a post-release danger to the community from ill persons is infinitesimal and cannot justify the maximal deprivation of liberty – detention – with a resulting risk of serious illness or death. Continued detention in such circumstances is arbitrary, purposeless restraint entirely inconsistent with the principle of proportionality at the heart of due process. This is particularly true where ICE has at its disposal alternatives to detention which have been proven to be highly effective at ensuring ICE's interests are satisfied.<sup>103</sup>

107. Once an otherwise valid basis for detention no longer applies, substantive due process requires the state to release the detained person. *Foucha*, 504 U.S. at 86 (ordering petitioner's release from commitment to mental institution because there was no longer any evidence of mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 363-64 (1997) (upholding statute requiring civil confinement for sex offenders in part because it provided for immediate release once an individual no longer posed a threat to others).

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<sup>103</sup> See, e.g., *Immigration: Progress and Challenges in the Management of Immigration Courts and Alternatives to Detention Program*, U.S. Government Accountability Office (Sep. 18, 2018), <https://www.gao.gov/products/GAO-18-701T>; *Alternatives To Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness*, U.S. Government Accountability Office (Nov. 13, 2014), <https://www.gao.gov/products/GAO-15-26>.

**C. Habeas is a Broad, Flexible Remedy that Authorizes Courts to Order Release from Unlawful Detention Conditions as Law and Equity Require.**

108. Petitioners seek habeas corpus relief under 28 U.S.C. § 2241, which is infused with long-standing common law equitable principles. *See* 28 U.S.C. § 2241(c)(3) (the writ extends to those prisoners “in custody in violation of the Constitution or laws or treaties of the United States”). “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

109. Habeas invests in federal courts broad, equitable authority to “dispose of the matter as law and justice require,” 28 U.S.C. § 2243, as the “very nature of the writ demands that it be administered with the initiative and flexibility.” *Harris v. Nelson*, 394 U.S. 286, 292 (1969); *see also Boumediene v. Bush*, 553 U.S. 723, 780 (2008) (“Habeas is not ‘a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose.’”) (quoting *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

110. Accordingly, the illegality of custody under the “Constitution or laws . . . of the United States” may stem from the fact of detention and the duration of detention – what is often referred to as the “historical core” of habeas – and, as courts have recognized, for unlawful placement or conditions of detention. *See Wilwording v. Swenson*, 404 U.S. 249, 251 (1971) (habeas challenging “living conditions and disciplinary measures” is “cognizable in federal habeas corpus”); *see also Aamer v. Obama*, 742 F.3d 1023, 1031-38 (2014) (surveying history, purpose and Supreme Court jurisprudence and “the weight of the reasoned precedent in the federal Courts of Appeal” relating to habeas and concluding “habeas corpus tests not only the fact but also the form of detention.”).

111. A court is fully empowered to remediate the particular illegality here – an outbreak of lethal and unavoidable virus that threatens petitioners and violates their constitutional rights to

be free from arbitrary and punitive detention – by ordering their release. Habeas corpus is, “above all, an adaptable remedy,” *Boumediene*, 553 U.S. at 780, and federal courts retain “broad discretion in conditioning a judgment granting habeas relief . . . ‘as law and justice require.’” *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (quoting 2243). That authority includes an order of release, *Boumediene*, 553 U.S. at 779, so as “to insure that miscarriages of justice within [the writ’s] reach are surfaced and corrected.” *Harris*, 395 U.S. at 291.

112. While the Fifth Circuit has yet to decide whether COVID-19-related habeas petitions seeking release are cognizable under 28 U.S.C. § 2241, many district courts within the Fifth Circuit, including in this District, have found that they are. *See, e.g., Dada*, 2020 WL 2614616, at \*1; *Vazquez Barrera*, 2020 WL 1904497, at \*4; *Tamayo Espinoza v. Gillis*, No. 5:20-cv-106-DCB-MTP, 2020 WL 2949779, at \*2 (S.D.Miss. Jun. 30, 2020); *Gatu Njuguna v. Staiger*, No. 6:20-CV-00560, 2020 WL 3425289, at \*5 (W.D.La. Jun. 3, 2020).

113. Here, because Petitioners seek immediate release from detention conditions that cannot be remediated or improved, their challenge cannot be deemed a challenge to conditions of confinement of the kind that some courts find lie outside of habeas; because the only available remedy in these circumstances is release, their claims challenge the unlawful fact of detention and sit at the core of habeas.

114. Independent of habeas, courts retain broad equitable relief to issue injunctions to remediate ongoing unconstitutional conduct. *See Armstrong v. Exceptional Child Center, Inc.*, 135 S.Ct. 1378, 1384 (2015); *Ex Parte Young*, 209 U.S. 123 (1908).

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS**

115. Petitioners reallege and incorporate by reference the foregoing paragraphs.

116. The Due Process Clause of the Fifth Amendment guarantees persons in civil immigration detention the right to reasonable safety and to be free from punitive conditions of confinement, and requires that the government have a constitutionally adequate, non-punitive purpose for continued detention. A condition of detention that is not reasonably related to a legitimate government objective for detention or excessive in relation to that objective violates the Fifth Amendment's guarantee of due process.

117. Respondents know about the prevalence of COVID-19 both in Louisiana and in the detention centers from which they continue to transfer people to Pine Prairie and Jena, and the disease's history at both Pine Prairie and Jena. Respondents are also well aware of the risk that COVID-19 poses to Petitioners and individuals like them, with certain underlying medical conditions.

118. Respondents have not, and could not possibly, implement sufficient measures to prevent the spread of COVID-19 in either Pine Prairie or Jena, including practices recommended by the CDC and those mandated by their own policies. Respondents have failed in their obligation to adequately protect Petitioners from exposure to COVID-19, putting Petitioners at a substantial risk of serious illness or death.

119. Respondents' interests in detaining Petitioners are to ensure the safety of the community and to prevent flight pending administrative proceedings or removal. *See Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Respondents can assure Petitioners' appearance in proceedings and for removal by placing them in its intensive supervision programs, which boast attendance rates over 90 percent.<sup>104</sup>

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<sup>104</sup> *See, e.g., Immigration: Progress and Challenges in the Management of Immigration Courts and Alternatives to Detention Program*, U.S. Government Accountability Office (Sep. 18, 2018), <https://www.gao.gov/products/GAO-18-701T>; *Alternatives To Detention: Improved Data Collection and*

120. Instead of using these tools, however, Respondents continue to detain Petitioners, whose medical conditions render them particularly vulnerable to serious injury or death as a result of COVID-19.

121. Under these circumstances, Petitioners' continued civil detention by Respondents has become unconstitutional, as it is excessive and is no longer reasonably related to Respondents' interests. Particularly in light of Respondents' highly effective alternatives to detention, Petitioners do not pose a danger or a flight risk; these considerations alone are vastly insufficient to countervail the severe risk of severe illness or even death that Petitioners face if they are not released.

122. Additionally, under these circumstances, Petitioners' continued detention amounts to deliberate indifference to a substantial risk of harm to Petitioners.

123. Absent judicial relief in the form of release from detention, Petitioner-Plaintiffs are suffering and will continue to suffer irreparable harm.

## **SECOND CLAIM FOR RELIEF:**

### **HABEAS AUTHORITY TO ORDER RELEASE FROM UNLAWFUL DETENTION**

124. Petitioners reallege and incorporate by reference the foregoing paragraphs.

125. The Court has broad, equitable authority under the habeas statute, 28 U.S.C. §§ 2241 and 2243, and the common law, to dispose of Petitioners' cases as law and justice require, based on the unique facts and circumstances of their cases, in order to remedy Petitioners' unlawful conditions of detention.

126. The Court should exercise this authority to grant Petitioners' habeas corpus petition and to fashion any and all additional relief, necessary to effectuate Petitioner' expeditious release

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*Analyses Needed to Better Assess Program Effectiveness*, U.S. Government Accountability Office (Nov. 13, 2014), <https://www.gao.gov/products/GAO-15-26>.

from unlawful detention. In the absence of such relief, Petitioners are suffering and will continue to suffer irreparable harm.

**THIRD CLAIM FOR RELIEF:**

**VIOLATION OF THE REHABILITATION ACT (FAILURE TO PROVIDE REASONABLE ACCOMMODATION TO PERSONS WITH DISABILITIES)**

124. Petitioners reallege and incorporate by reference the foregoing paragraphs.

125. Section 504 of the Rehabilitation Act (“Section 504”) provides that “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” 29 U.S.C. § 794.

126. Section 504 of the Rehabilitation Act requires federal agencies to provide “reasonable accommodations” to individuals with disabilities so they can fully participate in programs, activities, and benefits administered by these agencies. 29 U.S.C. § 794(a).

127. DHS regulations implementing the Rehabilitation Act mandate that “[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.” 6 C.F.R. § 15.30; *see also* 29 U.S.C. § 794(a). The regulations implementing Section 504 prohibit entities receiving federal financial assistance from utilizing “criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient’s program or activity with respect to handicapped persons.” 34 C.F.R. § 104.4(b)(4).

128. The removal process is a program which is in part administered by DHS, and Petitioners are entitled to participate in the removal process. The services, programs, and activities within Pine Prairie and Jena, where Respondents detain Petitioners, receive substantial federal financial assistance.

129. Petitioners' underlying medical conditions qualify as disabilities for purposes of the Rehabilitation Act. 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.

130. By failing to take account of Petitioners' special vulnerability to severe illness or death if they contract COVID-19 and by exposing them to a heightened risk of contracting COVID-19, Respondents are intentionally preventing Petitioners from participating in the removal process as well as the services, programs, and activities within Pine Prairie and Jena, by reason of their disabilities.

131. By failing to provide Petitioners adequate protection from severe complications or even death from COVID-19, Respondents' actions have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of removal proceedings and the services, programs, and activities within Pine Prairie and Jena with respect to Petitioners.

132. The only available "reasonable accommodation" that would mitigate Petitioners' disability is release from detention. Respondents have failed to implement this reasonable accommodation, which would not be unduly burdensome nor require a fundamental alteration in the removal process or the programs and activities of Pine Prairie and Jena.

133. Respondents' ongoing detention of Petitioners constitutes disability discrimination in violation of the Rehabilitation Act because it is either disparate treatment of Petitioners, or at the very least has a disparate impact on them, based on their disabilities, and because Respondents have failed to provide Petitioners with reasonable accommodations.



134. For these reasons, Respondents' ongoing detention of Petitioners violates the Rehabilitation Act.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners request that this Court:

- a. Declare that Respondents' continued civil detention of Petitioners, who are at increased risk for severe illness, violates the Due Process Clause and/or the Rehabilitation Act;
- b. Order Petitioners' immediate release or placement in alternatives to detention because their continued detention violates the Due Process Clause and/or the Rehabilitation Act;
- c. Enjoin Respondents from transferring Petitioners outside of this judicial district pending litigation of this matter or their removal proceedings;
- d. Award Petitioners all costs incurred in maintaining this action, including reasonable attorneys' fees under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and
- e. Grant Petitioners any other and further relief this Court deems just and proper.

Respectfully submitted,

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October 8, 2020  
New Orleans, Louisiana

**Verification Pursuant to 28 U.S.C. § 2242**

Undersigned counsel submits this verification on behalf of the Petitioners. Members of Petitioners' legal team have discussed with Petitioners the events described in this Petition for Writ of Habeas Corpus and Complaint for Injunctive Relief and, on the basis of those discussions, undersigned counsel verifies that the statements in the Petition and Complaint are true and correct to the best of his knowledge.

New Orleans, Louisiana  
October 8, 2020

/s/ Matthew S. Vogel  
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