

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

JANET MALAM,

Petitioner-Plaintiff,

and

QAID ALHALMI, BALDEMAR BARAJAS  
SANTOYO, SERGIO BRITO, TOMAS  
CARDONA RAMIREZ, GUO YAN LIN  
CASTRO, RUBY BRISELDA ESCOBAR, JOSE  
MAURICIO GARCIA TOLEDO, JOSE GOMEZ  
SANTIZ, JULIO FERNANDO MEDINA  
EUCEDA, ISAAC ORTA VIEYRA, DAMARY  
RODRIGUEZ SALABARRIA, EMANUEL  
ROSALES BORBOA, RUDY SOSA CARILLO,  
AMER TOMA, and MIN DAN ZHANG,

Plaintiff-Intervenors,

- against -

REBECCA ADDUCCI, in her official capacity as  
Detroit District Director of U.S. Immigration &  
Customs Enforcement; MATTHEW T.  
ALBENCE, in his official capacity as Deputy  
Director and Senior Official Performing the Duties  
of the Director of the U.S. Immigration &  
Customs Enforcement; CHAD WOLF, in his  
official capacity as Acting Secretary, U.S.  
Department of Homeland Security; WILLIAM P.  
BARR, in his official capacity as Attorney  
General, U.S. Department of Justice; and U.S.  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT,

Respondent-Defendants.

No. 2:20-cv-10829-JEL-APP

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

**CLASS ACTION**

## INTRODUCTION

1. We are in the midst of a global pandemic on a scale not seen for over a century. Hundreds of thousands of people have died in a matter of months. Governments around the world are mandating social distancing, recognizing that physical separation is the only way to prevent a deadly, rapidly-spreading disease with no vaccine and no known cure. But that basic protection is entirely unavailable to people in civil immigration detention, who are incarcerated solely for the purpose of facilitating their removal—which in many cases is highly unlikely given the almost complete breakdown in international travel as a result of the pandemic. Across the country, hundreds of immigration detainees have been infected and thousands have been potentially exposed. Without this court’s timely intervention, many more immigration detainees will get sick, many will suffer severe symptoms, and some will die.

2. Petitioner-Plaintiffs (“Plaintiffs”<sup>1</sup>) are noncitizens who are detained in ICE custody at the Calhoun County Correctional Center (“Calhoun”) in the midst of the current COVID-19 pandemic. Conditions at Calhoun render it impossible for Plaintiffs to protect themselves through social distancing—where people remain at

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<sup>1</sup> The individuals bringing this action are Petitioners for purposes of habeas relief and Plaintiffs for purposes of injunctive and declaratory relief. Those against whom the action is brought are Respondents for purposes of habeas relief and Defendants for purposes of injunctive and declaratory relief. For simplicity, the terms Plaintiffs and Defendants will be used throughout.

least six feet apart from each other—which is the only effective means of preventing the spread of COVID-19. Plaintiffs live, sleep, bathe and eat cheek by jowl with other detainees, and have little or no access to masks, gloves, soap or hand sanitizer to guard against infection in such close quarters. The government’s own medical subject matter experts have described this as a “tinderbox scenario.”

3. The novel coronavirus that causes COVID-19 has quickly led to a global pandemic. No one is immune from infection. As of April 26, 2020, over 2.8 million people worldwide have received confirmed diagnoses of COVID-19, and over 193,000 of those people have died. COVID-19 is most likely to cause serious illness and death for older adults and those with certain underlying medical conditions or diseases, but it can also cause severe illness or death in healthy and young people. On average, the mortality rate for COVID-19 is ten times greater than influenza.

4. Patients of all ages with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care. That treatment can require the use of specialized equipment, like ventilators. The pandemic has put ventilators in high demand and short supply around the world, and has even led to shortages of less specialized equipment such as face masks, gloves, and other personal protective equipment (“PPE”).

5. Patients who do not die from serious cases of COVID-19 often face prolonged recovery periods, including extensive rehabilitation from neurologic damage. The COVID-19 virus can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity. And, although the long-term effects of COVID-19 on the body are not yet known, experts predict that even those who have seemingly fully recovered from the disease could face ongoing health concerns, including serious impairment of major organs like the heart, liver, kidney, brain, and endocrine and blood systems.<sup>2</sup> These complications can lead to dialysis dependence, neurologic injury, and heart failure.

6. The COVID-19 virus is highly contagious and can be spread through asymptomatic carriers. The only known effective measures to reduce the risk of serious illness or death caused by COVID-19 are social distancing and improved hygiene. As a result, unprecedented public health measures are being undertaken in all fifty states and around the world.

7. People in enclosed group environments, where they live, eat, bathe, and sleep in close proximity, face substantially increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in jails, prisons, and

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<sup>2</sup> Melissa Healy, *Coronavirus infection may cause lasting damage throughout the body, doctors fear*, Los Angeles Times (Apr. 10, 2020), <https://www.latimes.com/science/story/2020-04-10/coronavirus-infection-can-do-lasting-damage-to-the-heart-liver>.

detention centers around the country. For people confined in such facilities it is virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, even with the best-laid plans. The enormity of the dangers faced by people in such facilities has become self-evident as more of them are testing positive for COVID-19 with each passing day. As of April 24, 2020, there are at least 9,437 people in U.S. prisons with confirmed cases of COVID-19.<sup>3</sup>

8. For this reason, leading public health experts have recommended significant reductions in the populations of detention facilities, as well as prioritizing the prompt release from custody of people who are most vulnerable to COVID-19. This dual strategy protects those with the greatest vulnerability to COVID-19 from transmission of the virus and allows for greater risk mitigation for those who remain detained, as well as for people working in detention facilities. Releasing as many individuals as feasible, starting with the most vulnerable people, also reduces the burden on the region's limited health-care infrastructure, as it lessens the likelihood

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<sup>3</sup> Katie Park *et al.*, *Tracking the Spread of Coronavirus in Prisons*, The Marshall Project, Apr. 24, 2020, <https://www.themarshallproject.org/2020/04/24/tracking-the-spread-of-coronavirus-in-prisons>; Cary Aspinwall & Joseph Neff, *These Prisons Are Doing Mass Testing For COVID-19—And Finding Mass Infections*, Apr. 24, 2020, <https://www.themarshallproject.org/2020/04/24/these-prisons-are-doing-mass-testing-for-covid-19-and-finding-mass-infections> (reporting that “prisons that do aggressive testing are finding that infection is spreading quickly.”).

that an overwhelming number of people will become seriously ill from COVID-19 at the same time.

9. For instance, as early as March 19, 2020, two medical subject matter experts for the Department of Homeland Security (“DHS”) sent a letter to Congress urging that “it is essential to consider releasing all detainees who do not pose an immediate risk to public safety.” More recently, on April 7, 2020, House Oversight and Reform Committee Chairwoman Carolyn B. Maloney and Subcommittee on Civil Rights and Civil Liberties Chairman Jamie Raskin sent a letter to DHS, U.S. Immigration and Customs Enforcement (“ICE”), and U.S. Customs and Border Protection (“CBP”) calling for the “immediate[] release [of] non-violent detainees, prioritizing those who are at higher risk for complications of coronavirus. Releasing these non-violent detainees will prevent the unnecessary infection, sickness, and death of the men and women who work in these facilities and those who are detained.”<sup>4</sup> Despite public health experts and public officials’ consensus, ICE has failed to meaningfully respond to protect the health and safety of the many thousands of people in its custody, including the immigration detainees at Calhoun. ICE has

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<sup>4</sup> House Committee on Oversight and Reform Press Release, *Chairs Maloney and Raskin Call on DHS to Release Non-Violent Migrant Detainees to Prevent Coronavirus Outbreak in Detention Facilities* (Apr. 7, 2020), <https://oversight.house.gov/news/press-releases/chairs-maloney-and-raskin-call-on-dhs-to-release-non-violent-migrant-detainees>.

demonstrated significant shortcomings in testing,<sup>5</sup> screening of medically vulnerable detainees,<sup>6</sup> and general precautionary measures including social distancing and hygiene.

10. Despite ICE's claims that it has taken appropriate protective measures, outbreaks of COVID-19 at its detention centers have rapidly escalated in the past several weeks. Already, based solely on testing individuals who became ill rather than through more comprehensive testing, ICE has confirmed five cases at the nearby St. Clair facility in Port Huron, Michigan,<sup>7</sup> representing one out of every eight of the approximately 40 immigration detainees housed there.<sup>8</sup>

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<sup>5</sup> On April 17, 2020, ICE Director Albence confirmed "that only 400 detainees [had] been tested" for COVID-19, out of more than 32,000 nationwide. Over one hundred of those tests came back positive. *See* House Committee on Oversight and Reform Press Release, DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus (Apr. 17, 2020), <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>

<sup>6</sup> *See* House Committee on Oversight and Reform Press Release, *Chairs Maloney and Raskin Call on DHS to Release Non-Violent Migrant Detainees to Prevent Coronavirus Outbreak in Detention Facilities*, *supra* n. 4 (noting that, as of April 17, 2020, "ICE [did] not plan to release any other detainees to slow the spread of coronavirus in detention facilities" but had only "released fewer than 700 vulnerable individuals and is continuing to detain more than 32,000 men and women").

<sup>7</sup> *See* U.S. Immigration & Customs Enforcement, ICE Guidance on COVID-19: Confirmed Cases (last updated Apr. 24, 2020).

<sup>8</sup> Data on the total number of inmates, including pretrial and sentenced prisoners, infected at St. Clair is not available, nor is data on the number of infected staff.

11. Across Michigan, as of April 26, 2020, the Michigan Department of Corrections (“MDOC”) reports 1031 cases and 32 deaths among Michigan state inmates, and 81 cases and one death among inmates in federal correctional facilities,<sup>9</sup> demonstrating the particular vulnerabilities of congregate settings like detention facilities. In response, Governor Gretchen Whitmer has recommended that individuals who are older or have underlying health conditions, among others, be considered for early release. Some county jails in Michigan have already begun to reduce their inmate populations.

12. The Plaintiffs are all immigrants detained at Calhoun.<sup>10</sup> They bring this action to protect themselves, and a class of similarly situated persons detained at

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<sup>9</sup> State of Michigan. *Coronavirus Michigan Data*, [https://www.michigan.gov/coronavirus/0,9753,7-406-98163\\_98173---,00.html](https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html) (last accessed April 26, 2020).

<sup>10</sup> Plaintiffs’ Amended Petition for the Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Injunctive and Declaratory Relief, including the addition of further plaintiffs, is filed pursuant to Federal Rule of Civil Procedure 15(a)(1) allowing a party to “amend its pleading once as a matter of course” in the initial stages of litigation. The Sixth Circuit—in accordance with the holdings of a majority of the federal courts of appeal—has indicated that Rule 15(a)(1), rather than Rule 21, is the proper vehicle for a plaintiff to add new parties when amending a complaint. *See Broyles v. Correctional Medical Services*, No. 08-1638, 2009 WL 3154241 (6th Cir. Jan 23, 2009); *Galustian v. Peter*, 591 F.3d 724, 730 (4th Cir. 2010); *Bibbs v. Early*, 541 F.3d 267, 275 n. 39 (5th Cir. 2008); *U.S. ex rel. Precision Co. v. Koch Indus., Inc.*, 31 F.3d 1015, 1019 (10th Cir. 1994); *Wash. v. N.Y. City Bd. of Estimate*, 709 F.2d 792, 795 (2d Cir. 1983); *Miller v. Conway*, 331 Fed. App’x 664, 665 (11th Cir. 2009); *but see Moore v. State of Indiana*, 999 F.2d 1125, 1128 (7th Cir. 1993). Should the Court have questions regarding the applicability of Rule 15, Plaintiffs are prepared to file an immediate motion regarding the propriety of proceeding under Rule 15 as of right, and, or,



Calhoun, from COVID-19. If the Plaintiffs and class members continue to be detained at Calhoun during the outbreak of COVID-19 under current facility conditions without the ability to protect themselves through social distancing, they face a danger that 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) (emphasis in original).

13. Accordingly, the Plaintiffs and the class ask this Court to declare that the conditions of confinement at Calhoun are unconstitutional under the Fifth Amendment because they do not permit social distancing and other measures necessary to minimize the risk of infection with COVID-19; declare that steps set out in the ICE Enforcement and Removal Operations (“ERO”) COVID-19 Pandemic Response Requirements, even if implemented at Calhoun, are inadequate to reduce the risk that COVID-19 poses to Plaintiffs’ health and safety to a level that is constitutional under the Fifth Amendment; and declare, based on expert evidence, what steps must be taken in order for individuals to be detained at Calhoun without violating their constitutional rights, including a determination of the population level that can be detained consistent with social distancing and other COVID-19

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to proceed by permission under Rule 21, so that these procedural niceties do not delay speedy resolution of the urgent substantive questions at issue.

prevention requirements. The Court should also grant injunctive relief to the individual named Plaintiffs, ordering their immediate release until Defendants have taken those steps and have reduced the population to the level that the Court has found necessary to comply with the Constitution.

14. Plaintiffs Qaid Alhalmi, Tomas Cardona Ramirez, Julio Fernando Medina Euceda, Damary Rodriguez Salabarria, Emanuel Rosales Borboa, Amer Toma, and Min Dan Zhang (the “Subclass Named Plaintiffs”) are older adults and/or have underlying medical conditions, which puts them at an even higher risk of serious COVID-19 infection than the general detained population. They seek to represent a subclass of similarly situated persons. Their detention, and that of the subclass they seek to represent, is unconstitutional because Defendants cannot ensure their reasonable safety given these Plaintiffs’ particular medical vulnerabilities.

15. Accordingly, this Court should issue a Writ of Habeas Corpus for the Subclass Named Plaintiffs and the subclass on the ground that their continued detention violates the Due Process Clause, order their immediate release with appropriate precautionary public health measures, and grant corresponding class-wide declaratory relief. The Court should also issue injunctive relief ordering the immediate release and barring the redetention of the Subclass Named Plaintiffs.

16. Finally, because of the breakdown in international travel, the removal of Plaintiffs Alhalmi, Escobar, Salabarria and Toma is not significantly likely in the reasonably foreseeable future, therefore their detention, or in the case of Mr. Toma redetention, is prohibited under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

## **PARTIES**

### **A. Subclass Named Plaintiffs**

17. **Plaintiff Qaid Alhalmi** is a 58-year-old citizen of Yemen who has been detained by ICE in Calhoun since September 2019. He suffers from hypertension and type 2 diabetes, and must take insulin daily to control his high blood sugar. As a result of his age, hypertension, and diabetes, Mr. Alhalmi is at high risk for severe illness or death if he contracts COVID-19.

18. **Plaintiff Tomas Cardona Ramirez** is a 38-year-old citizen of Guatemala who has been detained by ICE in Calhoun since February 2020. Mr. Cardona Ramirez suffers from type 2 diabetes, and takes insulin and other medication to regulate his blood sugar. He also suffers from hypertension, and has been prescribed medication, including Lipsinopril, an ACE inhibitor, to treat this condition. As a result of his diabetes and hypertension, Mr. Cardona Ramirez is at high risk for severe illness or death if he contracts COVID-19.

19. **Plaintiff Julio Fernando Medina Euceda** is a 54-year-old citizen of Honduras who has been detained by ICE in Calhoun since January 24, 2020. As a

result of his age, Mr. Medina Euceda is at high risk for severe illness or death if he contracts COVID-19.

20. **Plaintiff Damary Rodriguez Salabarria** is a 46-year-old citizen of Cuba. Ms. Rodriguez Salabarria was detained by ICE in McAllen, Texas from August 1, 2019 to August 10, 2019, when she was transferred to Calhoun. She has remained at Calhoun since then. Ms. Rodriguez Salabarria suffers from hypertension, chronic gastritis, and a peptic ulcer, as well as gastroesophageal reflux. She takes daily medication for all of these conditions. Prior to entering the United States in August 2019, Ms. Rodriguez Salabarria had twice been admitted to a hospital intensive care unit due to acute pancreatitis. She has also undergone both an appendectomy and cholecystectomy (gallbladder removal), and suffered from multiple kidney infections. As a result of her medical conditions, Ms. Rodriguez Salabarria is at high risk for severe illness or death if she contracts COVID-19.

21. **Plaintiff Emanuel Rosales Borboa** is a 35-year-old citizen of Mexico who has been detained by ICE in Calhoun since March 9, 2020. Mr. Rosales Borboa has suffered from asthma for over ten years and uses a prescribed inhaler multiple times per week, as well as Prednisone, an immunosuppressant medication used to treat, among other things, breathing problems. As a result of his asthma, Mr. Rosales Borboa is at high risk for severe illness or death if he contracts COVID-19.

22. **Plaintiff Amer Toma** is a 55-year-old citizen of Iraq who was detained by ICE in Monroe County Jail from September 21, 2019 to February, 2020, at which point he was moved to Calhoun. He was released from Calhoun on April 22, 2020, pursuant to this Court's temporary restraining order, which has since been converted to a preliminary injunction. In 2015, Mr. Toma was diagnosed with prostate cancer, but never received treatment. Mr. Toma is also pre-diabetic and suffers from hypotension. Additionally, he has two bullets in his body that have caused him to experience serious back pain and mobility problems for over thirty years. About six or seven years ago Mr. Toma was hospitalized with a groin infection resulting from one of the bullets. While at Calhoun, Mr. Toma used a wheelchair due to his back pain and limited mobility. As a result of his age and medical conditions, Mr. Toma is at high risk for severe illness or death if he contracts COVID-19.

23. **Plaintiff Min Dan Zhang** is a 50-year-old citizen of China who has been detained by ICE in Calhoun since August 22, 2019. As a result of her age, Ms. Zhang is at high risk for severe illness or death if she contracts COVID-19.

#### **B. Other Named Plaintiffs**

24. **Plaintiff Baldemar Barajas Santoyo** is a 47-year-old citizen of Mexico who has been detained by ICE in Calhoun since February 12, 2020. As a result of the conditions of confinement at Calhoun, Mr. Barajas is at high risk of contracting COVID-19.

25. **Plaintiff Sergio Brito** is a 37-year-old citizen of Mexico who has been detained by ICE in Calhoun since December 9, 2019. As a result of the conditions of confinement at Calhoun, Mr. Brito is at high risk of contracting COVID-19.

26. **Plaintiff Guo Yan Lin Castro** is a 45-year-old citizen of China who has been detained by ICE in Calhoun since October 2019. Ms. Castro suffers from gastroenteritis and severe depression, for which she takes medication. The extent of Ms. Castro's particular medical vulnerability is unknown, pending receipt of medical records. Regardless, as a result of the conditions of confinement at Calhoun, Ms. Castro is at high risk of contracting COVID-19.

27. **Plaintiff Ruby Briselda Escobar**<sup>11</sup> is a 31-year-old citizen of El Salvador who was detained by ICE at Calhoun from November 18, 2018 to April 6, 2020. After she moved to intervene in this action, Ms. Escobar was released by ICE under an order of supervision and release conditions. She remains subject to redetention at any time. Ms. Escobar suffers from several health problems, including a brain aneurysm and heart problems that cause her to experience chest pain, difficulty breathing, weakness, and sweating. Ms. Escobar developed her brain aneurysm in 2013, as a result of injuries she sustained while held hostage and tortured by human traffickers. Because of her brain aneurysm, she has headaches,

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<sup>11</sup> Although she remains a plaintiff in this action, Ms. Escobar is not seeking to represent the class or subclass.

dizziness, nausea, vomiting, double vision, trouble speaking clearly, and forgetfulness. As a result of her brain aneurysm and heart problems, Ms. Escobar is at high risk for severe illness or death if she contracts COVID-19.

28. **Plaintiff Jose Mauricio Garcia Toledo** is a 45-year-old citizen of Mexico who has been detained by ICE in Calhoun since February 2020. As a result of the conditions of confinement at Calhoun, Mr. Brito is at high risk of contracting COVID-19.

29. **Plaintiff Jose Gomez Santiz** is a 23-year-old citizen of Mexico who has been detained by ICE since January 2020. He was transferred to Calhoun from Gratiot County Jail on February 14, 2020, and has been detained at Calhoun since. As a result of the conditions of confinement at Calhoun, Mr. Gomez Santiz is at high risk of contracting COVID-19.

30. **Plaintiff Isaac Orta Vieyra** is a 32-year-old citizen of Mexico who has been detained by ICE in Calhoun since January 2020. As a result of the conditions of confinement at Calhoun, Mr. Orta Vieyra is at high risk of contracting COVID-19.

31. **Plaintiff Rudy Sosa Carillo** is a 23-year-old citizen of Guatemala who has been detained by ICE in Calhoun since February 2020. As a result of the conditions of confinement at Calhoun, Mr. Sosa Carillo is at high risk of contracting COVID-19.

**C. Respondent-Defendants (“Defendants”)**

32. **Defendant Rebecca Adducci** is the Detroit District Director of ICE. In that position, she is responsible for carrying out ICE’s immigration detention operations at Calhoun. Defendant Adducci is a legal custodian of Plaintiffs, and the proper respondent for a habeas petition. *See Roman v. Ashcroft*, 340 F.3d 314, 321 (6th Cir. 2003). She is sued in her official capacity.

33. **Defendant Matthew T. Albence** is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. In that position, he is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of immigrants. Defendant Albence is a legal custodian of Plaintiffs. He is sued in his official capacity.

34. **Defendant Chad Wolf** is Acting Secretary of DHS. In that position, he is responsible for the enforcement of the immigration laws and supervises Ms. Adducci at ICE Detroit Field Operations. Defendant Wolf is a legal custodian of Plaintiffs. He is sued in his official capacity.

35. **Defendant William P. Barr** is Attorney General of the United States and chief officer of the U.S. Department of Justice. He is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, routinely does and transacts business in the Eastern District of Michigan, and is a legal custodian of Plaintiff. He is sued in his official capacity.



36. **Defendant ICE** is a federal law enforcement agency within DHS. ICE is responsible for criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. ERO, a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiffs.<sup>12</sup>

### **JURISDICTION AND VENUE**

37. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 2241 (habeas jurisdiction) and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

38. Venue is proper in the U.S. District Court for the Eastern District of Michigan under 28 U.S.C. § 1391, as venue is proper in any district in which a defendant resides and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

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<sup>12</sup> The petition/complaint filed by Janet Malam named Matthew T. Albence, Chad Wolf, William P. Barr, and ICE as Respondent-Defendants. Plaintiffs here seek injunctive and declaratory, but not habeas relief, from those defendants. *See Roman v. Ashcroft*, 340 F.3d 314, 321 (6th Cir. 2003). The petition/complaint filed by Ms. Malam also named Michigan Department of Corrections Director Heidi E. Washington as a Respondent-Defendant. Plaintiffs here do not bring claims against Ms. Washington.

## FACTS

### **A. COVID-19 Poses a Grave Risk of Harm, Including Serious Illness or Death**

39. COVID-19 is a disease that has reached pandemic status. As of April 26, 2020, at least 2.8 million people worldwide have confirmed diagnoses, including over 899,000 people in the United States. Over 193,000 people have died as a result of COVID-19 worldwide, including at least 46,000 in the United States.<sup>13</sup> In Michigan, there are at least 37,778 confirmed cases and 3,315 deaths.<sup>14</sup> The transmission of COVID-19 is expected to continue grow to exponentially.

40. Everyone is at risk from COVID-19, with even young and otherwise healthy people becoming gravely ill or dying from the disease. Older people and people with certain medical conditions face even greater chances of serious illness or death from COVID-19. Our current knowledge of COVID-19 is limited, with new data and studies released practically daily.

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<sup>13</sup> Coronavirus disease 2019 (COVID-19) Situation Report – 97, World Health Organization (Apr. 26, 2020). These numbers have increased drastically since Plaintiffs Escobar and Toma first filed this Petition, just three weeks ago. At that time, there were only 1,056,159 confirmed cases worldwide, including roughly 241,703 people in the United States, and 57,206 people had died worldwide, including just 5,854 in the United States. *See* Dkt. 17, at 7.

<sup>14</sup> State of Michigan. *Coronavirus Michigan Data*, available at [https://www.michigan.gov/coronavirus/0,9753,7-406-98163\\_98173---,00.html](https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html) (last accessed April 26, 2020).

41. We do know that COVID-19 causes fever, cough, and shortness of breath, which can be severe. The COVID-19 virus can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases can cause a permanent loss of respiratory capacity. COVID-19 may also target the heart muscle, causing a medical condition called myocarditis, or inflammation of the heart muscle, which can also affect the heart's electrical system, reducing the heart's ability to pump. Reduced pumping can lead to rapid or abnormal heart rhythms in the short term, and to long-term heart failure that limits exercise tolerance and the ability to work. In addition, COVID-19 can trigger an over-response of the immune system, further damaging tissues in a cytokine-release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury.

42. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.

43. People who contract COVID-19, including even some younger and healthier people, may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and, in extreme cases, extracorporeal mechanical oxygenation. People in higher risk categories will likely need advanced support, which requires highly specialized equipment that is in limited supply, and an entire

team of care providers, including 1:1 or 1:2 nurse-to-patient ratios, respiratory therapists, and intensive care physicians. This level of support can quickly exceed local health-care resources.

44. While some class members are healthier than others, the entire class is at grave risk of contracting COVID-19 and facing serious harm given the current conditions in Calhoun. The Centers for Disease Control and Prevention (“CDC”) has reported that up to 20% of coronavirus hospitalizations in the United States were of people under the age of 44. And the World Health Organization (“WHO”) has reported that, globally, 10–15% of adults under the age of 50 who contract COVID-19 have moderate to severe cases.

45. Some young people who become seriously ill or die from COVID-19 have pre-existing medical conditions, but many do not.<sup>15</sup> For example, in New York, 36 percent of people between 30 and 39 who died from the virus had no preexisting conditions.<sup>16</sup>

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<sup>15</sup> See Ariana Eunjung Cha, *Young and middle-aged people, barely sick with covid-19, are dying of strokes*, Washington Post (Apr. 25, 2020), <https://www.washingtonpost.com/health/2020/04/24/strokes-coronavirus-young-patients/>.

<sup>16</sup> See Chris Mooney, et. al., *Hundreds of young Americans have now been killed by the coronavirus, data shows*, Washington Post (Apr. 8, 2020), <https://www.washingtonpost.com/health/2020/04/08/young-people-coronavirusdeaths/>.

46. Doctors and scientists do not know with certainty why some otherwise healthy young people are so susceptible to COVID-19, but some evidence suggests that exposure to larger viral loads—such as occurs with close, in-person interaction in enclosed spaces, at short distances—may lead to more serious infection.<sup>17</sup>

47. As another federal court held in provisionally certifying a class of immigration detainees: It is a “troubling fact that even perfectly healthy detainees are seriously threatened by COVID-19. To be sure, the harm of a COVID-19 infection will generally be more serious for some petitioners than for others. Yet it cannot be denied that the virus is gravely dangerous to all of us.” *Savino v. Souza*, 20-cv-10617-WGY, 2020 WL 1703844, at \*7 (D. Mass. Apr. 8, 2020)

48. And just recently on April 23, 2020, a federal district court in California certified and granted a preliminary injunction for all detainees at an ICE facility in Adelanto, California. *See Hernandez Roman v. Wolf*, No. 5:20-cv-00768-TJH-PVCx, 2020 WL 1952656, at \*3 (C.D. Cal. Apr. 23, 2020) (“While there are not, yet, any confirmed COVID-19 cases at Adelanto, it is, merely, fortuitous that an outbreak has not yet occurred, especially given the lax safety standards, now, in place.”).

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<sup>17</sup> See Joshua Rabinowitz and Caroline Bartman, *These Coronavirus Exposures Might be the Most Dangerous*, New York Times (Apr. 1, 2020), <https://www.nytimes.com/2020/04/01/opinion/coronavirus-viral-dose.html>.

49. The need for care, including intensive care, and the likelihood of death are much higher from COVID-19 infection than from influenza. Sources differ, but all accounts are grave: sources report fatality rates ranging from nearly 2% to over 15% for populations at high risk for complications from COVID-19, like the elderly or those with underlying medical conditions. Moreover, recent studies estimate that the COVID-19 fatality rate for the general population ranges from six to thirteen times higher than the fatality rate of a severe seasonal influenza, even in countries with highly effective healthcare systems.

50. Patients who do not die from COVID-19, especially those in high-risk categories, often experience a prolonged recovery, including the need for extensive rehabilitation for profound reconditioning, loss of digits, neurologic damage, and the loss of respiratory capacity. Moreover, the ongoing sequelae of COVID-19 are unknown, and physicians warn that the results could include decreased respiratory ability for life as well as increased vulnerability to other medical issues that arise in the future.

51. There is neither a vaccine against COVID-19 nor any known medication to prevent or treat infection from COVID-19. On March 26, 2020, Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases (NIAID), estimated that a vaccine could be developed in 18 months. This estimate is optimistic. Vaccines typically take between eight and 10 years to

develop. Vaccines usually must be tested in four phases before they attain regulatory approval: (1) animal testing, (2) small-group human testing to assess safety and monitor immune response, (3) medium-sized group testing to assess members of at-risk groups, and (4) large-scale testing on thousands of people. Moreover, more time is needed after approval to distribute the vaccine across the country. With these long trials and distribution schedules in mind, other experts have expressed reservations about the 18-month estimate given by Dr. Fauci.

52. Nor is there widespread testing or reliable antibody testing, other measures which experts say could eventually help to mitigate outbreaks of the disease.<sup>18</sup>

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<sup>18</sup> See, e.g., Sheryl Gay Stolberg et al., *Testing Remains Scarce as Governors Weigh Reopening States*, N.Y. Times (Apr. 25, 2020), <https://www.nytimes.com/2020/04/25/us/politics/virus-testing-shortages-states-trump.html> (“As governors decide about opening their economies, they continue to be hampered by a shortage of testing capacity, leaving them without the information that public health experts say is needed to track outbreaks and contain them.”); Rob Stein, *Study Raises Questions About False Negatives From Quick COVID-19 Test*, NPR (Apr. 21, 2020), <https://www.npr.org/sections/health-shots/2020/04/21/838794281/study-raises-questions-about-false-negatives-from-quick-covid-19-test> (reporting that a popular test developed by Abbott Laboratories “appears to be the least accurate test now in common use,” following a study done by the Cleveland Clinic); Laurie McGinley, *Dozens of coronavirus antibody tests on the market were never vetted by the FDA, leading to accuracy concerns*, Washington Post (Apr. 19, 2020), <https://www.washingtonpost.com/health/2020/04/19/fda-antibody-tests-coronavirus-review/> (reporting that in mid-March 2020, the Food and Drug Administration allowed “more than 90 [antibody tests] on the market without prior review, including some marketed fraudulently and of dubious quality.”).

53. The only known effective measures to reduce the risk of illness, or death from COVID-19 are to prevent people from being infected in the first place. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures for protecting people from COVID-19.

54. Projections by the CDC indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the pandemic without effective public health intervention, with as many as 1.7 million deaths in the United States alone.

55. As of April 26, 2020, there were 37,778 confirmed cases of COVID-19 and 3,315 deaths from COVID-19 in Michigan.<sup>19</sup> The number of confirmed cases has nearly tripled in the last three weeks, and the number of deaths has increased by a factor of nearly 7 during the same time.<sup>20</sup>

56. The COVID-19 outbreak in Michigan has resulted in unprecedented health measures to facilitate and enforce social distancing. On March 24, Governor Gretchen Whitmer issued Executive Order 2020-21, suspending through April 13 all

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<sup>19</sup> State of Michigan. *Coronavirus Michigan Data*, available at [https://www.michigan.gov/coronavirus/0,9753,7-406-98163\\_98173---,00.html](https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html) (last accessed April 26, 2020).

<sup>20</sup> See Plaintiff-Intervenors Motion for Temporary Restraining Order, Dkt. 17, at 17.



activities unnecessary to sustain or protect life.<sup>21</sup> The order requires employees to work from home unless they are considered “essential” or they work in jobs related to public safety, health care, or other critical industries. The order also requires individuals who leave their home to adhere to social distancing measures recommended by the CDC, including “remaining at least six feet away from people outside the individual’s household to the extent feasible under the circumstances.”

57. Governor Whitmer has extended the initial Executive Order 2020-21 twice: first on April 9, 2020, and again on April 24, 2020, with slight modifications each time.<sup>22</sup> The current stay-at-home order extends through May 15, 2020.

#### **B. COVID-19 Spreads Rapidly in Congregate Settings Like ICE Detention Centers and Correctional Facilities**

58. The risk of widespread COVID-19 infection is especially great in congregate settings like jails and immigration detention centers, where detainees are unable to socially distance or practice the necessary hygiene strategies to mitigate infection or spread of the disease.

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<sup>21</sup> Michigan Executive Order 2020-21, [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522626--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html) (last accessed April 23, 2020).

<sup>22</sup> Michigan Executive Order 2020-42, available at [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-525182--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525182--,00.html) (last accessed Apr. 23, 2020); Michigan Executive Order 2020-59, [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-526894--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-526894--,00.html) (last accessed Apr. 25, 2020).

59. This Court has already ordered the release of Plaintiffs Malam and Toma, recognizing that “in the face of a deadly pandemic with no vaccine, no cure, limited testing capacity, and the ability to spread quickly through asymptomatic human vectors, a ‘generalized risk’ is a ‘substantial risk’ of catching the COVID-19 virus for any group of human beings in highly confined conditions[.]” Opinion and Order Converting Temporary Restraining Order Into Preliminary Injunction, Dkt. 41, at 8. *See also Fofana v. Albence*, No. 2:20-cv-10869-GAD-DRG, Dkt. 15 (E.D. Mich. Apr. 15, 2020); *Zaya v. Adducci*, No. 5:20-cv-10921-JEL-APP, Dkt. 9 (E.D. Mich. Apr. 18, 2020).

60. Likewise, courts across the state and country are also ordering the release of people in civil immigration custody in recognition of the threat posed by COVID-19 in congregate settings. *See e.g., Xochihua-Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877 (9th Cir. Mar. 24, 2020); *Basank v. Decker*, No. 20-cv-2518, --- F. Supp. 3d ----, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Bravo Castillo v. Barr*, No. 20-605-TJH (AFMx), --- F. Supp. 3d ----, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020); *Coronel v. Decker*, No. 20-cv-2472, --- F.3d ----, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020); *Thakker v. Doll*, No. 1:20-CV-480, --- F.3d ----, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020); *Hernandez v. Wolf*, No. 20-cv-617, Dkt. 17 (C.D. Cal. Apr. 1, 2020); *Robles v. Wolf*, No. 5:20-cv-627-TJH-GJS, Dkt. 32, 35-39 (C.D. Cal. Apr. 2, 2020); *Hope v. Doll*, No. 20-cv-00562, ECF No.

11 (M.D. Pa. Apr. 7, 2020), *motion for reconsideration denied*, ECF No. 22 (Apr. 10, 2020); *Bahena Ortuño v. Jennings*, No. 20-cv-2064, 2020 WL 1701724 (N.D. Cal. Apr. 8, 2020); *Rafael L.O. v. Tsoukaris*, No. 2:20-cv-3481-JMV, 2020 WL 1808843 (D.N.J. Apr. 9, 2020); *Bent v. Barr*, No. 4:19-cv-06123, 2020 WL 1812850 (N.D. Cal. Apr. 9, 2020); *John Doe v. Barr*, No. 3:20-cv-02141-LB, 2020 WL 1820667 (N.D. Cal. Apr. 12, 2020); *Ixchop Perez v. Wolf*, No. 19-cv-05191, 2020 WL 1865303 (N.D. Cal. Apr. 14, 2020); *Arriaga Reyes v. Decker*, No. 20-cv-3600, ECF No. 27 (D. N.J. Apr. 14, 2020); *Vazquez Barrera v. Wolf*, No. 20-cv-01241, 2020 WL 1904497 (S.D. Tex. April 17, 2020); *Amaya-Cruz v. Adducci*, No. 1:20-cv-789, 2020 WL 1903123 (D. Oh. Apr. 18, 2020); *Durel B. v. Decker*, No. 2:20-cv-03430-KM, 2020 WL 1922140 (D.N.J. Apr. 21, 2020); *Hernandez Roman v. Wolf*, No. 5:20-cv-00768-TJH-PVC, Dkt. 52 (C.D. Cal. Apr. 23, 2020); *Hernandez Roman v. Wolf*, No. 5:20-cv-00768-TJH-PVC, 2020 WL 1952656 (C.D. Cal. Apr. 23, 2020). These orders recognize that “[t]he risk of contracting COVID-19 in tightly confined spaces, especially jails, is now exceedingly obvious” and that “public health authorities predict [COVID-19] will especially impact immigration detention centers.” *Basank*, 2020 WL 1481503, at \*5; *Xochihua-Jaimes*, 2020 WL 1429877, at \*1.<sup>23</sup>

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<sup>23</sup> In addition, on April 20, 2020, the United States District Court for the Central District of California, in a nation-wide class action, required ICE to review cases and provide custody redeterminations for medically vulnerable detainees, an

61. In numerous cases, courts have ordered releases, even where the plaintiffs do not fall within narrow definitions of those at higher risk. *See, e.g., Bravo Castillo v. Barr*, No. 20-605-TJH (AFMx), --- F. Supp. 3d ----, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020); *Jimenez v. Wolf*, No. 1:18-cv-10225-MLW, Dkt. 507, Memorandum and Order (D. Mass. Mar. 26, 2020); *Jimenez v. Wolf*, No. 1:18-cv-10225-MLW, Dkt. 507, Memorandum and Order (D. Mass. Mar. 26, 2020); *Sallaj v. U.S. Immigration & Customs Enf't*, No. 1:20-cv-00167-JJM-LDA, Dkt. 18 (D.R.I. Apr. 24, 2020).

62. Given the great risk of infection posed by COVID-19, the fact that prisoners and detainees cannot engage in proper hygiene and isolate themselves from infected residents or staff, and because the testing is inadequate to detect whether residents or staff are carrying the disease asymptotically, it is more likely that the virus has reached Calhoun and may already be infecting prisoners and detainees, including Plaintiffs.

63. The staff at jails like Calhoun also have a higher risk of contracting coronavirus due to the lack of protective gear and the impossibility of social distancing. Accordingly, detainees and other facility staff are at very high risk for contracting the virus. It is only a matter of time until Calhoun faces a similar crisis.

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important but different form of relief from that requested here. *Frailhat v. U.S. Immigration and Customs Enforcement*, No. EDCV 19-1546 JGB (SHKx), --- F. Supp. 3d ----, 2020 WL 1932570 (C.D. Cal., April 20, 2020).

It is highly likely, if not inevitable, that COVID-19 will reach Calhoun if it is not already present.

64. The early evidence bears this out. Nationwide, ICE has reported 317 confirmed cases of COVID-19 among immigration detainees across 30 detention facilities, as of April 24, 2020. ICE also reports 35 confirmed cases amongst ICE employees at 11 detention centers and 89 among ICE employees not assigned to detention facilities. But those numbers vastly understate the problem, because, as of April 21, 2020, ICE had tested only 1.32% of the people in its custody: 425 of its 32,309 detainees. Of those tested, 60% had COVID-19.<sup>24</sup>

65. Moreover ICE's figures do not cover positive cases among non-ICE employees who have close contact with ICE detainees, such as staff at local jails that house ICE detainees.<sup>25</sup> Nor do ICE's figures reflect the number of positive cases among non-immigrant detainees held at local jails that also house ICE detainees. For example, ICE reports that as of April 24, 2020, five detainees and no staff have tested positive at the St. Clair Jail.<sup>26</sup> However, declarations submitted in litigation

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<sup>24</sup> Monique Madan, *ICE has tested a tiny fraction of its detainees for COVID-19. Most of them are positive*, Miami Herald (Apr. 22, 2020), <https://www.miamiherald.com/news/local/immigration/article242203726.html>.

<sup>25</sup> Monique O. Madan, *Two Workers at ICE Detention Center in Miami Test Positive for Coronavirus*, Miami Herald (Apr. 6, 2020), <https://www.miamiherald.com/news/local/immigration/article241791511.html>.

<sup>26</sup> See U.S. Immigration & Customs Enforcement, ICE Guidance on COVID-19: Confirmed Cases (last updated Apr. 24, 2020).

seeking the release of an immigrant at St. Clair who contracted COVID-19 before he could be released showed that as of April 10, 2020, there were also six inmates and three St. Clair staff with confirmed cases. *See Albino-Martinez v. Adducci*, No. 2:20-cv-10893-SJM-DRM, ECF No. 10, at 23 (E.D. Mich. Apr. 10, 2020). Current numbers of infections for non-immigrant inmates and facility staff at St. Clair are not publicly reported by ICE.

66. Over the past month, more than nine thousand COVID-19 diagnoses have been confirmed at local, state, and federal correctional facilities across the United States. As of April 26, 2020, the Federal Bureau of Prisons (“BOP”) reports 730 federal inmates and 317 BOP staff with positive cases and 26 federal inmate deaths.<sup>27</sup> Cook County Jail in Illinois has over 500 confirmed cases.<sup>28</sup> California’s Department of Corrections has reported 148 confirmed cases.<sup>29</sup> At a single jail in New York City, 253 inmates had already tested positive for coronavirus as of April 5, 2020.<sup>30</sup> And, the rate of infection in New York City jails is more than seven times

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<sup>27</sup> Federal Bureau of Prisons *COVID-19 Cases*, available at <https://www.bop.gov/coronavirus/> (last accessed April 26, 2020).

<sup>28</sup> Cheryl Corley, *The COVID-19 Struggle in Chicago’s Cook County Jail*, NPR (Apr. 13, 2020), <https://www.npr.org/2020/04/13/833440047/the-covid-19-struggle-in-chicagos-cook-county-jail>

<sup>29</sup> California Department of Corrections, *Population COVID-19 Tracking*, <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last updated Apr. 26, 2020).

<sup>30</sup> Josiah Bates, *New York’s Rikers Island Jail Sees First Inmate Death from COVID-19*, Time (Apr. 6, 2020), <https://time.com/5816332/rikers-island-inmate-dies-coronavirus/>.

as high as the rate of infection in New York City overall. When the Ohio Department of Corrections performed comprehensive testing, it found that 2,011 out of 2,578 inmates, which is 78% of the inmate population, at one of its facilities have COVID-19.<sup>31</sup> Statewide, 3,792 inmates tested positive for COVID-19, meaning that incarcerated people made up 20% of the state's cases as of April 22, 2020.<sup>32</sup>

67. Similarly, COVID-19 has spread rapidly among those in the custody of MDOC. From March 23 to April 17, the number of confirmed cases of coronavirus in just one jail, Parnall Correctional Facility, multiplied from one inmate to 227 people—163 inmates and 64 staff—meaning that one out of every ten inmates had tested positive for COVID-19. As of April 17, this was higher than the rates of facilities in Chicago and New York.

68. MDOC has already placed four prisons on partial lockdown because of the rising number of inmates testing positive for the virus. As of April 26, 2020, MDOC reports 1031 cases and 32 deaths among Michigan state inmates, and 81 cases among inmates in federal correctional facilities.<sup>33</sup> Press reports say that at least 169 MDOC staff have contracted COVID-19, and at least 2 MDOC staff have

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> State of Michigan. *Coronavirus Michigan Data*, [https://www.michigan.gov/coronavirus/0,9753,7-406-98163\\_98173---,00.html](https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html) (last accessed April 26, 2020).

died.<sup>34</sup> The problem is almost certainly worse than reported given the dearth of available testing in such facilities.

69. Despite mitigation efforts, the virus continues to infiltrate and spread through correctional facilities. The top doctor at Rikers Island in New York City has lamented how extensive mitigation efforts failed to slow the spread of the disease at the jail.<sup>35</sup> He joins a chorus of public health experts in concluding that for such efforts to be effective, they must be paired with a reduction in the number of people incarcerated.

70. Recognizing the limits of any social distancing or hygiene-based mitigation strategy in a correctional facility, on March 29, Governor Whitmer included in Executive Order 2020-29 intended to protect vulnerable populations in jails, prisons, and juvenile detention facilities from the spread of COVID-19.<sup>36</sup> The order recommended that individuals who are older or have underlying health conditions, among others, be considered for early release. Executive Order 2020-29

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<sup>34</sup> John Agar, *Coronavirus a 'death sentence' in Michigan prisons, inmate says*, Michigan Live (Apr. 14, 2020), <https://www.mlive.com/news/grand-rapids/2020/04/coronavirus-a-death-sentence-in-michigan-prisons-inmate-says.html>

<sup>35</sup> Miranda Bryant, *Coronavirus spread at Rikers is a "public health disaster," says jail's top doctor*, The Guardian (Apr. 1, 2020), <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>.

<sup>36</sup> Michigan Executive Order 2020-29, [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-523422--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523422--,00.html) (last accessed April 23, 2020).



also restricted the use of out-of-home confinement for juveniles. Some county jails in Michigan have already begun to reduce their inmate populations. Macomb County Jail, for example, has reduced its inmate population from 875 to 648. ICE must follow suit at Calhoun.

### **C. ICE’s Protocols Are Insufficient To Prevent Widespread Transmission of COVID-19 in Custody**

71. On April 10, 2020, in response to the rapid spread of COVID-19 through ICE facilities, ICE released “COVID-19 Pandemic Response Requirements”,<sup>37</sup> a set of supplemental guidance for facilities housing immigration detainees.

72. Even if ICE were to fully implement its own COVID-19 Guidance at Calhoun, Plaintiffs would remain at significant risk of contracting COVID-19 because these protocols fall well short of what public health experts say is necessary to protect individuals in detention settings.

73. Glaringly, the ICE Guidance does not mandate implementation of many its own protocols, but instead requires compliance only to the extent “practicable” or “whenever possible.” This malleability allows facilities to claim compliance with the ICE Guidance without actually implementing crucial safeguards.

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<sup>37</sup> U.S. Immigration & Customs Enforcement, *COVID-19 Pandemic Response Requirements 11* (Apr. 10, 2020) (“ICE Guidance”), [ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf](https://ice.dhs.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf).

74. For example, the ICE Guidance does not mandate social distancing but merely recommends it. Indeed, ICE concedes that “strict social distancing may not be possible in congregate settings such as detention facilities.” It also does not address how social distancing can be achieved in dense housing units, where detainees must share sleeping quarters, communal spaces, showers, and bathrooms and are surrounded by dozens of others each day and night, including during mandatory lock-downs.

75. The ICE Guidance fails entirely to account for presymptomatic or asymptomatic transmission, which especially impacts high-risk detainees. It does not establish special protections for high-risk detainees until they are already symptomatic, by which point it is too late to meaningfully mitigate the risks of transmission to others, serious illness, or death.

76. Nor does the ICE Guidance address the lack of comprehensive COVID-19 testing at ICE facilities. There is no guidance for clinical staff on when to test patients for COVID-19, which leaves detained patients at a significant disadvantage. Without any clear guidance for testing, ICE will be unable to identify “confirmed cases,” to timely take necessary precautions to contain the spread of COVID-19.

77. Thus, public health experts like Dr. Homer Venters, an epidemiologist and correctional health expert, who have reviewed ICE’s COVID-19 protocols and guidance, have concluded that they contradict or omit several important CDC

guidelines, rendering them “simply insufficient to address the structural aspects of detention facilities that make transmission of COVID-19 so rapid.”

**D. Conditions at the Calhoun County Correctional Center Create Heightened Risk of COVID-19 Infection**

78. The current conditions at Calhoun, where people live, sleep, bathe, and eat in close proximity, pose a grave public health risk for the spread of COVID-19. People cannot remain more than six feet apart, scant medical resources are available, and many detainees are at high risk of serious infection.

79. At Calhoun, Plaintiffs and other detainees are kept together in “pods” containing groups of up to sixty people, who sleep, eat, bathe, and live in closely confined quarters. Most detainees sleep close together in cells or small communal rooms, in which they cannot avoid being within six feet of each other; more commonly, they are forced to be two or three feet apart, often in bunk beds. Detainees share a limited number of communal showers, bathroom stalls, and telephones, among other items in the facility.

80. Both food preparation and service are communal at Calhoun; detainees eat all meals together, sitting at shared tables with multiple other people at arms-length. Certain detainees are responsible for distributing food trays to the pods, and those detainees do not wear protective gear like masks or gloves.

81. It is impossible for detainees to shelter in place; instead they must interact with strangers who may be carriers for the disease. Detainees and staff

regularly come and go. Detainees are transported throughout the facility in close proximity to each other and staff. They regularly interact with individuals from other pods in the hallways, in the recreation area, and even while waiting to get their required medications. Detainees face the further risk of disease transmission through their work, as many work cleaning the kitchen, the laundry area, the bathrooms, and their own pods.

82. Many detainees have also reported concerns about inadequate hygienic practices. Detainees often lack access to soap and are not provided with hand sanitizer. They also have not been provided with protective equipment like gloves or face masks to wear in the normal course, and have rarely observed staff wearing such equipment.

83. The current protective measures implemented at Calhoun simply are not enough to protect Plaintiffs from COVID-19. Calhoun claims it is requiring staff to have their temperatures taken when they arrive at work, but this precaution is insufficient to detect a virus like COVID-19 or prevent its spread throughout Calhoun, because infected persons are often asymptomatic but still contagious.

84. Recent history reflects that Calhoun also lacks the medical infrastructure necessary to address the spread of infectious disease and treatment of people most vulnerable to illness. During the H1N1 influenza epidemic in 2009, for example, jails and prisons were sites of severe outbreaks. Calhoun and Monroe

County Jail each experienced mumps outbreaks just last year.<sup>38</sup> News reports suggested an ICE detainee spread the mumps outbreak between facilities when the detainee was transferred from Monroe County Jail to Calhoun. Calhoun confirmed at least two cases of the mumps, and news outlets suggested that “several inmates” at both jails were infected.

85. There is no indication that Calhoun is better prepared to address COVID-19, which poses a far greater risk than mumps, nor any suggestion that ICE is implementing procedures in Calhoun to ensure sufficient numbers of qualified staff to treat those who become infected with COVID-19.

86. Having reviewed sworn declarations describing the conditions of Plaintiffs’ confinement, correctional health expert and epidemiologist Dr. Venters has concluded that Calhoun fails to meet even the most basic elements of the CDC’s guidelines for management of COVID-19 risks in correctional settings. Dr. Venters identified the following, non-exclusive list of deficiencies: a lack of basic social distancing (including extremely close sleeping quarters and living areas), failure to provide sanitizing and personal protection equipment, failure to establish standards of use of gloves and masks by security personnel, lack of environmental cleaning in the facility, lack of availability of testing for COVID-19 despite concerning

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<sup>38</sup> *Mumps confirmed in Calhoun County Jail*, WoodTV.com (Apr. 21, 2019), available at: <https://www.woodtv.com/news/kzoo-and-bc/mumps-confirmed-in-calhoun-county-jail/>.

symptoms, and lack of attention to serious history and symptoms of potentially life-threatening medical problems that raises concerns about detainees' ability to receive access to appropriate health services.

**E. Calhoun Must Depopulate to Mitigate the Risks of COVID-19, Beginning with the Most Vulnerable Detainees**

87. Leading public health experts have recommended that the Subclass Named Plaintiffs, and other high-risk detainees, be released from Calhoun and similar correctional facilities.

88. Dr. Jonathan Louis Golob, an expert in infectious diseases and immunocompromised patients, has declared that social distancing and hygiene “are the only known effective measures for protecting vulnerable communities from COVID-19.” He has further advised that it is reasonable to expect that COVID-19 will “readily spread in detention centers such as prisons and jails[.]” Therefore, he has concluded, vulnerable people in such facilities “are at grave risk of severe illness and death from COVID-19.”

89. Dr. Venters, an epidemiologist and correctional health expert, has enumerated categories of risk factors that increase an individual's risk of serious complications from COVID-19. The “At-Risk Population” includes individuals with one or more of the following risk factors: age of 50 or above, pregnancy or recent pregnancy (within last 6 weeks), and serious underlying medical condition including: chronic kidney disease (including receiving dialysis); chronic liver

disease (including cirrhosis and chronic hepatitis); endocrine disorders (including diabetes mellitus); compromised immune system (immunosuppression) (e.g., receiving treatment such as chemotherapy or radiation, received an organ or bone marrow transplant and is taking immunosuppressant medications, taking high doses of corticosteroids or other immunosuppressant medications, HIV or AIDS); metabolic disorders (including inherited metabolic disorders and mitochondrial disorders); heart disease (including congenital heart disease, congestive heart failure and coronary artery disease); lung disease including asthma or chronic obstructive pulmonary disease (chronic bronchitis or emphysema) or other chronic conditions associated with impaired lung function or that require home oxygen; neurological and neurologic and neurodevelopment conditions (including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury); body mass index (BMI) of 40 or greater; hypertension; smoking or history of smoking; and, any other condition identified by the CDC as putting a person at a higher risk.

90. Dr. Venters explains that age 50 or older is an appropriate threshold for several reasons. First, CDC data reflects that the risk of complications, measured by hospitalization rates, increases for those between ages 45-54 and 55-64. Dr. Venters believes this is especially appropriate for ICE's consideration of those in its custody,

given that in correctional settings the age of 50 or 55 is often used to identify older patients, because of the extremely high level of physical and behavioral health problems among this cohort of people. In addition, Dr. Venters cites recent data that reveals that the critical risk of smoking for serious illness and death from COVID-19 infection, as well as data that reveals the rates of smoking to be highest among detained people over 50. For those reasons, it is Dr. Venters' expert opinion that ICE should apply the age of 50 and over to identify detainees who have an increased vulnerability to COVID-19 based on their age.

91. Dr. Venters has called for the immediate release of detainees who possess risk factors, to prevent their serious illness and/or death, and cautions that ICE should not wait until those detainees become symptomatic.

92. According to Dr. Venters, ICE should adhere to the following CDC-approved steps to meet the re-entry needs of people leaving ICE custody. First, any individual set for release must clear a COVID-19 screening process. If they do not, facilities should follow the protocol for a suspected COVID-19 case, including by providing a face mask to the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the individual is released before the recommended medical isolation period is complete, ICE should discuss the individual's release with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care,



as part of release planning. ICE should also make direct linkages to community resources to ensure proper medical isolation and access to medical care. Finally, before releasing a detainee with COVID-19 symptoms to a community-based facility, such as a homeless shelter, ICE should contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

**F. Plaintiffs Are at Grave Risk Under the Current Conditions in Calhoun.**

93. All Plaintiffs are at grave risk of contracting COVID-19 as a result of being detained by ICE at Calhoun, where they are subject to conditions that prevent them from taking basic measures, including social distancing, to protect themselves from this dangerous virus.

94. Plaintiffs **Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma and Zhang** are people who, as a result of their age and/or underlying medical conditions, are at greatest risk of serious illness or death if infected by COVID-19.

95. **Qaid Alhalmi** is a 58-year-old Yemeni national who first entered the United States on May 29, 1992, as a nonimmigrant visitor, and then on July 27, 1995, also as a nonimmigrant visitor. He remained in the country ever since. Mr. Alhalmi's final order of removal to Yemen was issued on August 8, 2002, and the Board of Immigration Appeals dismissed his appeal on December 15, 2003. Mr.

Alhalmi has been in ICE custody since on or around September 17, 2019, when he was detained during one of his standard Order of Supervision appointments.

96. Mr. Alhalmi is 58 years old and suffers from hypertension and type 2 diabetes. He must take insulin daily to control his high blood sugar.

97. Mr. Alhalmi is critically vulnerable to COVID-19 because of his hypertension and diabetes.

98. If released, Mr. Alhalmi will live in his home in Dearborn, Michigan, with his wife of 13 years, who is a U.S. citizen. While at home, Mr. Alhalmi would maintain a safe distance from others and/or quarantine as necessary. He would also have access to treatment for his medical conditions.

99. **Tomas Cardona Ramirez** is a 38-year-old Guatemalan national, who entered the United States in 2004. He has been detained by ICE in Calhoun since February 2020. On April 24, 2020, Mr. Cardona Ramirez was granted voluntary departure.

100. Mr. Cardona Ramirez suffers from type 2 diabetes, and takes insulin and other medication to regulate his blood sugar. He also suffers from hypertension, and has been prescribed medication, including Lisinopril, an ACE inhibitor, to treat this condition.

101. Mr. Cardona Ramirez is critically vulnerable to COVID-19 because of his diabetes and hypertension.

102. If released, Mr. Cardona Ramirez will live with his significant other and her children in Grand Rapids, Michigan. While at home, Mr. Cardona Ramirez would maintain a safe distance from others and/or quarantine as necessary. He would also have access to treatment for his medical conditions.

103. **Ruby Briselda Escobar** is a 31-year-old El Salvadorian national who entered the United States in 2013. She was detained by ICE at Calhoun from November 18, 2018 to April 6, 2020. Ms. Escobar has a final order of removal that was issued in 2013, when she first attempted entry into the United States. Ms. Escobar's application for Withholding of Removal and protection under the Convention Against Torture has been denied, but her attorney intends to file a Motion to Reopen Removal Proceedings.

104. Ms. Escobar suffers from several health problems, including a brain aneurysm and heart problems that cause her to experience chest pain, difficulty breathing, weakness, and sweating. Ms. Escobar developed her brain aneurysm in 2013, as a result of injuries she sustained while held hostage and tortured by human traffickers. Because of her brain aneurysm, she has headaches, dizziness, nausea, vomiting, double vision, trouble speaking clearly, and forgetfulness. At Calhoun, Ms. Escobar was denied her regular medications and her symptoms became much worse. She also never received any testing for her health issues during the year and

a half she was detained at Calhoun, despite reporting her symptoms to medical staff multiple times.

105. Ms. Escobar is critically vulnerable to COVID-19 due to her medical conditions.

106. Ms. Escobar was released voluntarily by ICE under an order of supervision on April 6, 2020, the day after her original petition was filed. *See* Dkt. 17, Dkt. 25 at 1. She is currently residing with her best friend in Lincoln Park, Michigan, where she is able to maintain a safe distance from others and/or quarantine as necessary. She continues to seek a writ of habeas corpus or permanent injunction to prevent her redetention.

107. **Julio Fernando Medina Euceda** is a 55-year-old Honduran national who entered the United States in 1991, and became a lawful permanent resident in 2006 after marrying his wife, who is a U.S. citizen. He has been detained by ICE in Calhoun since January 24, 2020. Mr. Medina Euceda requested voluntary departure, which the Detroit Immigration Court denied. On April 13, 2020, Mr. Medina Euceda was ordered removed.

108. Mr. Medina Euceda is critically vulnerable to COVID-19 because of his age.

109. If released, Mr. Medina Euceda will live with his wife in their apartment in Detroit, Michigan. While at home, Mr. Medina Euceda would maintain a safe distance from others and/or quarantine as necessary.

110. **Damary Rodriguez Salabarria** is a 46-year-old Cuban national who entered the United States on August 1, 2019, and requested asylum at that time. She was immediately detained in McAllen, Texas and on August 10, 2019, was transferred to Calhoun, where she has remained ever since. Ms. Rodriguez Salabarria's asylum case was denied, and her appeal to the Board of Immigration Appeals was also denied, approximately two weeks ago. She is filing a petition for review to the Sixth Circuit Court of Appeals.

111. Ms. Rodriguez Salabarria suffers from hypertension, chronic gastritis, and a peptic ulcer, as well as gastroesophageal reflux. She takes daily medication for all of these conditions. Prior to entering the United States in August 2019, Ms. Rodriguez Salabarria had twice been admitted to a hospital intensive care unit due to acute pancreatitis. She has also undergone both an appendectomy and cholecystectomy (gallbladder removal), and suffered multiple kidney infections.

112. Ms. Rodriguez Salabarria is critically vulnerable to COVID-19 because of her medical conditions.

113. If released, Ms. Rodriguez Salabarria will be picked up by volunteers from the Washtenaw Interfaith Coalition for Immigrant Rights and transported to

Baytown, Texas, where she can rejoin her husband. In Texas, Ms. Rodriguez Salabarria would maintain a safe distance from others and/or quarantine as necessary. She would also have access to treatment for her medical conditions.

114. **Emanuel Rosales Borboa** is a 35-year-old Mexican national who first entered the United States in 1995, when he was 10 years old, with a B-2 visa. He has continuously resided in the United States since then. Mr. Rosales Borboa was first detained by ICE in April 2017, after he was unable to produce proof of legal U.S. residency to ICE officers at his place of work. He was released on bond in May 2017. On March 7, 2020, Mr. Rosales Borboa was arrested and charged with carrying a concealed weapon. He appeared before a criminal judge who granted him release on bond of \$1,000.00, but ICE placed a detention hold and on March 9, 2020, Mr. Rosales Borboa was transferred to Calhoun. Mr. Rosales Borboa is seeking Cancellation of Removal.

115. About ten years ago, Mr. Rosales Borboa was hospitalized for two days at Henry Ford Hospital in Detroit, Michigan, after experiencing shortness of breath, chest pains, and difficulty breathing. His doctors diagnosed him with asthma, and he has been using a prescribed inhaler multiple times a week since then. Mr. Rosales Borboa has also been prescribed Prednisone, an immunosuppressant medication, for his asthma.

116. Mr. Rosales Borboa is critically vulnerable to COVID-19 because of his asthma.

117. If released, Mr. Rosales Borboa will live with family members at his home in Allen Park, Michigan, where he has lived for the last five years. While at home, Mr. Rosales Borboa would maintain a safe distance from others and/or quarantine as necessary. He would also have access to treatment for his asthma.

118. **Amer Toma** is a 55-year-old Iraqi national who first entered the United States about 10 years ago under Refugee status. Mr. Toma was in ICE custody from September 21, 2019 to April 22, 2020. Mr. Toma was arrested for driving with 5-45 kilograms of marijuana in his car, for which he received two years' probation and no jail time. Mr. Toma was detained at both Monroe County Jail and Calhoun.

119. Mr. Toma is 55 years old, pre-diabetic, and has prostate cancer, for which he has not received treatment. He also suffers from hypotension, for which he takes medication. Mr. Toma was injured in the Iran-Iraq war, and now has two bullets in his body that have been a source of severe back pain, infection, swelling, and mobility problems. Six or seven years ago, Mr. Toma was hospitalized for two days due to a groin infection caused by one of the bullets. Mr. Toma has used a wheelchair due to the severe pain caused by the bullets. Mr. Toma also has a hernia that has not received treatment. He has been on SSI disability for seven years.

120. Mr. Toma is critically vulnerable to COVID-19 because of his heart condition and susceptibility to infection. Since his release from Calhoun, Mr. Toma has been living at his home in Madison Heights, Michigan, where he has been able to practice social distancing and quarantine himself. He wears a mask as much as possible, and constantly washes his hands and uses hand sanitizer.

121. Mr. Toma was released pursuant to this Court's temporary restraining order, which has since been converted to a preliminary injunction. He continues to seek a writ of habeas corpus or permanent injunction to prevent his redetention.

122. **Min Dan Zhang** is a 50-year-old Chinese national who entered the United States in 2013. She has been detained by ICE in Calhoun since August 22, 2019. On April 20, 2020, the Detroit Immigration Court denied Ms. Zhang's request for bond. The Detroit Immigration Court has also denied Ms. Zhang's application for political asylum and withholding of removal under the Convention Against Torture. She has appealed this denial, and the appeal is currently pending.

123. Ms. Zhang is critically vulnerable to COVID-19 because of her age.

124. If released, Ms. Zhang will live with her ten-year-old son and family in Brooklyn, New York. Her family is able to arrange for her travel from Calhoun. While in Brooklyn, Ms. Zhang would maintain a safe distance from others and/or quarantine as necessary.



125. Plaintiffs **Barajas Santoyo, Brito, Castro, Garcia Toledo, Gomez Santiz, Orta Vieyra, and Sosa Carillo** are detained at Calhoun. Under the current conditions, they are unable to socially distance or practice other necessary measures to prevent the risk of contracting COVID-19.

126. These Plaintiffs, while not at the greatest risk of serious illness or death if infected by COVID-19 due to their age or underlying medical conditions, are also at high risk under the current conditions at Calhoun.

127. **Baldemar Barajas Santoyo** is a 47-year-old Mexican national who first entered the United States in December 1991, without inspection. His most recent entry was in May 2000, and he has been in the country ever since. Mr. Barajas Santoyo has been detained by ICE in Calhoun since February 12, 2020. He has no criminal history, and is currently in the process of applying for an immigrant visa.

128. As a result of the conditions of confinement at Calhoun, Mr. Barajas Santoyo is at high risk of contracting COVID-19.

129. If released, Mr. Barajas Santoyo will live with his six children, all of whom are U.S. citizens, at his home in Bangor, Michigan. While at home, Mr. Rosales Borboa would maintain a safe distance from others and/or quarantine as necessary.

130. **Sergio Brito** is a Mexican national who entered the United States in 2002, without inspection, and has been in the country ever since. He has been

detained by ICE in Calhoun since December 9, 2019. Mr. Brito is subject to mandatory detention due to a home invasion conviction, which he is currently working to vacate. If successful, Mr. Brito would be qualified to and will apply for cancellation of removal. Currently, he is appealing to the BIA whether his conviction does subject him to mandatory detention and, thus, he is ineligible for cancellation.

131. As a result of the conditions of confinement at Calhoun, Mr. Brito is at high risk of contracting COVID-19.

132. If released, Mr. Brito will live with his sister in Grand Rapids, Michigan. While living with his sister, Mr. Brito would maintain a safe distance from others and/or quarantine as necessary.

133. **Guo Yan Lin Castro** is a 45-year-old Chinese national who entered the United States in January 2013, with advance parole. She has been detained by ICE in Calhoun since October 2019, after she was charged with prostitution and paid bail. Ms. Castro's immigration case is pending before an immigration judge in Detroit, and her next hearing is scheduled for May 15, 2020.

134. Ms. Castro's suffers from gastroenteritis and severe depression, for which she takes medication. The extent of Ms. Castro's particular medical vulnerability is unknown, pending receipt of medical records.

135. As a result of the conditions of confinement at Calhoun, Ms. Castro is at high risk of contracting COVID-19.

136. If released, Ms. Castro will stay with her boyfriend, who is a permanent resident, at his home in Brooklyn, New York. While at home, Ms. Castro would maintain a safe distance from others and/or quarantine as necessary.

137. **Jose Mauricio Garcia Toledo** is a Mexican national who entered the United States about 27 years ago, without inspection, and has remained in the country ever since. He has been detained by ICE in Calhoun since February 2020. His petition for alien relative is pending with USCIS. He is currently applying for cancellation and has a hearing scheduled for June 15, 2020.

138. As a result of the conditions of confinement at Calhoun, Mr. Garcia Toledo is at high risk of contracting COVID-19.

139. If released, Mr. Garcia Toledo will live with his wife, a lawful permanent resident, and seven-year-old son, a U.S. citizen, at their home in Wyoming, Michigan. While at home, Mr. Garcia Toledo would maintain a safe distance from others and/or quarantine as necessary.

140. **Jose Gomez Santiz** is a 23-year-old Mexican national who entered the United States in 2009, without inspection. He has been detained by ICE in Calhoun since February 14, 2020. Before his detention in Calhoun, he had been detained at the Gratiot County Jail since January 2020. Mr. Gomez Santiz has requested he be

permitted to get married. If so, he would qualify for cancellation. His hearing is scheduled for May 22, 2020.

141. As a result of the conditions of confinement at Calhoun, Mr. Gomez Santiz is at high risk of contracting COVID-19.

142. If released, Mr. Gomez Santiz will stay with his fiancé in Gratiot County, Michigan. While at home, Mr. Gomez Santiz would maintain a safe distance from others and/or quarantine as necessary.

143. **Isaac Orta Vieyra** is a 32-year-old Mexican national who entered the United States on February 16, 2003, and has been in the country ever since. He has been detained by ICE in Calhoun since January 2020, after he was arrested for a drug charge that was later dismissed. Mr. Orta Vieyra is filing for cancellation of removal.

144. As a result of the conditions of confinement at Calhoun, Mr. Orta Vieyra is at high risk of contracting COVID-19.

145. If released, Mr. Orta Vieyra will live with his wife and children, who are all U.S. citizens, at their home in Shiawassee County, Michigan. While at home, Mr. Orta Vieyra would maintain a safe distance from others and/or quarantine as necessary.

146. **Rudy Sosa Carillo** is a 23-year-old Guatemalan national who entered the United States in 2013, without inspection. He has been detained by ICE in

Calhoun since February 2020, when ICE took him into custody as he was driving to work. Mr. Sosa Carillo was denied bond on April 2, 2020. He is contesting his removal, and has a June 24, 2020 hearing in his immigration case.

147. As a result of the conditions of confinement at Calhoun, Mr. Sosa Carillo is at high risk of contracting COVID-19.

148. If released, Mr. Sosa Carillo will live in the house he owns in Grand Rapids, Michigan. While at home, Mr. Sosa Carillo would maintain a safe distance from others and/or quarantine as necessary.

## **LEGAL BACKGROUND**

### **A. The Constitutional Framework for Evaluating Civil Detention.**

149. “In our society, liberty is the norm,” and detention is the “carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Incarceration can be used to punish criminal acts, but may be imposed only after extensive procedural protections designed to ensure a person is not unjustly deprived of her liberty. *See Santobello v. New York*, 404 U.S. 257, 264 (1971) (Douglas, J., concurring).

150. Civil detainees, unlike people convicted of crimes, “may not be punished.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see also Kingsley v.*

*Hendrickson*, 135 S.Ct. 2466, 2475 (2015). Accordingly, the constitutional constraints on civil detention are even higher than in the criminal context: “detention violates that [Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690. *See also Addington v. Texas*, 441 U.S. 418, 425 (1979) (“civil commitment for any purpose constitutes a significant deprivation of liberty”); *Rosales-Garcia v. Holland*, 322 F.3d 386, 414 (6th Cir. 2003).

151. The Supreme Court has therefore insisted that civil detention be “narrowly focused on a particularly acute problem in which the government interests are overwhelming.” *Foucha*, 504 U.S. at 80-81 (quoting *Salerno*, 481 U.S. at 749–50). “The bar for involuntarily removing someone from society against her will is high—quite understandably and quite legitimately so,” and thus there is a “heavy presumption” against such “a massive curtailment of liberty.” *Howell v. Hodge*, 710 F.3d 381, 385, 387 (6th Cir. 2013).

152. To ensure that civil detention does not become impermissible punishment, the Supreme Court has carefully limited its use, insisting that civil detention be used only in “special and narrow nonpunitive circumstances,” *Zadvydas*, 533 U.S. at 690, and that it must “bear[] [a] reasonable relation to the purpose

for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Unless civil detention is closely linked to its purpose, the state’s interests cannot “outweigh[] the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690.

153. It is not just the fact of confinement, but “the *nature* and duration of commitment [that must] bear some reasonable relation to the purpose for which the individual is committed.” *Jackson*, 406 U.S. at 738 (emphasis added). *See also Foucha*, 504 U.S. at 79 (“[d]ue process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed”); *id.* at 88 (opinion of O’Connor, J.) (requiring a “necessary connection between the nature and purposes of confinement”); *Seling v. Young*, 531 U.S. 250, 265 (2001).

154. Not only must the fact and nature of civil detention be “linked to the stated purposes of the commitment,” *Hendricks*, 521 U.S. at 363, but the fact and nature of detention may not be excessive in relation to the special, non-punitive reason that justifies detention. *Salerno*, 481 U.S. at 747. *See also Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963) (ostensibly civil restrictions constitute punishment if they are “excessive in relation to the alternative [non-punitive] purpose” used to justify them); *Schall v. Martin*, 467 U.S. 253, 269 (1984) (same); *Kingsley*, 135 S.Ct. at 2469 (same).

155. Thus, a civil detainee can establish unconstitutional punishment “by showing that a restriction or condition is not rationally related to a legitimate government objective or is excessive in relation to that purpose.” *J.H. v. Williamson Cty., Tenn.*, 951 F.3d 709, 717 (6th Cir. 2020).

**B. During the COVID-19 Pandemic, Immigration Detention Without Adequate Safeguards, Especially the Ability to Socially Distance, Is Punitive and Hence Unlawful.**

156. Immigration detention—like all civil detention—must be supported by a “sufficiently strong special justification.” *Zadvydas*, 533 U.S. at 690. The purpose of immigration detention is “effectuating an alien’s removal,” and immigration detention is only permissible if it “bear[s] a reasonable relation” to that purpose. *Id.* at 690, 697; *see also Ly v. Hansen*, 351 F.3d 263, 271 (6th Cir. 2003) (finding that the goal of immigration detention is “to ensure the ability of the government to make a final deportation”). Thus, when considering the lawfulness of immigration detention, courts must weigh the reasonableness of the government’s asserted interest in using detention to help accomplish removal against the individual’s interest in freedom from such confinement. The COVID-19 pandemic affects both parts of that equation.

157. During this pandemic, an individual’s interest in freedom from confinement is at its zenith. Detention is no longer solely a deprivation of liberty, as severe as that is. Detention in the time of COVID-19 is highly likely to result in



contraction of a dangerous illness, because detention centers do not allow for social distancing. Indeed, detention could well result in a deprivation of life itself.

158. Conversely, during this pandemic, the government's interest in keeping people detained is greatly weakened. First, the government's ability to remove people has decreased dramatically given the breakdown in international travel, the closure of international borders, and the pandemic-induced practical obstacles to obtaining the necessary paperwork to process removals. Second, and perhaps even more importantly, the government has a strong public health interest in limiting detention because the congregate nature of those facilities allows for rapid spread of the disease, endangering those detained, those who work in detention facilities, and those in surrounding communities. Given the limited public health resources—including scarce hospital beds, insufficient ventilators, and overtaxed medical staff—the government's true interest here is in preventing a wildfire spread of the virus in detention facilities.

159. In sum, due to the COVID-19 pandemic, the fact and nature of Plaintiffs' detention in Calhoun, where they do not have the ability to engage in social distancing and are at grave risk of severe illness or death, is not reasonably related to, and excessive in relation to, the government's interest in removal. Such detention therefore imposes punishment, in violation of Plaintiffs' Due Process rights under the Fifth Amendment.

### **C. Plaintiffs Have a Constitutional Right to Reasonable Safety in Custody.**

160. “[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As discussed above, because Plaintiffs are civil detainees, their detention is governed by the Fifth Amendment, and may not “amount to punishment of the detainee.” *Bell*, 441 U.S. at 535, 539.<sup>39</sup> See also *Banks v. Booth*, 1:20-cv-00849-CKK, Dkt. 51 at 10-12 (D.D.C., April 20, 2020) (holding that pretrial detainees held during COVID-19 pandemic did not need to show deliberate indifference, but only that Defendants knew or should have known that the jail conditions posed an excessive risk to their health); *Hernandez Roman v. Wolf*, No. 5:20-cv-00768-TJH-PVC, 2020 WL 1952656, at \*12 (C.D. Cal. Apr. 23, 2020) (“The Government must not be deliberately indifferent to the potential exposure of civil detainees to a serious,

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<sup>39</sup> Plaintiffs’ continued detention also violates the Eighth Amendment’s prohibition of cruel and unusual punishment—a much stricter standard than the Fifth Amendment’s ban on any punishment, which applies here. This is because Defendants have ignored “a condition of confinement that is sure or very likely to cause serious illness” by crowding Plaintiffs into living quarters with others who have “infectious maladies . . . even though the possible infection might not affect all of those exposed.” *Helling*, 509 U.S. at 32-33. See *Bell*, 441 U.S. at 539; *Thakker*, No. 1:20-cv-480, at \*22 n.15 (ordering immediate release of immigration detainees due to COVID-19 under the Fifth Amendment and, citing *Helling*, finding that plaintiffs had also met the “more exacting Eighth Amendment standard”).

communicable disease on the ground that the complaining detainees show no serious current symptoms, or ignore a condition of confinement that is more than very likely to cause a serious illness”).

161. Defendants’ continued detention of Plaintiffs and members of the proposed class under current conditions and population levels puts them at a high risk of exposure to a highly contagious disease resulting in serious illness, severe harm, or death, in violation of their due process rights under the Fifth Amendment.

**D. Plaintiffs Held in Post-Order Custody Must Be Released Because Their Removal Is Not Significantly Likely in the Reasonably Foreseeable Future Due to the Impact that the COVID-19 Crisis Has Had on International Travel and Removals.**

162. Mr. Alhalmi, who was ordered removed to Yemen, has been detained since September 2019, approximately eight months. Ms. Rodriguez Salabarria, whose order to be removed to Cuba became final after the BIA denied her appeal, has been detained since August 2019, more than eight months. Mr. Toma, who was ordered removed to Iraq, has been detained since September 2019, more than six months. As a result of the COVID-19 crisis, Mr. Alhalmi, Ms. Escobar, Ms. Rodriguez Salabarria, and Mr. Toma are not significantly likely to be removed in the reasonably foreseeable future, and their detention is therefore barred under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

163. Mr. Alhalmi, Ms. Escobar, Ms. Rodriguez Salabarria, and Mr. Toma have final orders of removal, and are therefore detained under 8 U.S.C. § 1231, the

statute governing post-order detention. 8 U.S.C. § 1231(a)(2) authorizes a 90-day period of mandatory post-final-order detention during which time ICE is supposed to effectuate removal, also known as “the removal period,” § 1231(a)(1)(A).

164. Individuals whom the government is unable to remove during the 90-day removal period should be released under conditions of supervision. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision.”). These conditions include periodic reporting and other “reasonable written restrictions on the alien’s conduct.” *Id.*

165. Mr. Alhalmi, Ms. Escobar, and Mr. Toma have been detained far longer than the 90-day removal period.

166. In certain circumstances, the government “*may*” continue to detain certain individuals “beyond the removal period,” including when individuals have been ordered removed on criminal grounds or where the government deems them to be a risk to the community or unlikely to comply with a removal order. 8 U.S.C. § 1231(a)(6) (emphasis added).

167. ICE continued the detention of Mr. Alhalmi, Ms. Escobar, and Mr. Toma beyond 90 days. Mr. Alhalmi was charged with selling pornography to a 17-year-old over ten years ago. He successfully completed a DA diversion program and has not reoffended. Mr. Toma has a conviction for delivery/manufacture of

marijuana, for which he was sentenced to two years' probation. There is no hearing process by which individuals can appeal the government's unilateral determination that they should be detained past the 90-day removal period.

168. In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) authorizes continued detention beyond the removal period only insofar as removal is “reasonably foreseeable.” 533 U.S. at 699. That is because, to satisfy due process, detention must “bear a reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (citations omitted). Because the principal purpose of the post-final-order detention statute is to effectuate removal, if removal cannot be effectuated, detention bears no reasonable relation to its purpose. *Id.* at 697. Thus, in order to avoid the serious constitutional problem that would be created if the statute authorized detention in such circumstances, the Supreme Court construed Section 1231(a)(6) as authorizing post-final-order detention only for a “period reasonably necessary to secure removal,” a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six-month period, if a detainee provides “good reason” to believe that his or her removal is not significantly likely in the reasonably foreseeable future, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the individual must be released.

169. Mr. Alhalmi, Ms. Escobar, Ms. Rodriguez Salabarría, and Mr. Toma have been detained longer than six months. The COVID-19 crisis provides good reason to believe their removal is not significantly likely in the reasonably foreseeable future. Therefore, they must be released unless Defendants provide evidence that rebuts Plaintiffs' showing that removal is unlikely in the reasonably foreseeable future.

170. Even under normal circumstances before the COVID-19 pandemic, securing the necessary documents for deportees and coordinating their travel could be a time-consuming, complicated, and costly process.

171. That process has now ground to a halt. The COVID-19 crisis has resulted in an unprecedented shutdown of international travel, a closure of international borders, the shuttering of embassy and consular services that are an integral part of removal processing, and a drastic curtailment of immigration case processing.

172. International travel has come to a virtual standstill. Sixty-four global airlines have completely suspended operations, and U.S. airlines have greatly reduced operations.<sup>40</sup> Many airlines are now operating cargo-only flights and U.S.

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<sup>40</sup> Thomas Pallini, 64 Global Airlines Have Completely Stopped Flying Scheduled Flights Due to Travel Bans, Airspace Closures, and Low Demand for Travel – See the Full List, Bus. Insider (Apr. 1, 2020), <https://www.businessinsider.com/coronavirus-global-airlines-stopping-flights-suspending-operations-2020-3>.

airports have closed terminals, gates and runways.<sup>41</sup> Delta will cut its international flights by 80%.<sup>42</sup> American Airlines plans to cut its international flights by 90% through April and May.<sup>43</sup> It is unclear when regular commercial air travel will resume, and, even when it does, it will likely take a great deal of time before regular routes are reestablished to many countries, meaning that it is likely to remain extremely difficult to effectuate removals.

173. While ICE uses charter flights to effectuate removals to some countries, for many countries ICE relies on commercial airlines. Removals are not significantly likely in the reasonably foreseeable future to countries where ICE cannot currently operate charter flights and where there is no regular commercial air travel.

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<sup>41</sup> James Asquith, *Commercial Airlines Are Now Operating Cargo-Only Flights*, Forbes (Mar. 28, 2020), <https://www.forbes.com/sites/jamesasquith/2020/03/28/commercial-airlines-are-now-operating-cargo-only-flights/#17b4385c6f0e>; Nicquel Terry Ellis, *Chicago, Los Angeles and more airports shutter gates, runways as coronavirus halts travel*, USA Today (Apr. 3, 2020), <https://www.usatoday.com/story/travel/2020/04/03/u-s-airports-reduce-operations-travel-declines-due-coronavirus/2939126001/>

<sup>42</sup> Kelly Yamanouchi, *Delta Says it Still Flies to All Points in its Domestic Network*, Atlanta Journal-Constitution (Apr. 3, 2020), <https://www.ajc.com/blog/airport/delta-says-still-flies-all-airports-its-domestic-network/Rym2MyGFFHdanXuKP7VPpK/>.

<sup>43</sup> Keith Griffin, *American Airlines Cuts International Flights by 90% Through May – but Vows NOT to Halt Domestic Service During the Coronavirus Crisis*, Daily Mail (Apr. 3, 2020), <https://www.dailymail.co.uk/news/article-8186105/American-Airlines-cuts-international-flights-90-May.html>.

174. In addition, many countries have closed their borders as a result of COVID-19. Both commercial and charter flights are affected. It is unclear how long it will be until countries reopen their borders, or, when they do, whether countries will agree to accept people deported from the United States, particularly those coming from Michigan, one of the areas in the United States hardest hit by COVID-19. It is also unclear what requirements countries will impose in order to accept individuals coming from abroad. For example, even if a country opens up its borders and allows entry conditioned on a period of quarantine, it is unclear that deportees, who are unlikely to have the resources to isolate in a hotel for several weeks, will be admitted.

175. The shuttering of consular and embassy services makes removals more difficult still. Even absent the COVID-19 crisis, individuals set to be deported must obtain travel documents, usually a passport. It was already quite difficult for ICE to obtain passports or other travel documents for nationals of certain countries. Given the global scale of the COVID-19 crisis, foreign governments are fully occupied with protecting their countries from the pandemic. As in the United States, government employees in other countries responsible for processing passport and document requests are likely to be working from home, assuming that they have internet and computers, which will often not be the case. Similarly, foreign consular and embassy staff in the United States face challenging working conditions, if they



are working at all. As a result, it is unlikely that ICE will be able to timely obtain passports or travel documents for plaintiffs who do not already have them.

176. The slowing and shutdown of consular and embassy services will also affect removals to countries where transit visas through third countries are necessary in order to remove a person because there are no direct flights to the country of deportation. Because many deportees are escorted by ICE officers on such flights, in order to travel through the transit country or countries, ICE needs to procure transit visas not just for the deportee, but also for the ICE escorts.

177. Likewise, immigration case processing in the United States has been severely curtailed as a result of the pandemic. As of 2020, there were over 1.1 million cases pending in the immigration court system, and the average wait for a disposition in Michigan is almost two years.<sup>44</sup> While the Detroit Immigration Court remains open for detainee hearings, detainees are being encouraged to waive their right to in-person appearances in favor of telephonic appearances, and to work with the Department of Justice to take certain facts out of controversy.<sup>45</sup> Thus, those

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<sup>44</sup> See *Immigration Court Backlog Tool*, TRAC Reports, Inc., [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/).

<sup>45</sup> Mark Jebson, U.S. Immigration Judge, Standing order: Telephonic Appearance due to COVID-19 in detained cases before Judge Mark Jebson in the Detroit Immigration Court (Mar. 26, 2020). Regarding the right to an in-person hearing generally, Immigration Court Practice Manual, Department of Justice, Chapter 4 (2008) (“[E]videntiary hearings on the merits may only be conducted by telephone conference if the respondent consents after being notified of the right to proceed in person or through video conference.”).

detainees who wish to press their right to fair procedures will see their cases delayed in a system that is heavily backlogged under the best of circumstances.

178. As the pandemic continues to spread, it is unclear how long it will take for immigration courts or the Board of Immigration Appeals to hear cases from individuals who are seeking further immigration relief or who are detained due to a government appeal.

179. Defendants seek to deport Mr. Alhalmi to Yemen. Even before the COVID-19 crisis, it was unlikely that the Government would deport Mr. Alhalmi to Yemen, a war-torn country facing a humanitarian crisis. In the past four years, over 3 million people have been displaced and over 15,000 people were killed.<sup>46</sup> Much of the country, including the capital city, Sana'a, is currently controlled by the Houthis, an armed militia group that has been accused of numerous human rights violations, including recruiting and using child soldiers.<sup>47</sup>

180. The violence has not stopped either since the COVID-19 outbreak; since January 2020, civilian casualties have risen every month.<sup>48</sup> In a statement

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<sup>46</sup> The United Nations identified Yemen as the worst humanitarian crisis in the world in 2019. *Humanitarian crisis in Yemen remains the worst in the world, warns UN*, UN News (Feb. 14, 2019), <https://news.un.org/en/story/2019/02/1032811>.

<sup>47</sup> *Q & A on The Conflict in Yemen and International Law*, Human Rights Watch (April 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>48</sup> *Yemen can't survive war on two fronts, top UN envoy tells Security Council, as coronavirus outbreak looms*, UN News (Apr. 16, 2020), <https://news.un.org/en/story/2020/04/1061942>.

released by Secretary of State, Michael Pompeo, he said that the U.S. Government is “alarmed by renewed violence” in Yemen even after de-escalation efforts were implemented.<sup>49</sup> Within the last month, the Saudi-led coalition has continued to carry out air strikes, killing over 30 people on March 30, 2020 alone.<sup>50</sup>

181. Since the COVID-19 outbreak, the conditions in Yemen have only grown more dire. Due to the conflict, there are few medical resources available in Yemen. Over half of the hospitals and clinics have closed or been destroyed. Around 80% of the population depends on foreign aid, which has been cut due to funding crises and accusations that aid was being diverted by Houthi authorities. There are also severe water and food shortages throughout the country and a lack of sanitation that led to an acute cholera outbreak.<sup>51</sup>

182. The conflict poses additional logistical problems, including that the U.S. Embassy in Sana’a suspended its operations in 2015, and that the U.S. Federal Aviation Administration prohibits flying in certain regions due to terrorist and militant activity. Additionally, the U.S. State Department travel advisory warns that

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<sup>49</sup> Press Release, Dep’t of State, Escalation of Violence in Yemen (Jan. 28, 2020).

<sup>50</sup> Aziz El Aziz El Yaakoubi and Lisa Barrington, *Air strikes hit Houthi-held Yemeni capital Sanaa: witnesses*, Reuters (March 30, 2020), <https://www.reuters.com/article/us-yemen-security/air-strikes-hit-houthi-held-yemeni-capital-sanaa-witnesses-idUSKBN21H1GY>

<sup>51</sup> Bethan McKernan, *Health workers' worst fears confirmed as Covid-19 reaches war-torn Yemen*, The Guardian (Apr. 10, 2020), <https://www.theguardian.com/world/2020/apr/10/yemen-confirms-first-coronavirus-case-war-torn-country>

there is a high-risk of kidnapping, especially of dual Yemeni-American citizens or individuals coming from the west, and attacks on public sites and transportation hubs.<sup>52</sup> The shutdown of international air travel has made it extremely difficult for ICE to remove Mr. Alhalmi to Yemen.

183. Given these facts, Mr. Alhalmi has provided good reason to believe that his removal is not significantly likely in the reasonably foreseeable future. Therefore, he must be released unless Defendants provide evidence that rebuts Plaintiffs' showing that removal is unlikely in the reasonably foreseeable future.

184. Defendants seek to deport Petitioner Ruby Briselda Escobar to El Salvador. El Salvador has banned entry to all foreigners, excluding accredited diplomats and legal residents, and those allowed to enter are subject to a 30-day quarantine.<sup>53</sup> El Salvador also shut down its airport on March 16, 2020 to all commercial flights, and it is unclear when the airport will reopen.

185. Ms. Escobar's immigration attorney is not certain whether Ms. Escobar has a passport or other immigration documents that would permit her entry into El

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<sup>52</sup> U.S. Dep't of State, *Yemen Travel Advisory* (Nov. 26, 2019), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/yemen-travel-advisory.html#ExternalPopup>.

<sup>53</sup> See *Coronavirus: Travel Restrictions, border shutdowns by country*, AL JAZEERA (Apr. 4, 2020), <https://www.aljazeera.com/news/2020/03/coronavirus-travel-restrictions-border-shutdowns-country-200318091505922.html>; U.S. Embassy in El Salvador, Current Information for U.S. Citizens in El Salvador.

Salvador, or whether those still must be obtained, which would be very difficult under present circumstances.

186. Given these facts, Ms. Escobar has provided good reason to believe that her removal is not significantly likely in the reasonably foreseeable future. She must therefore be released unless Defendants can rebut that showing.

187. Defendants seek to deport Ms. Rodriguez Salabarría to Cuba. Before the COVID-19 crisis, deportations to Cuba were rare. Before 2017, the Special Parole Policy (also known as the “dry foot, wet foot” policy) only permitted the repatriation of individuals that were intercepted at sea. In 2017, the U.S. and Cuba entered into an agreement that permitted deportations to Cuba. The Cuban government now has discretion to decide, on a “case-by-case basis” whether to accept deportations.<sup>54</sup> If the Cuban government does not accept the individual within 90 days, the individual can request asylum under the Cuban Adjustment Act. In the past three years, Cuba has not accepted all deportations, especially of individuals who are elderly, ill or whom the government views as a tax burden.<sup>55</sup>

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<sup>54</sup> See U.S. Department of Homeland Security, Fact Sheet (Jan. 12, 2017), <https://www.dhs.gov/sites/default/files/publications/DHS%20Fact%20Sheet%20FINAL.pdf>; U.S. DEP’T OF HOMELAND SEC., Joint Statement (Jan. 12, 2017), <https://www.dhs.gov/sites/default/files/publications/Joint%20Statement%20FINAL%20-%20US%20alt.pdf>

<sup>55</sup> See Monique O. Madan, *Cuban deportations have more than doubled in the past year, new data shows*, Miami Herald (Dec. 11, 2019), <https://www.miamiherald.com/news/local/immigration/article238280593.html>; Maria Alesia Sosa, *More than 37,000 Cubans face deportation, but they don't*

Out of the more than 39,000 Cubans with deportation orders, only about 1,300, or around 3%, have been deported.<sup>56</sup>

188. The COVID-19 crisis only further complicates deportations to Cuba. In addition to the challenges of getting the Cuban government to decide to admit deportees during the crisis, the borders are closed to all international travel. On March 20, 2020, Cuba closed its borders to non-Cuban citizens, and on April 2, 2020, the Cuban government suspended all international flights. The U.S. Embassy in Cuba released a statement that there are no additional repatriation charter flights for U.S. citizens and told individuals that did not get a seat on a prior charter flights to plan to “remain in Cuba until the airport re-opens and airlines can return.”<sup>57</sup> Given these facts, Ms. Rodriguez Salabarría has provided good reason to believe that her removal is not significantly likely in the reasonably foreseeable future. She must therefore be released unless Respondents can rebut the showing.

189. Defendants seek to deport Mr. Toma to Iraq. On February 25, 2020, Mr. Toma won his immigration case, and was granted Withholding of Removal

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*seem too worried*, Miami Herald (Dec. 29, 2017), <https://www.univision.com/local/miami-wltv/more-than-37-000-cubans-face-deportation-but-they-dont-seem-too-worried>

<sup>56</sup> Associated Press, *More Cubans are being deported under the Trump administration*, NBC News (Oct. 11, 2019), <https://www.nbcnews.com/news/latino/more-cubans-are-being-deported-under-trump-administration-n1065041>

<sup>57</sup> U.S. Embassy in Cuba, *Health Alert – U.S. Embassy, Havana, Cuba* (Apr. 22, 2020), <https://cu.usembassy.gov/covid-19-information/>

under the Convention Against Torture from the Detroit Immigration Court. However, the government appealed, and kept him detained during the appeal. It is unclear how long it will take for the government's appeal to be decided given the impact of the COVID-19 crisis on the operations of the Board of Immigration Appeals. Absent relief from this Court requiring Mr. Toma's release, which was preliminarily entered but has not been permanently granted, Defendants intend to keep Mr. Toma detained for the duration of the government's appeal of his immigration case.

190. Even before the COVID-19 crisis, this Court found, based on extensive evidence obtained in class action litigation about the difficulty of repatriating nationals of Iraq, that there is no significant likelihood that Iraqi nationals will be removed to Iraq in the reasonably foreseeable future. *See Hamama v. Adducci*, 349 F. Supp. 3d 665 (E.D. Mich. 2019), *rev'd on other grounds*, 946 F.3d 875 (6th Cir. 2020). Although Mr. Toma is not a class member in *Hamama* due to the date of his removal order, the *Hamama* court's factual findings about the obstacles to removals to Iraq are directly relevant here.

191. Because of the COVID-19 crisis, the obstacles to Mr. Toma's removal are even greater than at the time of the *Hamama* decision. Iraq will not accept repatriations or issue travel documents without first conducting an in-person consular interview. Mr. Toma has not had a consular interview. Given the COVID-

19 crisis, it is unclear whether or when Iraqi consular officials will conduct any further consular interviews.

192. Iraq has suspended all flights to and from Iraq, and has also banned travel between Iraqi provinces.<sup>58</sup> The WHO reports that, as of April 1, 2020 there were 697 total cases of COVID-19 in Iraq, and that it expects the reported numbers to “spike in the coming two weeks.”<sup>59</sup>

193. Given these facts, Mr. Toma has provided good reason to believe that his removal is not significantly likely in the reasonably foreseeable future. He must therefore be released unless Respondents can rebut the showing.

#### **E. ICE Has the Authority to Release Detained People in Its Custody**

194. It is well within ICE’s authority to comply with constitutional requirements by releasing people who are vulnerable to severe illness or death if they contract COVID-19. *See, e.g.*, 8 C.F.R. § 212.5(b)(1). ICE not only has the authority to exercise its discretion to release individuals from custody, but has routinely done so, particularly where individuals are medically frail or likely to suffer medical complications if they remain detained.

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<sup>58</sup> *COVID-19 Information*, U.S. Embassy & Consulates in Iraq (Apr. 1, 2020), <https://iq.usembassy.gov/covid-19-information/>.

<sup>59</sup> *The Fight to Contain COVID-19 in Iraq*, World Health Organization, <http://www.emro.who.int/irq/iraq-news/the-fight-to-contain-covid-19-in-iraq.html>.



195. This exercise of discretion comes from a long line of agency directives explicitly instructing officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating against detention.

196. ICE has a range of highly effective tools at its disposal to ensure that individuals report for court hearings and other appointments, including conditions of supervision. For example, ICE's conditional supervision program, called ISAP (Intensive Supervision Appearance Program), relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. A government-contracted evaluation of this program reported a 99% attendance rate at all immigration court hearings and a 95% attendance rate at final hearings.<sup>60</sup>

197. ICE's exercise of discretion applies regardless of the statutory basis for a noncitizen's detention.

198. Here, the Due Process Clause of the Fifth Amendment to the U.S. Constitution requires that ICE release detainees where civil detention has become punitive and where release is the only remedy to prevent this impermissible punishment. The fact that ICE has a longstanding practice of releasing immigrants

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<sup>60</sup> U.S. Gov't Accountability Off., GAO-15-26, *Alternative to Detention: Improved Data and Collection and Analyses Needed to Better Assess Program Effectiveness*, at 30 (2014).

on medical grounds indicates that the remedy Plaintiffs request is neither unprecedented nor unmanageable for the agency.

**F. This Court Has the Authority to Order Release To Ensure the Health and Safety of Plaintiffs, and Release is the Appropriate and Necessary Relief.**

199. The release of a sufficient number of Calhoun detainees to permit social distancing and hygiene measures for those who remain in detention is the only means to ensure compliance with the Constitution’s prohibition against punitive or unreasonable civil detention.

200. Where the government fails to meet its obligations to provide safe conditions for those in its custody, courts have a responsibility to remedy the resulting constitutional violation. *See Brown v. Plata*, 563 U.S. 493, 511 (2011). As a result, “[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.” *Id.*

201. Courts have regularly exercised this authority to remedy constitutional violations caused by overcrowding. “The scope of a district court’s equitable powers” in this regard “is broad, for breadth and flexibility are inherent in equitable remedies.” *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978) (citation omitted). Thus, even where “[t]he inquiry involves uncertain predictions regarding the effects of population reductions, as well as difficult determinations regarding the capacity of prison officials to provide adequate care at various population levels,” federal courts

“have substantial flexibility [in] making these judgments” and crafting an appropriate remedy. *Plata*, 563 U.S. at 538.

202. Federal courts have repeatedly ordered the release of detained persons when necessary to remedy unconstitutional conditions caused by overcrowding. *See, e.g., Plata*, 563 U.S. at 541–45; *Duran v. Elrod*, 713 F.2d 292, 297–98 (7th Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap); *Mobile Cty. Jail Inmates v. Purvis*, 581 F. Supp. 222, 224–25 (S.D. Ala. 1984) (concluding that district court properly exercised remedial powers to order a prison’s population reduced to alleviate unconstitutional conditions, and noting other cases); *Inmates of the Allegheny Cty. Jail v. Wecht*, 565 F. Supp. 1278, 1297 (W.D. Pa. 1983) (order to reduce overcrowding “is within our power to correct the constitutional violations”); *Brenneman v. Madigan*, 343 F. Supp. 128, 139 (N.D. Cal. 1972) (citation omitted) (“If the state cannot obtain the resources to detain persons . . . in accordance with minimum constitutional standards, then the state simply will not be permitted to detain such persons.”); *see also Unknown Parties v. Nielsen*, CV-15-00250-TUC-DCB, 2020 WL 813774, at \*1 (D. Ariz. Feb. 19, 2020) (ordering that DHS release from custody detainees to whom it did not provide a bed, shower, nutritious food, and screening by a medical professional within 48 hours of booking).

203. When conditions of confinement in an immigration detention facility lead to uniformly unsafe conditions that rise to the level of a constitutional violation, levels of detention must be reduced unless and until conditions can be brought in line with constitutional standards. As the constitutional principles and public health requirements mandate, releasing detainees from Calhoun is the only viable mechanism to ensure their safety from the threat to their health that COVID-19 poses.

204. Moreover, for those with medical vulnerabilities, such as Plaintiffs Alhalmi, Cardona Ramirez, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma and Zhang, and the subclass they seek to represent, release is the **only** relief capable of remedying the constitutional violation. *See* Op. & Order 39–40, Dkt. 22. Because of the underlying health conditions of these Plaintiffs and the subclass, which make them especially vulnerable to infection from COVID-19, the condition of their confinement is not “reasonably related to a legitimate governmental objective”; instead it is “arbitrary or purposeless[.]” *See Bell*, 441 U.S. at 539. *See also J.H. v. Williamson Cty., Tennessee*, 951 F.3d 709, 717 (6th Cir. 2020) (applying *Bell* test to pre-trial detainee’s conditions of confinement claim); *Turner v. Stumbo*, 701 F.2d 567, 571–72 (6th Cir. 1983) (same).

205. To vindicate detainees’ due process rights in the face of the COVID-19 pandemic, federal and state courts across the country have ordered the release of

detained individuals, vulnerable and otherwise. *See Hernandez Roman v. Wolf*, No. EDCV 20-00768-TJH (PVCx), 2020 WL 1952656, at \*3 (C.D. Cal. Apr. 23, 2020); *Thakker v. Doll*, No. 1:20-cv-480 (M.D. Pa. Mar. 31, 2020) (ordering release of 13 detainees in Pennsylvania due to threat of COVID-19); *see also supra* ¶¶ 60–61.

206. Additionally, social distancing and sanitation measures compliant with public health requirements must be fully implemented to protect any individuals that remain in detention. Defendants' actions make such protective measures exceedingly difficult, if not impossible, in the environment of an immigration detention center, where detainees share toilets, sinks, and showers, eat in communal spaces, and are in close contact with the many other detainees and officers around them.

### **CLASS ACTION ALLEGATIONS**

207. This case is ideally suited to class treatment. Unsurprisingly, given the grave danger that COVID-19 poses to people in detention, multiple individual actions have been filed in this district. Unrepresented individuals, however, continue to languish in these facilities, fearing for their lives but lacking the wherewithal to sue ICE for their release. Moreover, due the pandemic and the attendant restrictions within detention facilities including Calhoun, it is extremely difficult for detained people to communicate with the outside world, making legal representation very challenging.

208. The resource-intensive process of litigating multiple individual cases is not ideally suited to the urgent situation at hand, where due process requires swift adjudication. Consolidating discovery and decision-making about the Calhoun facility, which houses more ICE detainees than the other three Michigan facilities put together, is an efficient way to resolve the legal claims of the approximately 130 ICE detainees held there.

209. Accordingly, Plaintiffs bring this action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of themselves and a class of similarly situated individuals.

210. Plaintiffs Alhalmi, Barajas Santoyo, Brito, Cardona Ramirez, Castro Garcia Toledo, Gomez Santiz, Medina Euceda, Orta Vieryra, Rodriguez Salabarria, Rosales Borboa, Sosa Carillo, Toma, and Zhang seek to represent a class of all noncitizens who are detained in ICE custody at Calhoun. The class seeks declaratory relief on Count I.

211. Plaintiffs Alhalmi, Cardona Ramirez, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma, and Zhang seek to represent a subclass of medically vulnerable individuals. The subclass seeks habeas and declaratory relief on Count II. The proposed subclass is defined as:

All noncitizens who are detained in ICE custody in the Calhoun County Correctional Center, and who have one or more risk factors placing them at heightened risk of severe illness or death if exposed to COVID-19.<sup>61</sup>

212. These risk factors have been identified by the CDC and experts including Dr. Venters, Dr. Golob, and Dr. Robert Greifinger based on emerging data and studies.

213. In accord with the Sixth Circuit's ruling in *Hamama*, the class and subclass do not seek class-wide injunctive relief. *See Hamama v. Adducci*, 912 F.3d 869, 880 (6th Cir. 2018) (*Hamama I*); *Hamama v. Adducci*, 946 F.3d 875, 876 (6th Cir. 2020) (*Hamama II*). Plaintiffs seek class-wide declaratory and habeas relief, to which they are entitled. *See Nielsen v. Preap*, 139 S. Ct. 954, 962 (2019) (Alito, J.)

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<sup>61</sup> These risk factors are: age of 50 or above, pregnancy or recent pregnancy (within last 6 weeks), and serious underlying medical condition including: chronic kidney disease (including receiving dialysis); chronic liver disease (including cirrhosis and chronic hepatitis); endocrine disorders (including diabetes mellitus); compromised immune system (immunosuppression) (e.g., receiving treatment such as chemotherapy or radiation, received an organ or bone marrow transplant and is taking immunosuppressant medications, taking high doses of corticosteroids or other immunosuppressant medications, HIV or AIDS); metabolic disorders (including inherited metabolic disorders and mitochondrial disorders); heart disease (including congenital heart disease, congestive heart failure and coronary artery disease); lung disease including asthma or chronic obstructive pulmonary disease (chronic bronchitis or emphysema) or other chronic conditions associated with impaired lung function or that require home oxygen; neurological and neurologic and neurodevelopment conditions (including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury); body mass index (BMI) of 40 or greater; hypertension; smoking or history of smoking; and, any other condition identified by the CDC as putting a person at a higher risk.

(plurality op.) (whether the district court had jurisdiction to enter a class-wide injunction “is irrelevant because the District Court had jurisdiction to entertain the plaintiffs’ request for declaratory relief”);<sup>62</sup> *Hamama I*, 912 F.3d at 879 (citing *Jennings v. Rodriguez*, 138 S. Ct. 830, 858 (2018) (Thomas, J., concurring in part and concurring in judgment)) (“there is nothing barring a class from seeking a traditional writ of habeas corpus (which is distinct from injunctive relief[])”).

214. The proposed class and subclass satisfy the requirements of Federal Rule of Civil Procedure 23(a)(1) because they are so numerous that joinder of all members is impracticable. As of April 17, 2020, there were approximately 130 people detained by ICE at Calhoun. Upon information and belief, a significant percentage of the class is medically vulnerable as that term is defined for purposes of the subclass definition.

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<sup>62</sup> See also *Alli v. Decker*, 650 F.3d 1007, 1013 (3d Cir. 2011) (“[V]iewing [§ 1252(f)(1)] in context and then taking into consideration the heading of the provision [‘limits on injunctive relief’], it is apparent that the jurisdictional limitations in § 1252(f)(1) do not encompass declaratory relief.”); *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010) (“It is simply not the case that Section 1252(f) bars Petitioner from receiving declaratory relief on behalf of the class.”); *Caliste v. Cantrell*, 937 F.3d 525, 532 (5th Cir. 2019) (ordering class-wide declaratory relief despite statutory bar on injunctive relief); *Reid v. Donelan*, No. 13-30125-PBS, 2018 WL 5269992, at \*7 (D. Mass. Oct. 23, 2018) (holding that 8 U.S.C. § 1252(f)(1) does not bar classwide declaratory relief; the section heading is “Limit on injunctive relief” and a neighboring section specifically precludes both declaratory and injunctive relief, which § 1252(f)(1) does not); *Vazquez Perez v. Decker*, No. 18-cv-10683, 2019 WL 4784950, at \*9 (S.D.N.Y. Sept. 30, 2019); *O.A. v. Trump*, 404 F. Supp. 3d 109, 159 (D.D.C. 2019).



215. Joinder is also impracticable because class members are detained and largely unrepresented. Due to the pandemic, their ability to communicate with the outside world, including potential counsel, is limited. Joinder is also impracticable because many in the proposed class and subclass are *pro se*, indigent, have limited English proficiency, and/or have a limited understanding of the U.S. judicial system.

216. The proposed class and subclass meet the commonality requirements of Federal Rule of Civil Procedure 23(a)(2) because there are common questions of law and fact affecting members of the proposed class and subclass. Common questions of law for the class include whether Defendants must modify the conditions of confinement—or, failing that, release a critical mass of detainees—such that social distancing will be possible and all those held in the facility will not face a constitutionally violative substantial risk of serious harm. Common questions of law for the subclass include whether the detention at Calhoun for individuals at higher risk of suffering severe illness or death violates their due process rights. Common questions of fact include how social distancing can be accomplished in Calhoun, given facility design, what measures are being taken to protect detainees from COVID-19 and whether those measures are sufficient, and what treatment is available at Calhoun to detainees who contract COVID-19.

217. The proposed class meets the typicality requirements of Federal Rule of Civil Procedure 23(a)(3) because Plaintiffs' claims are typical of the claims of the

class, and the claims of Plaintiffs Alhalmi, Cardona Ramirez, Medina Euceda, Rodriguez Salabarría, Rosales Borboa, Toma and Zhang are typical of the claims of the subclass. Each named putative class and subclass representative is being harmed or threatened with harm by the same course of conduct as the rest of the class, namely ICE's decision to continue to detain them in a setting that makes social distancing impossible. And each seeks similar relief as the rest of the class and subclass.

218. The proposed class and subclass meet the adequacy requirements of Federal Rule of Civil Procedure 23(a)(4). Named Plaintiffs have the requisite personal interest in the outcome of this action and have no interests adverse to the interests of the proposed class and subclass.

219. Additionally, the proposed class is represented by pro bono counsel from the American Civil Liberties Union Fund of Michigan, the American Civil Liberties Union Foundation's Immigrant Rights Project and National Prison Project, and Paul, Weiss, Rifkind, Wharton & Garrison LLP. Plaintiffs' counsel have extensive experience litigating class action lawsuits and other complex cases in federal court, including civil rights lawsuits on behalf of detained immigrants.

220. The members of the class and subclass are readily ascertainable through Defendants' records.

221. Finally, the proposed class satisfies Federal Rule of Civil Procedure 23(b)(2). Defendants have acted and are acting on grounds generally applicable to

the class by detaining class members and subclass members without social distancing in the face of the COVID-19 pandemic. Thus, final declaratory and/or habeas relief is appropriate for the class and subclass as a whole.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

**Violation of Fifth Amendment Right to Substantive Due Process:  
Impermissible Punishment of Civil Detainees;  
Denial of Reasonable Safety under Current Conditions  
(All Named Plaintiffs Seeking Declaratory and Injunctive Relief)  
(Class Seeking Declaratory Relief)**

222. Plaintiffs repeat and reallege each and every allegation above, as if set forth in full herein.

223. The Fifth Amendment of the U.S. Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it subjects civil detainees to confinement, the fact, nature, or conditions of which amount to punishment or which creates an unreasonable risk to detainees' safety and health.

224. Defendants are subjecting Plaintiffs and members of the putative class to punishment and an unreasonable heightened risk of contracting COVID-19, for which there is no vaccine, reliable treatment, or cure, for no legitimate reason or justification. Defendants' practices, including but not limited to maintaining population levels too high for social distancing to be possible, subject Plaintiffs and

members of the putative class to an unreasonable risk of serious harm, including severe illness and death, in violation of their due process rights.

225. Defendants are acting with deliberate indifference towards Plaintiffs and proposed class members by failing to safeguard their health and safety adequately.

226. Defendants are exposing Plaintiffs and proposed class members to a substantial—indeed grave—risk of serious harm, including death. Defendants know of and are disregarding the substantial risk to Plaintiffs and proposed class members’ health or safety.

227. Thus, Defendants’ continued detention of Plaintiffs and the proposed class members under the current conditions violates their due process rights.

## **COUNT TWO**

**Violation of Fifth Amendment Right to Substantive Due Process:  
Impermissible Punishment and Inability to Ensure  
Reasonable Safety For the Medically Vulnerable  
(Named Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda,  
Rodriguez Salabarría, Rosales Borboa, Toma, and Zhang, Seeking Habeas,  
Declaratory, and Injunctive Relief)  
(Subclass Seeking Habeas and Declaratory Relief)**

228. Plaintiffs repeat and reallege each and every allegation above, as if set forth in full herein.

229. Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma, and Zhang and the subclass present particular vulnerabilities that place them at a heightened risk of serious illness and death if they are infected with COVID-19.

230. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it subjects civil detainees to confinement, the fact, nature or conditions of which amount to punishment or which creates an unreasonable risk to detainees' safety and health.

231. Defendants are subjecting Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma, and Zhang and the subclass to punishment and unreasonable heightened risk of contracting COVID-19, for which there is no vaccine, reliable treatment, or cure, for no legitimate reason or justification.

232. Defendants' continued detention of Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma, and Zhang and members of the subclass presents an unreasonable risk of serious harm, including severe illness and death, in violation of their due process rights.

233. Defendants' are acting with deliberate indifference to Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarria, Rosales

Borboa, Toma, and Zhang and members of the subclass by continuing to detain and expose them to a substantial risk of serious harm, including death, despite Defendants' knowledge of the substantial risk to Plaintiffs and proposed class members' health or safety.

234. Given the substantial risk of serious illness or death from COVID-19, there are no conditions of confinement that would permit the safe detention of Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma, and Zhang and the subclass.

235. The Fifth Amendment thus requires release of Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma, and Zhang and the subclass.

### **COUNT THREE**

**Defendants' Detention of Plaintiffs Where Removal Is Not  
Significantly Likely in the Foreseeable Future Violates  
8 U.S.C. § 1231(a)(6)  
(Plaintiffs Alhalmi, Escobar, Salabarria, and Toma)**

236. Plaintiffs repeat and reallege each and every allegation above, as if set forth in full herein.

237. Due process requires that immigration detention bear a reasonable relation to its purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Rosales-Garcia v. Holland*, 322 F.3d 386, 411 (6th Cir. 2003). The principal purpose of the

statute that authorizes post-final-order detention, 8 U.S.C. § 1231, is to effectuate removal. Where removal cannot be effectuated, detention is not reasonably related to its purpose, would violate due process, and is not statutorily authorized.

238. The removal of Plaintiffs Alhalmi, Escobar, Salabarria and Toma is not significantly likely in the reasonably foreseeable future. Plaintiffs' detention is therefore not authorized by statute and they are entitled to immediate release under orders of supervision.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- a. Certify this Petition/Complaint as a Class Action; appoint the Named Plaintiffs as class representatives and the Subclass Named Plaintiffs Alhalmi, Cardona Ramirez, Medina Euceda, Rodriguez Salabarria, Rosales Borboa, Toma, and Zhang as representatives of the subclass; and appoint the undersigned counsel as class counsel;
- b. Order Respondents not to transfer Petitioners to another detention facility without this Court's permission while this action is pending;
- c. Declare that conditions of confinement at the Calhoun County Correctional Center for all Named Plaintiffs and class members are currently unconstitutional under the Fifth Amendment because they do not permit social distancing and other measures necessary to minimize the risk of infection with

COVID-19; declare that the steps set out in the U.S. Immigration and Customs Enforcement and Removal Operations COVID-19 Pandemic Response Requirements, even if implemented at the Calhoun County Correctional Center, are inadequate to reduce the risk that COVID-19 poses to Plaintiffs' health and safety to a level that is constitutional under the Fifth Amendment; and declare, based on expert evidence, what steps must be taken in order for individuals to be detained at Calhoun without violating their constitutional rights, including a determination of the population level that can be detained consistent with social distancing and other COVID-19 prevention requirements;

- d. Issue a Writ of Habeas Corpus and injunctive relief for all Named Plaintiffs ordering their release unless the Defendants have taken the steps that the Court has declared must be taken in order for individuals to be detained at Calhoun without violating their constitutional rights and has reduced the population to the level that the Court has found can be detained consistent with social distancing and other COVID-19 prevention requirements.
- e. Declare that Defendants' continued detention in civil immigration custody of individuals at increased risk for severe illness, including older individuals and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, including Alhalmi, Cardona Ramirez, Escobar,



Medina Euceda, Rodriguez Salabarría, Rosales Borboa, Toma, and Zhang and members of the subclass, violates the Due Process Clause;

- f. Issue a Writ of Habeas Corpus for Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarría, Rosales Borboa, Toma, and Zhang and the subclass on the ground that their continued detention violates the Due Process Clause; order their immediate release with appropriate precautionary public health measures; and order that they may not be redetained until the threat of the COVID-19 is abated or until a vaccine is available and Defendants obtain sufficient vaccine supplies to vaccinate its population, whichever occurs first;
- g. Issue injunctive relief ordering Defendants to immediately release Plaintiffs Alhalmi, Cardona Ramirez, Escobar, Medina Euceda, Rodriguez Salabarría, Rosales Borboa, Toma, and Zhang with appropriate precautionary public health measures on the ground that their continued detention violates the Due Process Clause, and order that they may not be redetained until the threat of the COVID-19 is abated or until a vaccine is available and Defendants obtain sufficient vaccine supplies to vaccinate its population, whichever occurs first;
- h. Declare that for persons ordered removed to countries where removals are not currently occurring and who are held in post-order detention under 8 U.S.C. § 1231, including Plaintiffs Alhalmi, Escobar, Sabarria, and Toma, there is

good reason to believe that, due to the COVID-19 crisis, there is no significant likelihood of their removal in the reasonably foreseeable future, and that such persons, including Plaintiffs Alhalmi, Escobar, Salabarria, and Toma, must be released with appropriate precautionary public health measures unless the government can rebut that showing;

- i. Find that Defendants have failed to rebut the showing of Plaintiffs Alhalmi, Escobar, Salabarria, and Toma that their removal is not significantly likely in the reasonably foreseeable future; order the government immediately to release Plaintiffs Alhalmi and Salabarria from detention under an order of supervision and with appropriate precautionary public health measures; and enjoin Defendants from redetaining Plaintiffs Alhalmi, Escobar, Salabarria, or Toma unless or until Defendants can establish to the Court's satisfaction that their removal is significantly likely in the reasonably foreseeable future.
- j. Award Plaintiffs their costs and reasonable attorneys' fees in this action 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 under law; and
- k. Grant any other and further relief that this Court may deem fit and proper.

Dated: April 26, 2020

Respectfully submitted,

/s/ Miriam J. Aukerman

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*Attorneys for Plaintiffs*

\* Application for admission  
forthcoming

### **CERTIFICATE OF SERVICE**

I, Jeannie S. Rhee, certify that on April 26, 2020, I caused a true and correct copy of the foregoing document to be filed and served electronically via the ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.

Respectfully submitted,

/s/ Jeannie S. Rhee\_\_\_\_\_