

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

FLORIAN CRAINIC, MUMIN FATAI
OWOLABI, MARIO ARNALDO GONZALEZ
TORRES, ORLANDO RAFAEL
CHINCHILLA-RIVAS, YACUB SOBHI
IBRAHIM, ISMAIL MISANKOV, JUAN
MANUEL ROSITAS-MARTINEZ,

Petitioners-Plaintiffs,

v.

CHAD KOLITWENZEW, Chief of Corrections
of the Jerome Combs Detention Center;
ROBERT GUADIAN, Field Office Director,
Enforcement and Removal Operations, U.S.
Immigration and Customs Enforcement;
MATTHEW ALBENCE, Acting Director, U.S.
Immigration and Customs Enforcement; and
CHAD WOLF, Acting Secretary, U.S.
Department of Homeland Security,

Respondents-Defendants,

UNITED STATES OF AMERICA,

Interested Party.

Case No. 20-cv-2138

**AMENDED EMERGENCY JOINT
PETITION FOR A WRIT OF
HABEAS CORPUS**

AND

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

INTRODUCTION¹

1. COVID-19, the disease caused by a novel coronavirus, is rampaging across the world like an out-of-control wildfire. It has become a global pandemic with lethal consequences, especially for older adults and people with certain pre-existing medical conditions. More than nine million people worldwide have tested positive for the coronavirus, and more than 450,000

¹ Petitioners incorporate by reference all previously filed declarations in this action.

people have died, with the numbers rising daily.² The death toll in the United States and Illinois continues to rise. There is no vaccine against COVID-19, and there is no known cure. It is no longer a question of whether and when, but of how many victims and who dies.

2. Like five other ICE detainees whom courts in this District recently ordered to be released from the Jerome Combs Detention Center (“JCDC”) in Kankakee County, Petitioners-Plaintiffs Florian Crainic, Mumin Fatai Owolabi, Mario Arnaldo Gonzalez Torres, Orlando Rafael Chinchilla-Rivas, Yacub Sobhi Ibrahim, Ismail Misankov, and Juan Manuel Rositas-Martinez (“Petitioners”) are held in *civil detention* by U.S. Immigration and Customs Enforcement (“ICE”) in the JCDC while they await disposition of their immigration cases or deportation pursuant to a final order of removal. Petitioners all suffer from preexisting medical or health conditions such as diabetes, hypertension, asthma, and a history of smoking. Mr. Gonzalez Torres and Mr. Rositas-Martinez are also age 50 or older, and Mr. Crainic is nearly 50 years old.

3. While coronavirus may infect anyone who comes into contact with it, the highest risk of serious illness and death from COVID-19 is for people who, like Petitioners, are age 50 or older or have one of the pre-existing medical or health conditions that increase the risk of serious complications from COVID-19. Epidemiological studies indicate that about 15% in this group—or one in seven people—who are infected will die.

4. ICE continues to detain Petitioners in the JCDC, despite knowing that Petitioners have medical or health conditions that place them at risk of severe illness and death from COVID-19 and despite the growing danger of infection as the virus continues to spread in the

² World Health Org., *WHO Coronavirus Disease (COVID-19) Dashboard*, <https://covid19.who.int/> (last visited June 25, 2020), attached as Ex. 55 to the Supplemental Declaration of Nusrat J. Choudhury (“Supp. Choudhury Decl.”).

surrounding community and ICE facilities nationwide.³ Moreover, conditions in the JCDC for ICE detainees are insufficient to prevent the introduction of the coronavirus or rapid transmission among detainees and staff once it is in the facility.

5. In recent months, five decisions of courts in this District have ordered the release of medically vulnerable ICE detainees from the JCDC because conditions in the facility posed an objectively unreasonable risk to their health and lives from COVID-19 in violation of the Fifth Amendment Due Process Clause. *See Ochoa v. Kolutwenzew*, No. 20-cv-2135, 2020 WL 2850706, at *13 (C.D. Ill. June 2, 2020); *Herrera-Herrera v. Kolutwenzew*, No. 20-cv-2120-SEM-TSH, Dkt. 36 at 40 (C.D. Ill. May 19, 2020); *Ruderman v. Kolutwenzew*, No. 20-cv-2082, 2020 WL 2449758, at *3 (C.D. Ill. May 15, 2020); *Favi v. Kolutwenzew*, No. 20-cv-2087, 2020 WL 2114566, at *2 (C.D. Ill. May 4, 2020); *Hernandez v. Kolutwenzew*, No. 20-cv-2088-SLD, Dkt. 12 at 5 (C.D. Ill. Apr. 23, 2020).

6. JCDC conditions have not improved in the weeks since this Court ordered the release of Olivero Ochoa, a 29-year-old man with asthma, bipolar disorder, developmental learning difficulties, schizophrenia, and anxiety. *Ochoa*, No. 20-cv-2135, 2020 WL 2850706, at *3. This Court recognized that “[c]ongregate living situations, including jail facilities like JCDC, exacerbate the risk” of coronavirus infection and that “[t]his reality has already played out at many congregate settings across the county,” including the Cook County Jail and the Pulaski County Detention Center in Ullin, Illinois. *Id.* at *2. This Court explained:

For individuals like Petitioner, with a heightened risk of serious illness or death from COVID-19, the conditions are objectively serious. . . . The Government and JCDC have not disputed that they are aware of the serious risks related to the COVID-19 pandemic or that they are aware of Petitioner’s underlying health

³ See Catherine E. Shoichet, *Doctors Warn of ‘Tinderbox Scenario’ If Coronavirus Spreads in ICE Detention*, CNN (Mar. 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/>, Dkt. 7-2 at 48–52 (Ex. 16 to the Choudhury Decl.).

conditions. . . . The Government places great weight on its claim that it has largely implemented all of the guidance from the [Centers for Disease Control and Prevention (“CDC”)]. However, as other courts have found, the CDC’s guidelines, while important, are not dispositive standing alone. Detainees still appear to be largely relying on voluntary social distancing measures of others, and it is not clear whether the policies of JCDC are being uniformly executed in practice. . . . Despite JCDC’s efforts, Petitioner’s continued confinement still presents an increased and serious risk of contracting COVID-19. Staff, obviously, continue to enter and exit JCDC—each time potentially bringing the virus into the JCDC. And many detainees appear to still be transported for hearings. -Respondent states that JCDC now—nearly three months into the pandemic—has provided masks to all detainees and mandated their use at all times other than eating and showering. While the Court commends this measure, as well as other preventative measures, the Court finds that Petitioner’s mental illness and learning disabilities will likely prevent his compliance with these policies. . . . [T]he Court finds that, considering the totality of the circumstances, Petitioner’s detention appears “excessive in relation to” the Government’s “legitimate nonpunitive governmental purpose” for detaining him.

Id. at *11–12 (internal citations omitted).

7. The *Ochoa* court’s findings reflect a lack of sufficient improvement in JCDC conditions from weeks earlier when this Court ruled that other medically vulnerable ICE detainees facing a heightened risk of severe COVID-19 should be released. *Compare id.* at *11–13 with *Herrera-Herrera v. Kolitwenzew*, No. 20-cv-2120-SEM-TSH, Dkt. 36 at 37–38, 40 (C.D. Ill. May 19, 2020) (concluding JCDC measures were insufficient to mitigate the risk of harm from COVID-19 to a medically vulnerable detainee in light of evidence showing “inability to socially distance, engage in effective sanitation measures, and the high potential of asymptomatic spread” in the JCDC); *Ruderman*, 2020 WL 2449758, at *12–13 (detailing JCDC measures and concluding that Respondents failed to address “the potential for asymptomatic spread”); *Favi*, 2020 WL 2114566, at *11–12 (describing JCDC measures and concluding they are “insufficient to minimize Petitioner’s risk of harm”). Similarly, several months ago, Chief Judge Darrow ruled that JCDC conditions violated due process because “in light of the seriousness of the pandemic, . . . Petitioner’s detention in a highly confined setting ‘[i]n the face

of a deadly pandemic with no vaccine, no cure, limited testing capacity, and the ability to spread quickly through asymptomatic human vectors’ in and of itself creates a substantial risk of Petitioner catching the virus and suffering serious illness or death.” *Hernandez*, No. 20-cv-2088-SLD, Dkt. 12, at 5, 14, 16, 19 (C.D. Ill. Apr. 23, 2020) (quoting *Malam v. Adducci*, No. 20-10829, 2020 WL 1672662, at *9 (E.D. Mich. Apr. 5, 2020), *as amended* (Apr. 6, 2020)).

8. Even today, after more than two months of litigation challenging the risk of harm from COVID-19 to medically vulnerable ICE detainees in the JCDC, Respondents are not taking adequate measures to prevent entry of the novel coronavirus into the JCDC or the rapid spread of the virus once inside. Jail staff do not regularly enforce the social distancing policy—and likely cannot ensure social distancing in all common spaces or shared cells (let alone the six-foot distancing recommended by the CDC). Jail staff do not consistently enforce the policy requiring detainees to wear masks, and some detainees do not wear masks or wear them inconsistently. Respondents do not ensure sufficient sanitization of high-touch surfaces and objects in common areas and shared cells, and jail staff do not provide detainees with adequate cleaning supplies or prophylactic equipment, such as gloves or hand sanitizer. Jail staff do not adequately screen staff and detainees for COVID-19, do not properly segregate new detainees upon admission, and fail to test new non-ICE detainees and staff to ensure that they are not bringing the coronavirus into the facility. The JCDC also lacks sufficient medical staff to conduct screenings of high-risk detainees and to maintain medical monitoring of isolation patients with COVID-19 symptoms. Nor do Respondents have a unified COVID-19 mitigation plan to ensure that staff throughout the JCDC are preventing entry of the coronavirus into the facility, minimizing the chance of spread, and taking concrete measures to protect medically vulnerable ICE detainees. These failures put Petitioners at an objectively unreasonable risk of severe disease and death from COVID-19.

9. As of May 15, 2020, Kankakee County had 1,246 confirmed cases and 61 related deaths related to COVID-19.⁴ These figures likely understate the problem because the virus can present asymptotically.⁵ Once COVID-19 reaches the JCDC, if it hasn't already, it will be nearly impossible to contain because of the close proximity between people, limited medical staff and resources, and restrictions that prevent people from taking steps to protect themselves from infection.

10. Clustering vulnerable individuals in conditions such as those in the JCDC and waiting for COVID-19 to explode in detention centers is a humanitarian and constitutional crisis. The nature of the pandemic and the conditions of confinement at the JCDC make it impossible for Respondents to protect Petitioners and other medically vulnerable detainees from coronavirus infection, which for Petitioners carries a one-in-seven chance of death. JCDC conditions thus create a risk of harm “so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk.” *Helling v. McKinney*, 509 U.S. 25, 36 (1993). Such conditions necessarily violate Petitioners’ rights, as *civil* detainees, which prohibit Respondents from confining them in conditions that constitute punishment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”). Respondents detain Petitioners in conditions that pose an “objectively unreasonable” risk to their health and lives in violation of due process. *Hardeman v. Curran*, 933 F.3d 816, 824–25 (7th Cir. 2019). No legitimate, non-punitive interest is served by confining civil detainees who are medically

⁴ City of Kankakee, *COVID-19 Updates from the Kankakee County Health Department* (May 15, 2020), attached as Dkt. 7-4 at 5–6 (Ex. 34 to the Choudhury Decl.).

⁵ Sam Whitehead, *CDC Director on Models for the Months to Come: ‘This Virus Is Going to Be With Us’*, NPR (Mar. 31, 2020, 5:16 AM), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us> (Interview with CDC Director Dr. Robert Redfield), attached as Dkt. 7-2 at 55–63 (Ex. 18 to the Choudhury Decl.).

vulnerable in conditions that place them at heightened risk of severe illness and death due to COVID-19.

11. Moreover, these risks to Petitioners' health and lives and the risks to the general public are obvious in light of calls by government officials and advocates to release medically vulnerable detainees from ICE facilities and successive litigation seeking release of medically vulnerable ICE detainees from the JCDC since April 2020.

12. Petitioners thus bring this action to enforce their rights under the Due Process Clause of the Fifth Amendment against conditions of confinement that place them at a heightened and intolerable risk of losing their health and lives to COVID-19.

13. This Court has the authority and the obligation to order Respondents-Defendants ("Respondents") to comply with the Fifth Amendment and release Petitioners from civil detention. For the reasons discussed below, this Court should immediately grant Petitioners' emergency request for a writ of habeas corpus requiring ICE to release Petitioners from custody so that they have the chance to avoid infection, which would likely lead to serious illness and possibly death from COVID-19.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 2241 (habeas jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

15. Venue lies in the United States District Court for the Central District of Illinois because Petitioner is detained by Respondents Chad Kolutwenzew, Robert Guadian, Matthew Albence, and Chad Wolf at the JCDC, which is located within the Central District. 28 U.S.C. § 2242. Venue is proper in the Central District of Illinois because a substantial portion of the

relevant events occurred in the District and because several Respondents reside in the District. 28 U.S.C. § 1391(b), (e)(1).

PARTIES

A. Petitioners

16. Petitioner Florian Crainic is a 49-year-old citizen of Romania, and has been detained by ICE in the JCDC since January 30, 2020. Declaration of Florian Crainic, Dkt. 2 (“Crainic Decl.”) ¶¶ 2–3, 26. Mr. Crainic suffers from diabetes, hypertension, and reduced right lung capacity. *Id.* ¶ 7.

17. Petitioner Mumin Fatai Owolabi is a 47-year old citizen of Nigeria, and has been detained by ICE in the JCDC since November 29, 2018. Declaration of Mumin Fatai Owolabi (“Owolabi Decl.”) ¶¶ 2, 7. Mr. Owolabi suffers from hypertension and diabetes. *Id.* ¶ 8; Declaration of Rebecca K. Glenberg (“Glenberg Decl.”) Ex. A at JCDC-USA0449-0491 (*passim*) (medical records of Mr. Owolabi).

18. Mr. Gonzalez Torres is a 51-year-old citizen of Cuba, and has been detained by ICE in the JCDC since August 2019. Declaration of Mario Arnaldo Gonzalez Torres (“Gonzalez Torres Decl.”) ¶¶ 2–3, 22. Mr. Gonzalez Torres suffers from hypertension, and his cholesterol and triglycerides are elevated. *Id.* ¶¶ 7, 9; Glenberg Decl. Ex. C at JCDC-USA1057-1136; JCDC-USA1482-1512 (*passim*) (medical records of Mr. Gonzalez Torres).

19. Petitioner Orlando Rafael Chinchilla-Rivas is a 19-year-old citizen of Honduras, and has been detained by ICE in the JCDC since March 2020. Declaration of Orlando Rafael Chinchilla-Rivas (“Chinchilla-Rivas Decl.”) ¶¶ 2, 6. Mr. Chinchilla-Rivas suffers from asthma, has required an inhaler since childhood, and currently experiences frequent and sudden difficulty breathing. *Id.* ¶¶ 7–10; Glenberg Decl. Ex. D at JCDC-USA0146 (medical records of Mr. Chinchilla-Rivas). Mr. Chinchilla-Rivas has an extensive history of smoking, and smoked half of

a pack of cigarettes per day for around nine years before entering ICE custody in October 2019. Chinchilla-Rivas Decl. ¶ 21; Glenberg Decl. Ex. D at JCDC-USA0147.

20. Petitioner Yacub Sobhi Ibrahim is a 42-year-old citizen of Brazil, and has been detained by ICE in the JCDC since December 2, 2019. Declaration of Yacub Sobhi Ibrahim (“Ibrahim Decl.”) ¶¶ 2–3, 23. He suffers from hypertension and asthma. *Id.* ¶¶ 6, 12; Glenberg Decl. Ex. E at JCDC-USA0280-0328 (*passim*) (medical records of Mr. Ibrahim); Glenberg Decl. Ex. F at PDF pp. 8–11 (medical records of Mr. Ibrahim from Western Illinois Correction Center). Mr. Ibrahim has an extensive history of smoking, and smoked a pack and a half of cigarettes a day for nearly twenty years. Ibrahim Decl. ¶ 15.

21. Petitioner Ismail Misankov is a 41-year-old citizen of Bulgaria, and has been detained by ICE in the JCDC since March 15, 2020. Declaration of Ismail Misankov (“Misankov Decl.”) ¶¶ 2–3, 24. He has suffered from repeated, recent respiratory illnesses, including an April 2020 bout of pneumonia. *Id.* ¶¶ 9–12; Glenberg Decl. Ex. G at JCDC-USA0786–91 (medical records of Mr. Misankov). Mr. Misankov was prescribed an inhaler to use three times a day to assist with his breathing, but JCDC staff never provided it to him. Misankov Decl. ¶ 11. He also has an extensive history of smoking, and smoked a pack of cigarettes every two to three days from 2015 to January 2020. *Id.* ¶ 14.

22. Juan Manuel Rositas-Martinez is a nearly 55-year-old citizen of Mexico, and has been detained by ICE in the JCDC since November 27, 2019. Declaration of Juan Manuel Rositas-Martinez (“Rositas-Martinez Decl.”) ¶¶ 2, 30. Mr. Rositas-Martinez suffers from hypertension, has a history of smoking, and is obese. *Id.* ¶¶ 7–8, 15; Glenberg Decl. Ex. H at JCDC-USA0001-0127 (*passim*) (medical records of Mr. Rositas-Martinez).

B. Respondents

23. Respondent Chad Kolitwenzew is the Chief of Corrections of the JCDC, where

Petitioners are detained. Respondent Kolitwenzew is the immediate, physical custodian of Petitioners, and is therefore a proper respondent to Petitioners' emergency joint petition for a writ of habeas corpus. He is sued in his official and individual capacities solely for habeas, injunctive, and declaratory relief.

24. Respondent Robert Guadian is the Field Office Director for Enforcement and Removal Operations ("ERO") in the Chicago Field Office (overseeing 13 offices throughout six states, including Illinois) of U.S. Immigration and Customs Enforcement ("ICE"). ICE is a federal law enforcement agency within the Department of Homeland Security ("DHS"), and is responsible for the criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. ERO is a division of ICE that manages and oversees the immigration detention system. In his capacity as Field Director for ERO, Respondent Guadian exercises control over and is a custodian of immigration detainees held at the JCDC, including Petitioners. At all times relevant to this Complaint, Respondent Guadian was acting within the scope and course of his employment with ICE. He is sued in his official and individual capacities solely for habeas, injunctive, and declaratory relief.

25. Respondent Matthew T. Albence is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Respondent Albence is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. Respondent Albence is a legal custodian of Petitioners and, at all times relevant to this Complaint, was acting within the scope and course of his position as an ICE official. He is sued in his official and individual capacities solely for habeas, injunctive, and declaratory relief.

26. Respondent Chad Wolf is the Acting Secretary for DHS. In this capacity, he is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a), has

authority over ICE and its field offices, and has authority to order the release of Petitioners. At all times relevant to this complaint, Respondent Wolf was acting within the scope and course of his position as the Acting Secretary for DHS. He also is a legal custodian of Petitioners. Petitioners sue Respondent Wolf in his official and individual capacities solely for habeas, injunctive, and declaratory relief.

STATEMENT OF FACTS

27. This Emergency Joint Habeas Petition relies on facts and expert opinions set forth and attached to the Emergency Representative Petition or previously filed in this litigation and summarized here, including the declarations of three experts:

- The Declaration of Dr. Jonathan Louis Golob, Dkt. 4 (“Golob Decl.”), a specialist in infectious diseases and internal medicine, who is “actively involved in the planning and care” for COVID-19 patients and is an Assistant Professor at the University of Michigan School of Medicine. Golob Decl. ¶ 1.
- The Declaration of Dr. Homer Venters, Dkt. 3 (“Venters Decl.”) and Supplemental Declaration of Dr. Venters (“Supp. Venters Decl.”), a physician, internist, epidemiologist, and correctional health expert, who led health services for New York City jails for approximately nine years and analyzed detainee health policies for the DHS for two years. Venters Decl. ¶¶ 1–2, 4. Dr. Venters has visited ICE facilities and worked with ICE on medical release cases and health policies, and testified before Congress on mortality in ICE detention facilities. *Id.* ¶ 1.
- The Declaration of Dr. Dora Schriro, Dkt. 5 (“Schriro Decl.”), a corrections expert, Senior Advisor to former DHS Secretary Janet Napolitano, and the founding Director of the ICE Office of Detention Policy and Planning. Schriro Decl. ¶ 3. She served as the commissioner of the New York City and St. Louis jail systems and as the director of corrections for Missouri and Arizona. *Id.* ¶¶ 4–5.

I. COVID-19 is a Dangerous Pandemic that Puts ICE Detainees with Certain Risk Factors at Grave Risk of Serious Illness and Death.

28. Across the United States, more than 2.3 million people have been diagnosed with COVID-19, and 121,117 people have died as of June 24, 2020.⁶ In Illinois, there are at least

⁶ Ctrs. for Disease Control and Prevention, *Coronavirus Disease (COVID-19), Cases in the U.S.*,

138,540 confirmed cases and 6,770 deaths due to COVID-19.⁷ Without effective public health interventions, projections by the CDC indicate about 200 million people in the United States could be infected by the coronavirus over the course of the pandemic, with as many as 1.5 million people dying from COVID-19. Golob Decl. ¶ 11.

29. Outcomes from COVID-19 vary from asymptomatic infection to death. Individuals who are at low risk may experience mild symptoms, while high-risk individuals may suffer respiratory failure from the disease. *Id.* ¶¶ 3–5. In the highest risk populations, the fatality rate is about 15 percent. *Id.* ¶ 4. In other words, more than one in every seven people in this high-risk group are likely to die, and an even higher percentage will suffer serious illness.

30. Those who do not die may experience long-term harm. COVID-19 can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases, can cause a permanent loss of respiratory capacity. *Id.* ¶ 9. COVID-19 may also cause myocarditis, which can reduce the heart’s ability to pump and lead to short-term rapid or abnormal heart rhythms and long-term heart failure, which limits exercise tolerance and the ability to work. *Id.* Emerging evidence also suggests that COVID-19 can trigger an excessive response from 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. *Id.*

31. People age 50 and older and those of any age with serious underlying medical and health conditions are at high risk of severe disease and death if they are infected with COVID-

<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited June 25, 2020), attached as Ex. 56 to the Supp. Choudhury Decl.

⁷ State of Ill., *Coronavirus (COVID-19) Response*, <https://coronavirus.illinois.gov/s/> (last visited June 24, 2020), attached as Ex. 57 to the Supp. Choudhury Decl.

19. *Id.* ¶ 3; Venters Decl. ¶¶ 25, 29. According to the CDC, people of any age with the following conditions are at increased risk: chronic kidney disease, chronic obstructive pulmonary disease, immunocompromised state from solid organ transplant, obesity (body mass index (“BMI”) of 30 or higher), serious heart conditions (such as heart failure, coronary artery disease, or cardiomyopathies), sickle cell disease, type 2 diabetes mellitus.⁸ The CDC has also concluded that people with the following conditions might be at an increased risk for severe illness from COVID-19: asthma (moderate-to-severe); hypertension or high blood pressure; smoking; cerebrovascular disease; cystic fibrosis; an immune-compromising condition, such as cancer treatment, smoking, blood or bone marrow transplantation, immune deficiencies, HIV, or use of corticosteroids; neurologic conditions, such as dementia; liver disease; pregnancy; pulmonary fibrosis; thalassemia; and type 1 diabetes mellitus.⁹ Additional risk factors include a history of smoking. Venters Decl. ¶ 25.

32. The CDC recently removed the specific age of 65 from the age-related risk threshold and clarified: “[A]mong adults, risk increases steadily as you age, and it’s not just those over the age of 65 who are at increased risk of severe illness. . . . Age is an *independent risk factor for severe illness*, but risk in older adults is also in part related to the increased likelihood that older adults also have underlying medical conditions.”¹⁰ Moreover, Dr. Venters explains that age 50 is the correct threshold for age-related risk of severe COVID-19 for ICE detainees:

⁸ Ctrs. for Disease Control and Prevention, *Coronavirus Disease (COVID-19), People of Any Age with Underlying Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited June 26, 2020), attached as Ex. 62 to the Supp. Choudhury Decl.; *see also* Golob Decl. ¶ 3; Venters Decl. ¶ 25.

⁹ *Id.*; Golob Decl. ¶ 3; Venters Decl. ¶ 25; Supp. Venters Decl. ¶¶ 10–11.

¹⁰ Ctrs. for Disease Control and Prevention, *CDC Updates, Expands List of People at Risk for Severe COVID-19 Illness*, <https://www.cdc.gov/media/releases/2020/p0625-update-expands-covid-19.html> (last visited June 26, 2020) (emphasis added), attached as Ex. 63 to the Supp. Choudhury Decl.

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, recent data on the critical risk of smoking for serious illness and death from COVID-19 infection, combined with data that reveals the rates of smoking to be highest among detained people over 50, leads me to believe that the age of 50 should be applied to ICE detainees to identify individuals who have an increased vulnerability to COVID-19 based on their age for the same reason.

Venters Decl. ¶ 25 (citing Kimberly A. Skarupski, et al., *The Health of America's Aging Prison Population*, 40 *Epidemiologic Rev.* 157 (2018), <https://academic.oup.com/epirev/article/40/1/157/4951841>; Sara M. Kennedy, et al., *Cigarette Smoking Among Inmates by Race/Ethnicity: Impact of Excluding African American Young Men From National Prevalence Estimates*, 18 *Nicotine & Tobacco Research S73* (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5100810/>; Berkeley Lovelace, *CDC Says Diabetes, Lung or Heart Disease and Smoking May Increase Risk of Severe Coronavirus Illness*, CNBC, (Mar. 31, 2020, 5:11 PM), <https://www.cnbc.com/2020/03/31/cdc-says-diabetes-lung-disease-heart-disease-and-smoking-may-increase-risk-of-severe-coronavirus-illness.html>); *see also* Golob Decl. ¶ 3.

33. The CDC recognizes that hypertension (high blood pressure) is a “comorbidity known to increase the health risks associated with COVID-19 infections and, thus, the likelihood of requiring medical intervention after infection.”¹¹ This Court has recognized that “in light of current medical evidence, hypertension should be viewed as a medical condition that places Petitioner at an increased risk of serious illness or death.” *Herrera-Herrera*, No. 2:20-cv-2120-SEM-TSH, at *32 (May 19, 2020). Other courts have similarly concluded that hypertension

¹¹ U.S. Dep’t of Health and Human Services, Ctrs. for Disease Control and Prevention, Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists (Mar. 20, 2020) (“CDC Suspension Order”), https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf, Dkt. 7-3 at 7–50 (Ex. 27 to the Choudhury Decl.).

places people at risk of severe illness or death from COVID-19. *See Gomes v. U.S. Dep't of Homeland Sec., Acting Sec'y*, No. 20-cv-453-LM, 2020 WL 2514541, at *15–16 (D.N.H. May 4 2020) (discussing “medical backdrop” that shows “hypertension is an objectively serious medical condition that places individuals at a high probability of developing severe disease from COVID-19”).¹²

34. Similarly, this Court has recognized on numerous occasions that moderate-to-severe asthma increases the health risks associated with COVID-19 and creates a significant risk of severe illness and death to those who become infected with the virus. *Ochoa v. Kolutwenzew*, No. 20-cv-2135, 2020 WL 2850706, at *11 (C.D. Ill., June 2, 2020) (ordering the release of an immigration detainee at JCDC because, “[his] asthma places him at an increased risk of serious illness or death should he contract COVID-19, even if it is not as heightened a risk as someone with severe asthma[.]”); *United States v. Halliburton*, No. 17-cr-20028, 2020 WL 3100089, at *3 (C.D. Ill., June 11, 2020) (granting a federal prisoner’s motion for compassionate release based, in part, on his severe asthma and obesity creating a heightened risk of severe illness or death during the COVID-19 pandemic); *United States v. Common*, No. 17-cr-30067, 2020 WL 3412233, (C.D. Ill., June 22, 2020) (“The CDC has identified asthma as a comorbidity that increases the likelihood of serious risk from COVID-19[.]”).

35. Other courts have similarly recognized that moderate-to-severe asthma increases the risk of serious illness and death from COVID-19. *Basank v. Decker*, 20 Civ. 2516 (AT), 2020

¹² *See also Bahena Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1866122 (N.D. Cal. Apr. 14, 2020) (noting hypertension as a condition “associated with increased illness severity and adverse outcomes” from COVID-19 and citing several medical studies and Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html).

WL 1481503, at *3 (S.D.N.Y. Mar. 26, 2020) (taking judicial notice that, for people with asthma *inter alia*, “COVID-19 causes severe medical conditions and has increased lethality[,]” and ordering the release of three asthmatic detainees from ICE custody); *United States v. Mahan*, No. 1:19-cr-00233-DCN, 2020 WL 1846789, at *4-5 (D. Idaho Apr. 10, 2020) (finding that a pre-trial criminal defendant’s temporary release from custody was justified, “because of the compelling reasons created by his chronic, moderate asthma condition in a detention facility during the COVID-19 pandemic.”); *United States v. Ramos*, 18-CR-30009-FDS, 2020 WL 1478307, at *1–2 (D. Mass Mar. 26, 2020) (ordering release of pre-trial criminal detainee from custody due, in part, to the risk of danger of severe harm from COVID-19 due to asthma).

36. There is no vaccine to prevent COVID-19. Golob Decl. ¶ 10. There is no known cure or anti-viral treatment for COVID-19 outside of a hospital or clinical trial. *Id.* The only way to protect vulnerable people from serious health outcomes, including death, is to prevent them from being infected with the virus that causes COVID-19. *Id.*

37. People develop COVID-19 when they come into contact with respiratory droplets that contain the coronavirus.¹³ Such contact can occur at a distance up to six feet. *Id.* It is also possible that an individual can become infected by touching a surface with the virus and then touching their face. *Id.* Thus, the only known means of minimizing the risk of infection are social distancing and increased sanitization. Golob Decl. ¶ 10.

38. Increasingly, research shows that social distancing is the primary means of risk mitigation. Venters Decl. ¶ 28. Distancing must occur before individuals display symptoms, as

¹³ Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): How COVID-19 Spreads* (last visited May 12, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>, Dkt. 7-2 at 77 (Ex. 22 to the Choudhury Decl.).

they may be contagious before they are symptomatic. Golob Decl. ¶¶ 6, 13; Venters Decl. ¶¶ 14, 24, 35. “Some recent studies have suggested that COVID-19 may be spread by people who are not showing symptoms.”¹⁴ The CDC recommends a social distance of around six feet to minimize the risk of spread.¹⁵

39. In response to this research, at least 316 million people in at least 42 states, three counties, 10 cities, the District of Columbia and Puerto Rico were urged to stay home under statewide or local orders as of April 20, 2020.¹⁶ Illinois ordered people to stay at home, shut down all non-essential businesses where people might come into contact with each other, and banned people from congregating in groups of more than ten people.¹⁷ It also mandated the use of face masks in public, and mandated people to keep six feet apart from one another when leaving home for essential activities.¹⁸ The idea behind these actions is that, by “flattening the curve,” those most vulnerable will be less likely to become infected and, if they do, the numbers of infected individuals will be low enough that medical facilities will have enough beds, masks, and ventilators for those who need them. *See* Schriro Decl. 5 ¶ 50.¹⁹

¹⁴ Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): How to Protect Yourself & Others* (last visited May 12, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>, Dkt. 7-2 at 79–82 (Ex. 23 to the Choudhury Decl.).

¹⁵ *Id.*

¹⁶ Denise Lu, et al., *See Which States and Cities have Told Residents to Stay at Home, The Coronavirus Outbreak* (last updated Apr. 20, 2020), <https://nyti.ms/2y5j9LN>, Dkt. 7-2 at 83–95 at (Ex. 24 to the Choudhury Decl.).

¹⁷ JB Pritzker, *Ill. Exec. Order in Response to COVID-19 (COVID-19 Exec. Order No. 8)*, Ill. Exec. Order 2020-10 (Mar. 20, 2020), <https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-10.pdf>, Dkt. 7-1 at 75–84 (Ex. 4 to the Choudhury Decl.); JB Pritzker, *Ill. Exec. Order in Response to COVID-19 (COVID-19 Executive Order No. 31)*, Ill. Exec. Order 2020-33 (Apr. 30, 2020), Dkt. 7-1 at 85–94 (Ex. 5 to the Choudhury Decl.)

¹⁸ JB Pritzker, *Ill. Exec. Order in Response to COVID-19 (COVID-19 Exec. Order No. 8)*, Ill. Exec. Order 2020-10 (Mar. 20, 2020), <https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-10.pdf>, Dkt. 7-1 at 75–84 (Ex. 4 to the Choudhury Decl.).

¹⁹ Siobhan Roberts, *Flattening the Coronavirus Curve*, N.Y. Times (Mar. 27, 2020)

40. Even as Illinois gradually transitions from phase three to phase four of the plan for reopening several industries, there remain requirements to maintain social distance, wear masks when outside the home, and limit the number of people who may gather together.²⁰

II. Detention Facilities Amplify Coronavirus Infection and Endanger Detainees, Staff, and Surrounding Communities.

41. Detention facilities have become hotspots for coronavirus infection because they are enclosed environments, where people live in close quarters, share common facilities, and are subject to security measures that prohibit the “social distancing” needed to effectively prevent the spread of COVID-19.

42. On March 26, 2020, Governor Pritzker suspended all admissions to the Illinois Department of Corrections (“IDOC”) from Illinois county jails, with exceptions solely authorized by the IDOC Director, out of recognition that people in correctional settings “are especially vulnerable to contracting and spreading COVID-19” due to “their close proximity and contact with each other in housing units and dining halls.”²¹

43. Experts accurately predicted mass contagion within correctional facilities.²² In the

<https://www.nytimes.com/article/flatten-curve-coronavirus.html>, Dkt. 7-2 at 96–100 (Ex. 25 to the Choudhury Decl.).

²⁰ *Illinois Reopening Plan: Pritzker Releases Guidelines for Phase 4*, NBC5 Chicago (June 22, 2020), <https://www.nbcchicago.com/news/local/illinois-reopening-plan-pritzker-releases-guidelines-for-phase-4/2293469/>, attached as Ex. 58 to the Supp. Choudhury Decl.

²¹ JB Pritzker, Ill. Exec. Order in Response to COVID-19 (COVID-19 Exec. Order No. 11), Ill. Exec. Order 2020-13 (Mar. 26, 2020) <https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-13.pdf>, Dkt. 7-1 at 95–97 (Ex. 6 to the Choudhury Decl.).

²² See, e.g., Rich Shapiro, *Coronavirus Could “Wreak Havoc” on U.S. Jails, Experts Warn*, NBC News (Mar. 12, 2020, 12:04 PM), <https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586> (“An outbreak of the deadly virus inside the walls of a U.S. prison or jail is now a question of when, not if, according to health experts.”), Dkt. 7-1 at 98–103 (Ex. 7 to the Choudhury Decl.); Anne C. Spaulding, MD MPH, *Coronavirus COVID-19 and the Correctional Facility: For the Correctional Healthcare Worker*, 17 (Mar. 9, 2020), https://www.ncchc.org/filebin/news/COVID_for_CF_HCW_3.9.20.pdf (“Prisons and jails are enclosed environments, where individuals dwell in close proximity. Incarcerated persons

Cook County Jail, the number of confirmed COVID-19 cases skyrocketed from 2 to 353 in the two weeks following March 23, 2020.²³ As of May 11, 2020, there were 541 inmates and 399 employees at Cook County Jail who had contracted COVID-19 or were recovering from the disease.²⁴ There were only three confirmed cases in the Stateville Correctional Facility in Illinois on March 25, 2020,²⁵ but in less than two weeks, 49 inmates and 17 staff members at the facility had tested positive for coronavirus.²⁶ That number has since increased to 271 inmates and 207 staff.²⁷

44. There have been 2,521 confirmed cases of COVID-19 among ICE detainees in 65 facilities across the country.²⁸ Of the ICE detainees who are tested, 28% have been confirmed to have the disease.²⁹

sleep in close quarters, eat together, recreate in small spaces. Staff are close by. Both those incarcerated and those who watch over them are at risk for airborne infections.”), Dkt. 7-1 at 104–123 (Ex. 8 to the Choudhury Decl.).

²³ Timothy Williams & Danielle Ivory, *Chicago’s Jail is Top U.S. Hot Spot as Virus Spreads Behind Bars*, N.Y. Times (Apr. 8, 2020), <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>, Dkt. 7-1 at 124–127 (Ex. 9 to the Choudhury Decl.).

²⁴ See Cook Cty. Sheriff’s Office, *COVID-19 Cases at CCDOC* (last visited May 12, 2020), <https://www.cookcountysheriff.org/covid-19-cases-at-ccdoc/>, Dkt. 7-1 at 128–131 (Ex. 10 to the Choudhury Decl.).

²⁵ Chicago Tribune Staff, *Coronavirus in Illinois Updates: Here’s What Happened March 25 With COVID-19 in the Chicago Area*, Chi. Trib. (Mar. 25, 2020, 7:48 PM), <https://www.chicagotribune.com/coronavirus/ct-coronavirus-pandemic-chicago-illinois-news-20200325-swgp5hlecrbabjqx52etj2rruq-story.html>, Dkt. 7-2 at 1–16 (Ex. 11 to the Choudhury Decl.).

²⁶ Josh McGhee, *Stateville Prison Outbreak Signals COVID-19 Threat to Inmates, Surrounding Hospital Systems*, Chi. Reporter (Apr. 3, 2020), <https://www.chicagoreporter.com/stateville-prison-outbreak-signals-covid-19-threat-to-inmates-surrounding-hospital-systems/>, Dkt. 7-2 at 17–20 (Ex. 12 to the Choudhury Decl.).

²⁷ See Ill. Dep’t of Corrections, *COVID-19 Response: Confirmed Cases* (last visited May 12, 2020), <https://www2.illinois.gov/idoc/facilities/Pages/Covid19Response.aspx>, Dkt. 7-2 at 21–26 (Ex. 13 to the Choudhury Decl.).

²⁸ U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (last visited June 25, 2020), <https://www.ice.gov/coronavirus>, attached as Ex. 59 to the Supp. Choudhury Decl.

²⁹ *Id.* (reporting that out of 8,858 detainees tested, 2,512 were confirmed to have COVID-19).

45. There is a massive COVID-19 outbreak in the Pulaski County Detention Center southern Illinois in which at least 45 ICE detainees and 15 staff have contracted COVID-19.³⁰

46. Research confirms that the coronavirus will spread rapidly once it enters a facility with ICE detainees. A consortium of researchers, including U.S. Department of Homeland Security medical experts, Dr. Josiah Rich and Dr. Scott Allen, completed a recent study that recognizes the “fast pace” of coronavirus transmission in detention settings and concludes that entry of the virus into ICE facilities is “inevitabl[e].”³¹ The ICE Facilities Study finds that after entering a facility like the JCDC, coronavirus will infect between 77% and 99% of detainees within months.³²

47. The ICE Facilities Study also concludes that because they amplify coronavirus transmission, detention facilities with ICE detainees contribute to the depletion of local hospital resources:

The public health implications of this study are critical. They suggest that decisive action on the part of ICE will not only reduce morbidity and mortality outcomes in its population of detained immigrants, but minimize negative health outcomes in the communities that support ICE’s detention facilities with health care resources. If hesitation prevails instead, and more limited measures on the part of ICE prove ineffective, then the successful social distancing strategies implemented in a community may be undone by the large number of detainee infectious disease cases that its hospitals must care for.³³

³⁰ *Id.* (reporting 45 detainees confirmed to have COVID-19); *Galan-Reyes v. Acoff*, No. 20-cv-345-SMY, 2020 WL 2497133, at *4 (S.D. Ill. May 14, 2020) (noting 15 staff confirmed to have COVID-19).

³¹ This study was conducted by a consortium of experts from Brown University, Brandeis University, the University of British Columbia, British Columbia Children’s Hospital Research Institute, and George Mason University. *See* Daniel Coombs & Michael Irvine, *Modeling COVID-19 and Impacts on U.S. Immigration and Enforcement (ICE) Detention Facilities, 2020* (“ICE Facilities Study”), J. Urb. Health 2020, at 3, https://whistleblower.org/wp-content/uploads/2020/04/Irvine_JUH_ICE_COVID19_model.pdf, Dkt. 7-2 at 31–47 (Ex. 15 to the Choudhury Decl.).

³² *Id.* at 6 & Table 1 (reporting that a 500-person facility will have between 386 and 494 infected people in 90 days).

³³ *Id.* at 9.

48. Dr. Schriro similarly concludes that medically vulnerable ICE detainees should be released “as quickly as possible . . . to protect themselves, other detainees, correctional and medical staff, and the general public.” Schriro Decl. ¶¶ 55–56; *see also id.* ¶¶ 42, 50, 51.

III. Conditions at the Jerome Combs Detention Facility Fail to Adequately Protect High-Risk Detainees from COVID-19.

49. Dr. Venters, an expert in correctional health, reviewed the Declaration of Respondent Chad Kolitwenzew, Chief of Corrections for the Jerome Combs Detention Center, which was filed in this case on May 26, 2020, Dkt. 29-1 (“Kolitwenzew Decl.”), Respondent Kolitwenzew’s May 28, 2020 court testimony (“Kolitwenzew Tr.”), and the declarations of the Petitioners. Supp. Venters Decl. ¶¶ 3, 5.

50. Based on these materials, Dr. Venters finds that “little has been done to make a meaningful improvement in the JCDC COVID-19 response.” *Id.* ¶ 4. Dr. Venters notes that some of the procedures outlined by Respondent Kolitwenzew have not been implemented, as discussed in further detail below. *Id.* ¶¶ 5, 7. Still, Dr. Venters concludes that the practices described by Respondent Kolitwenzew would be inadequate to ensure the protection of medically vulnerable detainees, *even if* they were fully implemented. Venters Supp. Decl. ¶¶ 5–6. Notably, Dr. Venters concludes that certain of Respondent Kolitwenzew’s statements describe JCDC practices that are contrary to or fail to follow CDC guidance on COVID-19 response in detention settings. Venters Supp. Decl. ¶ 5.

A. Social Distancing and Mask Policies are not Consistently Enforced.

51. Previous decisions of this Court have noted that “social distancing remains impossible, especially during meal times when detainees are required to line up and cannot maintain six feet of distance, and during showers, or when receiving medication. Not only is it

impossible for detainees to maintain social distancing, officers have not instructed detainees to attempt to do so.” *Herrera-Herrera*, No. 2:20-cv-2120-SEM-TSH, Dkt. 36, at 14. (C.D. Ill. May 19, 2020).

52. Earlier this month, this Court observed that “[d]etainees still appear to be largely relying on voluntary social distancing measures of others, and it is not clear whether the policies of JCDC are being uniformly executed in practice.” *Ochoa*, 2020 WL 2850706, at *12 (C.D. Ill. June 2, 2020).

53. Current JCDC policy requires staff and detainees to socially distance. But jail staff do not regularly enforce that policy. *Rositas-Martinez Decl.* ¶¶ 42, 51–52; *Misankov Decl.* ¶¶ 26, 29, 31, 38; *Ibrahim Decl.* ¶¶ 23, 29. As a result, detained people still congregate in the dayroom and do not maintain social distance while standing in line for meals or medication. *Id.* They ignore social distancing markers like stickers on the floor or tape across table seats. *Chinchilla Decl.* ¶ 26; *Rositas-Martinez Decl.* ¶ 51; *Misankov Decl.* ¶ 26; *Ibrahim Decl.* ¶ 23. Moreover, several Petitioners currently share cells. Detainees with cellmates find it difficult or impossible to maintain social distance within their cells. *Chinchilla-Rivas Decl.* ¶¶ 26, 43; *Ibrahim Decl.* ¶ 36; *Misankov Decl.* ¶¶ 26, 29, 31; *Rositas-Martinez Decl.* ¶ 36.

54. Staff are similarly unable or unwilling to enforce mask requirements. After this lawsuit was filed, the JCDC staff distributed cloth masks to ICE detainees in the facility. Nonetheless, detainees regularly flout the mask requirement with seeming impunity. *Rositas-Martinez Decl.* ¶¶ 41–43; *Chinchilla-Rivas Decl.* ¶¶ 38–39; *Ibrahim Decl.* ¶ 27; *Gonzalez Torres Decl.* ¶ 34; *Misankov Decl.* ¶¶ 30, 38. Jail staff themselves are occasionally inconsistent about wearing masks at all times as required, and often do not wear gloves, even when touching surfaces used by detainees. *Rositas-Martinez Decl.* ¶¶ 44–47; *Misankov Decl.* ¶ 28; *Gonzalez*

Torres Decl. ¶ 32–39; Ibrahim Decl. ¶ 26. Some have observed maintenance workers appearing in the pod without a mask. Rositas-Martinez Decl. ¶ 47; Chinchilla-Rivas Decl. ¶ 42.

B. Cleaning of Cells and Common Areas is Inadequate.

55. Although Chief Kolitwenzew states that “JCDC conducts a daily disinfection routine three times a day, which includes door handles, toilets, showers and tables,”

Kolitwenzew Decl. ¶ 60, many detainees continue to report that the dayroom is cleaned only once a day, and showers are cleaned only once a week. Rositas-Martinez Decl. ¶¶ 60–61;

Chinchilla-Rivas Decl. ¶ 31; Gonzalez Torres Decl. ¶¶ 24, 26, 29; Misankov Decl. ¶ 37.

Telephones available to all detainees in the unit are not cleaned between uses. Gonzalez Torres Decl. ¶ 26; Ibrahim Decl. ¶ 33; Misankov Decl. ¶ 36; Rositas-Martinez Decl. ¶¶ 56, 58.

56. Detainees are also unable to maintain hygiene within their cells. Cleaning products are shared among all detainees on a unit for cleaning their cells, including a mop and bucket that are often dirty by the time they reach the last cell. Rositas-Martinez Decl. ¶¶ 62–63; Gonzalez Torres ¶¶ 24–25, 28; Misankov Decl. ¶ 37.

57. Sinks are operated with a button that automatically stops the water flow after a certain number of seconds, so detainees are not able to wash their hands for 20 seconds without touching the button again at least once. Rositas-Martinez Decl. ¶ 64. Detainees have no paper towels to dry their hands, so they must use toilet paper or the cloth towels they also use for showering. Gonzalez Torres Decl. ¶ 37; Rositas-Martinez Decl. ¶ 66; Ibrahim Decl. ¶ 32; Misankov Decl. ¶ 35. Although Chief Kolitwenzew states that “[n]on-alcoholic hand sanitizer is . . . stocked in every housing unit,” Kolitwenzew Decl. ¶ 59, detainees consistently state that hand sanitizer has never been available to them. Misankov Decl. ¶ 34; Rositas-Martinez Decl. ¶¶ 68–69; Gonzalez Torres Decl. ¶ 37.

C. Procedures for Preventing Staff and New Detainees from Bringing Coronavirus Into the Jail are Insufficient.

58. As this Court has recognized, “[s]taff, obviously, continue to enter and exit JCDC—each time potentially bringing the virus into the JCDC.” *Ochoa*, 2020 WL 2850706, at *12 (C.D. Ill. June 2, 2020).

59. New non-ICE detainees continue to be brought to the JCDC. According to Respondent Kolitwenzew’s May 26, 2020 declaration, no new ICE detainees have been brought into the JCDC since April 3, 2020. Kolitwenzew Decl. ¶ 34. Nevertheless, the JCDC may resume accepting new ICE detainees at any time, and there is no permanent policy in place not to accept new ICE detainees.

60. Respondent Kolitwenzew attested that the facility relies on three measures to identify infected people: (1) temperature checks of non-detainees who enter the facility (e.g., staff, contractors, volunteers and vendors); (2) the segregation of new detainees for a period of time ranging from five to fourteen days; and (3) screening of new detainees in a manner that does not include a COVID-19 test. Kolitwenzew Decl. ¶ 49–52. New detainees are tested for COVID-19 *only if* they “present[] symptoms compatible with COVID-19.” *Id.* ¶ 52.

61. Such measures fail to prevent entry of coronavirus into the JCDC due to the reality of asymptomatic transmission. Dr. Golob explains that due to asymptomatic transmission of coronavirus the monitoring of fever and other symptoms of staff or detainees is inadequate to identify all those who are infected and preventing transmission. *See* Golob Decl. ¶¶ 6–7, 13. Similarly, Dr. Venters notes that “because screening based on self-reports by staff, temperature checks, and observable symptoms of the disease fail to account for asymptomatic staff. For high-risk patients like the petitioners, even the screening standards of the CDC do not sufficiently reduce the risk of COVID-19 entering the facility, given their high risk for serious illness or

death should they contract the disease.” Venters Decl. ¶ 37.

62. This Court has recognized, moreover, that “the only way to determine if the virus is present in the facility is to do wide-spread testing for the virus, which Respondent has not alleged has occurred.” *Ochoa*, 2020 WL 2850706, at *12. Without such testing, it is impossible for JCDC to ensure that staff, contractors, volunteers, and vendors do not bring the coronavirus into the jail, even as COVID-19 spreads in the surrounding community.

63. Respondent Kolitwenzew’s policy of segregating new detainees who brought into the JCDC from the general population for five to 14 days is also insufficient to ensure that new detainees do not transmit the virus in the jail. Supp. Venters Decl. ¶ 5(d). According to Dr. Venters, “the period needed to ensure lack of COVID-19 symptoms after initial contact is 14 days,” and the clearance of new detainees in less than 14 days, as exemplified in the JCDC’s procedure, is “a deficient practice that places staff and detainees at risk.” *Id.*

D. The Jail Has Insufficient Staff and Procedures for Screening and Monitoring Detainees.

64. Although Chief Kolitwenzew’s declaration, ¶ 47, states that health care workers “conduct temperature checks of each detainee twice per day,” detainees consistently report that their temperature is taken once a day. Misankov Decl. ¶ 32; Rositas-Martinez Decl. ¶ 70; Gonzalez Torres Decl. ¶ 30. Moreover, even with daily temperature checks, “[w]ith new individuals and staff coming into the detention centers who may be asymptomatic or not yet presenting symptoms, the risk of infection rises even with symptom screening measures.” Golob Decl. ¶ 13; *see also id.* ¶¶ 6–7 (discussing the need for testing to determine risk of transmission in an institution due to asymptomatic transmission).

65. Dr. Venters finds that based on the statements in Respondent Kolitwenzew’s declaration, “[t]here are not sufficient medical staff to conduct screenings of high-risk or

quarantine patients at any time or to maintain medical monitoring of isolation patients with COVID-19 symptoms.” Supp. Venters Decl. ¶ 5(b) (citing Kolutwenzew Decl. ¶ 44). This lack of staffing is immediately problematic if and when a patient exhibits COVID-19 symptoms. Supp. Venters Decl. ¶ 5(b). Because the JCDC does not have overnight medical staff, it is simply not possible, in Dr. Venters’ expert opinion, for the JCDC to medically monitor isolation patients three to four times per day for the first five days of isolated confinement as Respondent Kolutwenzew describes. *Id.* Moreover, this level of monitoring cannot be performed by first responder security staff, which impacts detainees who are isolated or quarantined. *Id.*

66. The jail has an inadequate “cohorting” procedure in which detainees with “known exposure to a person with COVID-19, but are themselves asymptomatic, are placed in cohorts with restricted movement for the 14-day incubation period” and are monitored for symptoms. Kolutwenzew Decl. ¶ 52. But this policy of “cohorting” will not prevent the spread of coronavirus to Petitioners. Contrary to CDC recommendations to cohort individually, Respondents cohort many people together. Moreover, even if the JCDC is cohorting as described by Respondent Kolutwenzew, asymptomatic transmission will allow individuals to infect others before showing the signs that would trigger the cohorting measures.

67. Dr. Venters also finds no evidence to show that the JCDC sick call procedure leads to prompt evaluation of COVID-19 symptoms reported by detainees or a facility-wide tracking system. *Id.* ¶5(c) (citing Kolutwenzew Decl. ¶ 12).

E. The Jail Does Not Have a Comprehensive Plan in the Event of an Outbreak.

68. Dr. Venters finds that Respondent Kolutwenzew’s declaration and sworn testimony demonstrate Respondents’ failure to adopt a unified COVID-19 mitigation plan for the JCDC. Venters Supp. Decl. ¶ 35. ICE’s revised Pandemic Response Plan makes clear that any facility holding ICE detainees should have such a plan in place. Venters Supp. Decl. ¶ 5(a)(i).

70. Dr. Venters noted that although Respondent Kolitwenzew's declaration refers to a "comprehensive set of precautionary measures to limit the risk of COVID-19 transmission," the declaration attaches only a printout of CDC guidelines and a generic law enforcement guide to COVID-19 developed by the Illinois Department of Public Health. *Id.* ¶ 5(a) (citing Kolitwenzew Decl. ¶ 20). At one point in Respondent Kolitwenzew's testimony, he appeared to explain that only the JCDC medical department would have a written COVID-19 mitigation plan in place, but that the document would not reside with the jail administration. Venters Supp. Decl. ¶ 5(a)(ii). Dr. Venters observes that Respondent Kolitwenzew's testimony later "acknowledged that there was no 'comprehensive COVID plan' that existed 'on paper,' instead describing meetings and websites where staff 'learn every day' about the 'fluid situation.'" *Id.* ¶ 5(a)(iii) (citing Kolitwenzew Tr. at 52).

71. Dr. Venters found Respondent Kolitwenzew's explanations for why there is no unified COVID-19 mitigation plan for all JCDC staff to be "unacceptable." Venters Supp. Decl. ¶ 5(a)(ii). Dr. Venters explains that the failure to have such plan increases the risk of coronavirus transmission:

COVID-19 is a pandemic that impacts many areas of detention operations, and integrated plans are critical to facilities being able to implement basic CDC guidelines including screening, social distancing, and responding to sick detainees. Taking the one example of how staff respond to a detainee with suspected COVID-19 reveals critical roles for health and security staff that if not performed in accordance with CDC guidelines and with clarity about health and security roles, *can increase transmission of the virus and the likelihood of serious illness or death.* In my experience managing outbreaks in detention settings, the disconnect between expectations and plans of security and health staff is one of the most critical aspects of limiting morbidity and mortality.

Venters Supp. Decl. ¶ 5(a) (ii).

72. Dr. Venters also finds that contrary to Respondent Kolitwenzew's testimony:

Having a plan in place is not somehow at odds with reacting to new developments or integrating new information. In fact, without a single facility plan for COVID-19, staff and supervisors quickly become overwhelmed by the tasks of seeking out the latest guidelines or protocols. For this reason, JCDC must have a written plan that staff can turn to and that leadership can update and evolve as needed, instead of referring to numerous meeting notes, emails, protocols and other documents.

Id. ¶ 5(a)(iii).

IV. Petitioners Are at High Risk of Serious Illness or Death from COVID-19 in JCDC and May be Safely Released With or Without Conditions.

73. Petitioners are especially vulnerable to serious illness and death if they are infected with the coronavirus and develop COVID-19. Nonetheless, Respondents continue to detain Petitioners at the JCDC while Petitioners await adjudication of their immigration cases or deportation. Without a vaccine or cure for COVID-19, however, mitigating the risk of contracting coronavirus is the only known way to protect those who are most vulnerable to serious harm from infection. Golob Decl. ¶ 10.

74. Because the risk of infection is at its zenith in detention centers where social distancing measures are impossible to implement, where people share common spaces that are not regularly sanitized, and where individuals are regularly exposed to potential vectors of infection, public health experts with experience in detention and correctional settings, including Dr. Schriro and Dr. Venters recommend the release of vulnerable individuals from custody. Venters Decl. ¶ 47; Schriro Decl. ¶¶ 18, 42, 55, 56; *see also* Golob Decl. ¶ 14 (noting that medically vulnerable detainees are at “grave” risk of severe harm).

75. Once infection spreads throughout the JCDC, the burden of caring for detainees who contract COVID-19 will shift to local medical facilities. The few facilities will likely not be able to provide care to all infected individuals with serious cases, increasing the likelihood that these individuals will die. As discussed below, Petitioners can be safely released from the JCDC

and should be released before it is too late.

a. Florian Crainic

76. Mr. Crainic is older (nearly 50) and suffers from medical conditions—diabetes, hypertension, and reduced right lung capacity—that place him at elevated risk for serious illness and death from COVID-19. Crainic Decl. ¶¶ 7, 10–12; Crainic JCDC Medical Records, Dkt. 7-4 at 126–127, 130–31, 134, 137–41 (Ex. 40 to the Choudhury Decl.).

77. Mr. Crainic receives diabetes medication at JCDC. Crainic Decl. ¶ 16. To this day, he frequently feels dizzy and cannot feel his fingers or toes on a daily basis. *Id.* ¶ 8.

78. Mr. Crainic was diagnosed in Romania with diabetes in 2003. *Id.* ¶ 8. Prior to his detention by ICE on January 30, 2020, he took daily medication to treat his diabetes. *Id.* ¶ 14. Diabetes places Mr. Crainic at high risk of serious complications and death from COVID-19, even if it is controlled with medication. Venters Decl. ¶¶ 25, 44.

79. Mr. Crainic also suffers from reduced right lung capacity stemming from a history of pneumonia, lung infection, and a coma and spinal surgery related to a 2004 fall down a flight of stairs that occurred in Romania. Crainic Decl. ¶¶ 9–12. In early April 2020, Mr. Crainic was seen by a JCDC doctor for a dry cough, runny nose, and chest discomfort, but was not removed from his cell or tested for COVID-19. *Id.* ¶ 18. He was later seen by a lung specialist, who ordered an X-ray and prescribed a course of antibiotics. *Id.* ¶ 19. The X-rays did not address, however, whether Mr. Crainic has reduced right lung capacity.

80. Mr. Crainic can be safely released from the JCDC. He has no history of violent crime. Nor does he pose a flight risk due to his strong community ties, including his relationship with his daughter, who is a lawful permanent resident of the United States. *Id.* ¶¶ 3, 5.

b. Mumin Fatai Owolabi

81. Mumin Fatai Owolabi suffers from medical conditions—hypertension and

diabetes—that place him at elevated risk for serious illness and death from COVID-19. Owolabi Decl. ¶ 8; Glenberg Decl. Ex. A at JCDC-USA0449-0491 (*passim*); Supp. Venters Decl. ¶¶ 13–15.

82. He was diagnosed with these conditions while in ICE custody. Owolabi Decl. ¶ 8; Glenberg Decl. Ex. A at JCDC-USA0449-0491 (*passim*). Mr. Owolabi experiences headaches and blurred vision on a daily basis and numbness and tingling in his hands and legs several times a week. Owolabi Decl. ¶¶ 13, 15. Although he takes medication for hypertension and diabetes, his blood pressure readings since entering JCDC are above normal or at the high end of normal. *Id.* ¶ 10; *see also* Glenberg Decl. Ex. A at JCDC-USA0454, 0459, 0462, 0465–71; Supp. Venters Decl. ¶ 14.

83. In the JCDC, Mr. Owolabi stays in his cell most of the time, wears a mask and socially distances himself from his cellmate and the other detainees in an effort to avoid contracting COVID-19. Owolabi Decl. ¶¶ 31–37.

84. Mr. Owolabi can be safely released from the JCDC. He has no criminal history. *Id.* ¶ 38. Mr. Owolabi poses no public safety threat or flight risk. To the contrary, he has strong ties to the United States, including his wife, Shonta Smith, and her three sons, all of whom are U.S. citizens. *Id.* ¶ 4.

85. Mr. Owolabi came to the United States from Nigeria in 2015 and worked in Chicago as a clinical nursing assistant at Glencrest Nursing Home, where he met his wife. *Id.* ¶¶ 6, 19. They fell in love and married six months later, in January 2017. *Id.* ¶ 6. Approximately a year and a half later, Ms. Smith filed an I-130 application to secure a green card for her husband, Mr. Owolabi. *Id.* ¶ 19.

86. With his wife’s encouragement, Mr. Owolabi traveled to Nigeria in October 2018

to visit his three biological children. *Id.* ¶¶ 3, 20, 21. Mr. Owolabi obtained advanced parole to allow him to travel to Nigeria and return to the U.S. Owolabi Decl. ¶ 20; 11/14/19 Removal Order, attached as Ex. B to the Glenberg Decl. However, Mr. Owolabi was detained upon his return to the U.S. through O’Hare International Airport on November 29, 2018. Owolabi Decl. ¶¶ 21, 22. Customs and Border Protection officers searched Mr. Owolabi’s phone and found pictures of him with his Nigerian ex-wife and daughters, which ICE used to claim that Mr. Owolabi’s marriage to Ms. Smith was a fraud. *Id.* ¶¶ 23, 24. As a result, Mr. Owolabi was placed in removal proceedings and detained in Kenosha until March 5, 2020, when he was transferred to the Jerome Combs Detention Center (JCDC). *Id.* ¶¶ 24, 28, 29. He has been in the JCDC ever since. *Id.* ¶ 7.

87. A final order of removal has been entered against Mr. Owolabi. United States’ Third Supp. Discovery Disclosure, attached as Ex. I to the Glenberg Decl.³⁴ Mr. Owolabi is detained solely for the purpose of effecting his removal to Nigeria. But Nigeria is not accepting international flights at this time.³⁵ Nor is it clear when Nigeria will be accepting international flights since there are over 18,000 COVID-19 cases in the country and a curfew in place.³⁶

88. If Mr. Owolabi is released, he has means to be transported back to his home in accordance with public health protocols. *See* Owolabi Decl. ¶¶ 39–40; Declaration of Colby Kingsbury ¶¶ 3–7. Once at home, Mr. Owolabi will stay with his wife and step-children and

³⁴ The government’s Third Supplemental Discovery Disclosure indicates that Mr. Owolabi’s deportation has not been arranged “because flights to Ethiopia were on standby or delayed because of COVID mitigation.” Glenberg Decl. Ex. I at 3. To be clear, Mr. Owolabi is a citizen of Nigeria and that country is not accepting international flights at this time.

³⁵ U.S. Embassy & Consulate in Nigeria, *COVID-19 Information*, <https://ng.usembassy.gov/u-s-citizen-services/covid-19-information/> (last visited June 26, 2020), attached as Ex. 65 to the Supp. Choudhury Decl.

³⁶ *Id.*

follow all other conditions imposed on him by this Court. Owolabi Decl. ¶¶ 41–44.

c. Mario Arnaldo Gonzalez Torres

89. Mr. Gonzalez Torres is 51 years old and suffers from medical conditions—hypertension, obesity, elevated cholesterol and triglycerides, and other ailments—that place him at elevated risk for serious illness and death from COVID-19. Gonzalez Torres Decl. ¶¶ 3, 7, 9; Glenberg Decl. Ex. C at JCDC-USA1057–1136, JCDC-USA1482–1512 (*passim*); Supp. Venters Decl. ¶¶ 27–29.

90. Mr. Gonzalez Torres is 5’4” and weighs 193 pounds. Gonzalez Torres Decl. ¶ 6. He therefore has a BMI of 33.1 and is clinically obese.³⁷ Supp. Venters Decl. ¶¶ 28. Mr. Gonzalez Torres also suffers from frequent nighttime headaches, heartburn, and stomach and rectal pain. Gonzalez Torres Decl. ¶¶ 8, 10; Glenberg Decl. Ex. C at JCDC-USA1081, 1489–90, 1493–95. He currently receives medication for hypertension, heartburn, and hemorrhoids. Gonzalez Torres Decl. ¶¶ 7, 10; Glenberg Decl. Ex. C at JCDC-USA1490–93.

91. Mr. Gonzalez Torres can be safely released from the JCDC. He poses no public safety threat or flight risk.

92. Mr. Gonzalez Torres has never been convicted of a crime and entered the country to pursue asylum from political persecution in his home country of Cuba. Gonzalez Torres Decl. ¶¶ 42, 12, 14–15. His entire time in the United States has been spent in immigration detention while pursuing political asylum. *Id.* ¶¶ 14–15, 39. Mr. Gonzalez Torres also has strong ties to the United States, including his brother and aunt, who are lawful permanent residents, and his cousin, who is a United States citizen. *Id.* ¶ 4. The three live in Miami, Florida. *Id.*

³⁷ Ctrs. for Disease Control and Prevention, *Defining Adult Overweight and Obesity*, <https://www.cdc.gov/obesity/adult/defining.html> (last visited June 26, 2020) (providing body mass index calculator and noting that a BMI of 30.0 or higher “falls within the obese range”), attached as Ex. 64 to the Supp. Choudhury Decl.

93. In Cuba, Mr. Gonzalez Torres was a farmer and political dissident, who publicly opposed the Castro regime and distributed propaganda against the government. *Id.* ¶¶ 17–19. He participated in a campaign opposing the Cuban Constitution of 2019 and openly refused to vote for it in February 2019. *Id.* ¶¶ 20–21. The Cuban government detained Mr. Gonzalez Torres on the evening of the Constitution of 2019 elections, then proceeded to beat and torture him. *Id.*

94. Mr. Gonzalez Torres traveled to the U.S.-Mexico border in April 2019 to seek political asylum. *Id.* ¶ 12. He followed the instructions of U.S. immigration authorities to wait near the border for three months until his appointment for a sworn statement with an immigration officer. *Id.* ¶¶ 12–13. Mr. Gonzalez Torres entered the United States in August 2019 and was detained by ICE after a U.S. immigration official took his sworn statement. *Id.* ¶ 14. Although Mr. Gonzalez Torres does not speak English, he proceeded with his asylum application without the assistance of counsel. *Id.* ¶ 15.

95. An immigration judge denied Mr. Gonzalez Torres’s asylum application on October 8, 2019, and the Board of Immigration Appeals (“BIA”) affirmed the denial on April 28, 2019. *Id.* Mr. Gonzalez Torres is aware that his asylum case was denied. *Id.*

96. Mr. Gonzalez Torres is thus being detained for the sole purpose of carrying out his deportation to Cuba. But there is no clear end to his detention. On April 2, 2020, the Cuban government suspended the arrival of all international flights until August 1, 2020 due to the COVID-19 pandemic.³⁸ This flight suspension may be extended further as the pandemic continues.

97. Mr. Gonzalez Torres can be safely released to his cousin, Juan Carlos Veitia

³⁸ U.S. Embassy in Cuba, *COVID-19 Information*, <https://cu.usembassy.gov/covid-19-information/> (last visited June 25, 2020), attached as Ex. 60 to the Supp. Choudhury Decl.

Rodriguez, who will pick him up at the JCDC in a Chevrolet Silverado, a vehicle with ample space for social distancing. Gonzalez Torres Decl. ¶ 40. Mr. Veita Rodriguez will also provide Mr. Gonzalez Torres with a face mask and gloves. *Id.* Mr. Veitia Rodriguez will either rent a hotel room or lease an apartment for Mr. Gonzalez Torres, where Mr. Gonzalez Torres will self-quarantine for 14 days following his release. *Id.* After the 14-day period, Mr. Veitia Rodriguez will drive Mr. Gonzalez Torres to his home in Clewiston, Florida, where he will follow any release conditions set by this Court and ICE. *Id.*

d. Orlando Rafael Chinchilla-Rivas

98. Mr. Chinchilla-Rivas is 19 years old and suffers from medical and health conditions—asthma, obesity, and an extensive history of smoking—that place him at elevated risk for serious illness and death from COVID-19. Supp. Venters. Decl. ¶ 21.

99. Mr. Chinchilla-Rivas has suffered from asthma and required an inhaler since childhood. Chinchilla-Rivas Decl. ¶ 7; Glenberg Decl. Ex. D at JCDC-USA0146. As a result of his asthma, Mr. Chinchilla-Rivas frequently experiences sudden and unexpected difficulty breathing. Chinchilla-Rivas Decl. ¶ 8. These episodes vary in severity and occur spontaneously or while he engages in light exercise. *Id.* ¶¶ 8, 10. Additionally, Mr. Chinchilla-Rivas’s asthma causes him to stop breathing while he is sleeping at least once every night. *Id.* ¶ 9. When he experiences breathing difficulties during sleep, Mr. Chinchilla-Rivas would ordinarily rely on his inhaler in order to restore normal breathing function. *Id.* ¶ 19. But Mr. Chinchilla-Rivas’s requests to JCDC medical staff for a personal inhaler to manage his asthma have been ignored and, more recently, denied completely. *Id.* ¶¶ 11–17.

100. Initially, the JCDC staff informed Mr. Chinchilla-Rivas that inhalers are held for detainees in the staff office for corrections officers. *Id.* ¶ 13. This meant that in order to get access to the inhaler to address his difficulty breathing, including when he stops breathing in the middle

of the night, Mr. Chinchilla-Rivas must travel down a flight of stairs from his cell, walk to the entrance to his pod, approach a one-way mirror, ring a buzzer, get the attention of an officer, and ask for an inhaler. *Id.* ¶ 14. This takes a long time, and sometimes when detainees ring the buzzer for an officer, no officer responds or follows up. *Id.* On one recent occasion, Mr. Chinchilla-Rivas had difficulty breathing and went to the office to request his inhaler, but an officer informed him that his inhaler was not there. *Id.* ¶ 15. Despite requesting an inhaler through the process outlined by the officer and meeting with a nurse, his request for an inhaler was denied. *Id.* ¶¶ 16–17.

101. Mr. Chinchilla-Rivas’s asthma places him at elevated risk for serious illness and death from COVID-19. Supp. Venters. Decl. ¶¶ 16–18. According to the CDC, individuals with asthma are at higher risk of severe COVID-19³⁹

102. Mr. Chinchilla-Rivas’s extensive history of smoking and obesity are additional health conditions that increase his already heightened risk of experiencing severe COVID-19. Mr. Chinchilla-Rivas smoked cigarettes for approximately nine years, and was regularly smoking half of a pack of cigarettes each day just before entering ICE custody in October 2019. Chinchilla-Rivas Decl. ¶ 21; Glenberg Decl. Ex. D at JCDC-USA1047. He is 5’11” tall and weighs 223 lbs. Chinchilla-Rivas Decl. ¶ 20. This corresponds to a BMI of 31.1, which renders Mr. Chinchilla-Rivas obese. Supp. Venters. Decl. ¶ 20. The CDC also recognizes that obesity increases a person’s risk of severe illness from COVID-19. *Id.* As Petitioners’ medical expert, Dr. Venters, explains, Mr. Chinchilla-Rivas’s asthma, history of smoking cigarettes, and obesity

³⁹ Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People with Moderate to Severe Asthma*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html> (last visited June 25, 2020), attached as Ex. 61 to the Supp. Choudhury Decl.

place him at increased risk of serious illness and death from COVID-19. *Id.* ¶¶ 16–21.⁴⁰

Moreover, the CDC acknowledged that “[b]eing a current or former cigarette smoker may increase your risk of severe illness from COVID-19.”⁴¹

103. Mr. Chinchilla-Rivas can be safely released from the JCDC. He poses no public safety threat or flight risk.

104. Mr. Chinchilla-Rivas has strong ties to the United States. He lived in the United States since he was approximately five years old, when he arrived with his family. Chinchilla-Rivas Decl. ¶ 4. Before entering ICE custody, he lived in Indianapolis, Indiana with his mother, a lawful permanent resident, and his brother, who is a U.S. citizen. *Id.* ¶¶ 4, 17. Before his detention, Mr. Chinchilla-Rivas regularly attended church at Great Commission Church of God with his family. *Id.* ¶ 3.

105. Mr. Chinchilla-Rivas was granted a U-nonimmigrant visa in October 2014 because he was a victim of a crime. *Id.* ¶ 45. In order to receive this visa, he was required to demonstrate that he fully complied with law enforcement’s investigation into the crime. *Id.*

106. Mr. Chinchilla-Rivas’s sole criminal conviction was for one non-violent misdemeanor in March 2019. *Id.* ¶ 47. Mr. Chinchilla-Rivas pled guilty, received a suspended sentence, one year of probation, and was ordered to pay court fees. *Id.* ¶ 48. He fully complied with the conditions of his probation and paid his fees. *Id.*

107. Further, Mr. Chinchilla-Rivas can be safely released in a manner that ensures the health and safety of himself and his family. *Id.* ¶¶ 49–51. If released, his mother, Maria

⁴⁰ Ctrs. for Disease Control and Prevention, *Defining Adult Overweight and Obesity*, (providing body mass index calculator and noting that a BMI of 30.0 or higher “falls within the obese range”), attached as Ex. 64 to the Supp. Choudhury Decl.

⁴¹ Ctrs. for Disease Control and Prevention, *People of Any Age with Underlying Medical Conditions*, attached as Ex. 62 to the Supp. Choudhury Decl.

Chinchilla-Rivas, has agreed to pick him up from JCDC and take him to her home in Indianapolis, Indiana. *Id.* ¶ 49. She will pick him up in a full-size vehicle with three rows and enough space to allow for social distancing while traveling from JCDC to her home. *Id.* Ms. Chinchilla-Rivas will also bring masks, gloves and sanitizer for her and her son to use while traveling to her home. *Id.*

108. After release, Mr. Chinchilla-Rivas will remain at his mother's home in Indianapolis, Indiana, where he will have his own room in which to quarantine himself from the rest of the household for at least 14 days. *Id.* ¶ 50. During his time in quarantine, Mr. Chinchilla-Rivas will perform all errands to allow her son to remain quarantined, including shopping for groceries and obtaining his medication. *Id.* She will also provide him with his meals by placing them in front of his bedroom door. *Id.* The meals will be served on disposable plates with disposable utensils so that there will be no need to wash or touch Mr. Chinchilla-Rivas's used plates or utensils. *Id.*

109. Mr. Chinchilla-Rivas will comply with any conditions on release imposed by the Court. *Id.* ¶ 51.

e. Yacub Sobhi Ibrahim

110. Mr. Ibrahim is 42 years old and suffers from medical and health conditions—hypertension, asthma, and an extensive history of smoking. Ibrahim Decl. ¶¶ 3, 6, 12, 15; Glenberg Decl. Ex. E at JCDC-USA0280–0328 (*passim*); Glenberg Decl. Ex. F at PDF pp. 8–11. These conditions place him at elevated risk for serious illness and death from COVID-19. Supp. Venters Decl. ¶¶ 30–34.

111. Mr. Ibrahim's hypertension was diagnosed in 2015 and he has consistently taken medication to control his symptoms since diagnosis. Ibrahim Decl. ¶¶ 6, 7; Glenberg Decl. Ex. E at JCDC0284. Even when properly medicated, Mr. Ibrahim has suffered from serious medical

episodes due to his hypertension. Ibrahim Decl. ¶¶ 8, 9. Furthermore, since the onset of the COVID-19 pandemic, JCDC staff have not consistently checked Mr. Ibrahim's blood pressure. *Id.* ¶ 10.

112. Additionally, Mr. Ibrahim's asthma and history of smoking are of serious concern. Mr. Ibrahim has been diagnosed with intermittent and mild persistent asthma. Glenberg Decl. Ex. F at PDF pp. 8–11. JCDC staff have not provided Mr. Ibrahim an inhaler, which he requested on multiple occasions. Ibrahim Decl. ¶ 14. An inhaler would greatly assist Mr. Ibrahim's asthma. *Id.*; *see also* Glenberg Decl. Ex. F at PDF p. 11. Additionally, Mr. Ibrahim smoked a pack and a half of cigarettes every day for around 17 years. Ibrahim Decl. ¶¶ 3, 15.

113. In addition to his hypertension, Mr. Ibrahim's asthma and history of smoking further places him at elevated risk for serious illness and death from COVID-19. As Petitioners' medical expert, Dr. Venters, explains, Mr. Ibrahim's hypertension, asthma, and history of smoking cigarettes place him at increased risk of serious illness and death from COVID-19. Supp. Venters Decl. ¶ 30–34.

114. Although Mr. Ibrahim does have past criminal convictions, conditions of release can adequately address any concerns about community safety and flight risk, as they have for other medically vulnerable ICE detainees previously ordered released by this Court. *See, e.g., Herrera-Herrera v. Kolutwenzew*, No. 20-cv-2120-SEM-TSH, Dkt. 31 (C.D. Ill. May 19, 2020) (ordering release pursuant to conditions stipulated by the parties, including that "Petitioner must self-quarantine, be confined to his residence, not consume alcohol, and not drive"). Moreover, Mr. Ibrahim has strong community ties. His mother and siblings are all U.S. citizens and still live in Chicago, and Mr. Ibrahim lived with them prior to his detention. Ibrahim Decl. ¶ 17.

115. If released, Mr. Ibrahim will stay at his mother's home in Chicago, Illinois. *Id.* ¶¶

17, 37. Mr. Ibrahim's mother or brother will pick him up in a three-row Odyssey van, which will allow for social distancing. *Id.* ¶ 38. Once at his mother's home, Mr. Ibrahim will be able to self-quarantine for 14 days. *Id.* He will have his own room and bathroom, and the house is large enough to allow for social distancing. *Id.* Mr. Ibrahim will take precautions, including social distancing in common areas, such as the kitchen, during the self-quarantine period. *Id.* Finally, Mr. Ibrahim will comply with all conditions of release imposed by the Court and ICE. *Id.* ¶ 37.

f. Ismail Misankov

116. Mr. Misankov is 41 years old and has suffered from repeated and recent respiratory illness, including pneumonia, and has a history of smoking. Misankov Decl. ¶¶ 3, 6–7, 9–10, 14, 38. These conditions place him at elevated risk for serious illness and death from COVID-19. Supp. Venters. Decl. ¶ 22.

117. Mr. Misankov initially became sick with a fever, runny nose, and watery eyes in February 2020, while detained in Kenosha, Wisconsin. Misankov Decl. ¶ 6. He was sick for roughly a week after receiving treatment. *Id.* In the middle of March 2020, Mr. Misankov again developed the same symptoms, and recovered in about one week. *Id.* ¶ 7. Soon after recuperating, Mr. Misankov was moved from Kenosha to the Jerome Combs Detention Center, where he developed pneumonia in early April 2020. *Id.* ¶¶ 8–10; Glenberg Decl. Ex. G at JCDC-USA0786–91 (medical records of Mr. Misankov).

118. While ill with pneumonia, Mr. Misankov was fatigued and experienced shortness of breath, accelerated heart beating, hands shaking, and a general feeling of weakness. Misankov Decl. ¶ 9. An x-ray of his chest showed a spot on his lung, which led JCDC medical staff to diagnose Mr. Misankov with pneumonia. *See* Glenberg Decl. Ex. G at JCDC-USA0786–91. Mr. Misankov was prescribed antibiotics. *Id.* He was also prescribed an inhaler, which he was to take three times per day for a 10-day period; however, Mr. Misankov never received the inhaler even

after continuously requesting it. *Id.* at JCDC-USA0790; *see* Misankov Decl. ¶ 11.

119. Mr. Misankov continues to experience lingering pneumonia symptoms. As recently as June 2, 2020, Mr. Misankov reported difficulty breathing, fatigue, and an elevated heartbeat when he performs physical activities such as working out. *See* Glenberg Decl. Ex. G at JCDC-USA1409–10. Even so, JCDC staff have yet to provide Mr. Misankov access to an inhaler. Misankov Decl. ¶ 11.

120. In addition to his respiratory issues, Mr. Misankov has an extensive history of smoking. Mr. Misankov typically smoked a pack of cigarettes every two to three days for around eleven years. *Id.* ¶ 14. He most recently reported smoking cigarettes in January 2020. Glenberg Decl. Ex. G at JCDC-USA0775.

121. Mr. Misankov's recent history of pneumonia and other respiratory illness and his history of smoking place him at increased risk of serious illness and death from COVID-19. Supp. Venters Decl. ¶ 22.

122. Mr. Misankov can be safely released from the JCDC. He does not pose a danger to the public or a flight risk.

123. Mr. Misankov's criminal history does not include any violent offenses. Mr. Misankov was convicted of conspiracy, aggravated identity theft, aiding and abetting, and bank fraud concerning a scheme to make unauthorized withdrawals from ATM accounts. Misankov Decl. ¶ 18; Glenberg Decl. Ex. J at ICE-USA1364–73. Mr. Misankov completed his sentence and was released in December 2012. Misankov Decl. ¶ 18.

124. Moreover, Mr. Misankov has cooperated with ICE during his time in the United States. He was detained on January 31, 2020 after a family visit to Bulgaria. *Id.* ¶¶ 19–21. ICE initially asked Mr. Misankov to provide more information, and Mr. Misankov complied by

presenting the documents requested by ICE to their downtown office on four separate occasions. *Id.* ICE officials subsequently put Mr. Misankov's green card on hold and, during the fourth visit, detained him. *Id.*

125. Although Mr. Misankov does have past criminal convictions, conditions of release can adequately address any concerns about community safety and flight risk, as they have for other medically vulnerable ICE detainees previously ordered released by this Court. *See, e.g., Herrera-Herrera v. Kolutwenzew*, No. 20-cv-2120-SEM-TSH, Dkt. 31 (C.D. Ill. May 19, 2020) (ordering release pursuant to conditions).

126. If Mr. Misankov were to be released, he would stay with friends in Rosemont, Illinois. Misankov Decl. ¶ 39. He would be picked up in a large enough vehicle, with multiple back rows, where he could maintain proper social distance as they take him to their home. *Id.*

g. Juan Manuel Rositas-Martinez

127. Juan Manuel Rositas-Martinez is nearly 55 years old and suffers from medical and health conditions—hypertension, obesity, and a history of smoking—that place him at elevated risk of severe illness and death from COVID-19. Rositas-Martinez Decl. ¶¶ 2, 7–8, 15; Glenberg Decl. Ex. H at JCDC-USA0002; *see* Supp. Venters Decl. ¶ 23–26.

128. Mr. Rositas-Martinez frequently experiences arrhythmic episodes during which his heartbeat is irregular. Rositas-Martinez Decl. ¶¶ 10–11. In early April, he began experiencing shortness of breath and swelling in his ankles. *Id.* ¶ 12. He currently takes multiple medications for his hypertension and other ailments, but continues to experience swollen ankles and to cough every day. *Id.* ¶¶ 9, 12–14; Glenberg Decl. Ex. H at JCDC-USA0030–32.

129. Hypertension alone places Mr. Rositas-Martinez at elevated risk for serious illness and death from COVID-19. Venters Decl. ¶ 25.

130. Mr. Rositas-Martinez's obesity and history of smoking further elevate his risk of

severe COVID-19. He is 5’5” tall and weighs 230. Rositas-Martinez Decl. ¶ 7. This corresponds to a BMI of 38.3, which is considered clinically obese.⁴² Moreover, Mr. Rositas-Martinez smoked around one pack of cigarettes each week for around 15 years. Rositas-Martinez Decl. ¶ 15. Together, hypertension, obesity, and a history of smoking place Mr. Rositas-Martinez at increased risk of serious illness and death from COVID-19. Supp. Venters Decl. ¶ 26.

131. Mr. Rositas-Martinez can be safely released from the JCDC. Although he does have past criminal convictions, conditions of release can adequately address any concerns about community safety and flight risk, as they have for other medically vulnerable ICE detainees previously ordered released by this Court. *See, e.g., Herrera-Herrera v. Kolitwenzew*, No. 20-cv-2120-SEM-TSH, Dkt. 31 (C.D. Ill. May 19, 2020) (ordering release pursuant to conditions). Moreover, Mr. Rositas-Martinez has strong community ties. He has four U.S. citizen children, has lived in the United States continuously since the age of four, and his sister is a Lawful Permanent Resident who lives in Cicero. Rositas-Martinez Decl. ¶¶ 3–4, 74.

132. If released, Mr. Rositas-Martinez will live with his sister and her family. *Id.* ¶ 74. His eldest daughter will pick him up from the JCDC and drive to his sister’s home in Cicero, Illinois, while they both wear masks and the car windows are rolled down. *Id.* ¶ 77. Mr. Rositas-Martinez will be able to self-quarantine at his sister’s home for 14 days. *Id.* ¶¶ 74–76. Mr. Rositas-Martinez has committed to wearing a facemask whenever he is in public, including in the car, and to adhering to a pre-arranged plan based on CDC guidelines to protect himself and

⁴² Ctrs. for Disease Control and Prevention, *Overweight & Obesity, Defining Adult Overweight and Obesity* (last visited June 26, 2020), <https://www.cdc.gov/obesity/adult/defining.html> (providing body mass index calculator and noting that a BMI of 30.0 or higher “falls within the obese range”), attached as Ex. 64 to the Supp. Choudhury Decl.

everyone else in his sister's home. *Id.* ¶¶ 76–77.⁴³

133. Mr. Rositas-Martinez also agrees to comply with any additional conditions imposed by either this Court or ICE. Rositas-Martinez Decl. ¶ 79.

V. ICE Continues to Expose Petitioners to Dangerous Conditions of Confinement Despite Being Advised of These Dangers.

134. Public health measures across the country, including in Illinois, demonstrate the widespread recognition that the only clinically recommended course of action to protect individuals who are older or have medical or health conditions that make them vulnerable to serious illness and death from COVID-19 is to prevent infections through social distancing and vigilant hygiene. Only these practices mitigate the risk of contracting this novel virus that has no cure. *See Golob Decl.* ¶ 10.

135. CDC guidance for detention centers and prisons specifically recommends implementing social distancing strategies to increase the physical space between people, “ideally 6 feet between all individuals, regardless of the presence of symptoms.”⁴⁴

136. As discussed above however, Respondents are not ensuring social distancing, putting all detainees, and especially those at high risk of severe disease and death, in jeopardy. *See generally, supra* ¶¶ 51–56.

137. CDC guidance on correctional and detention facilities emphasizes that there are many opportunities for the coronavirus to be introduced into a detention facility, including by

⁴³ *See also* Ctrs. for Disease Control and Prevention, *Coronavirus Disease (COVID 19), Households Living in Close Quarters*, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/living-in-close-quarters.html> (last visited June 26, 2020).

⁴⁴ Ctrs. for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 1, 11 (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>, Dkt. 7-3 at 82 (Ex. 30 to the Choudhury Decl., at 11).

staff and through the transfer of detainees. Venters Decl. ¶¶ 12-14, 18-19.

138. As discussed above, however, Respondents' screening and monitoring procedures fail to guard against entry of the coronavirus into the facility by staff or new detainees. *See generally, supra* ¶¶ 58-67. Respondents also expose Petitioners to unsanitary conditions that increase the risk of infection and spread. *See generally, supra* ¶¶ 55-57.

139. Respondents have long been aware of the need to take swift and comprehensive action to guard against the entry and rapid transmission of the coronavirus into the JCDC. On March 17, 2020, as infection rates began to increase in Illinois at an alarming rate, the National Immigrant Justice Center ("NIJC") sent a letter to Respondents Albence, Guadian, Kolitwenzew and other agency officials, alerting them to the high risk of COVID-19 infection in detention facilities and the dangerous health outcomes of an infection for vulnerable people.⁴⁵

140. Respondents Albence, Guadian and Kolitwenzew did not respond to the letter. Nor did any other agency official.

141. To the contrary, ICE has resisted the release of medically vulnerable detainees from the JCDC despite the known risks of COVID-19 and the lack of adequate measures to ensure the virus does not enter the jail, does not rapidly spread once inside, and does not infect medically vulnerable detainees. ICE released five medically vulnerable detainees from JCDC between April 23, 2020 and June 2, 2020, only *after* courts in this District ruled that JCDC conditions posed an objectively unreasonable risk of severe illness and death from COVID-19 and ordered their release. *See Ochoa v. Kolitwenzew*, No. 20-cv-2135, 2020 WL 2850706 (C.D. Ill. June 2, 2020); *Herrera-Herrera v. Kolitwenzew*, No. 2:20-cv-2120-SEM-TSH, Dkt. 36 (C.D.

⁴⁵ Letter from Hena Mansori & Keren Zwick, National Immigrant Justice Center, to Matthew T. Albence, Acting Director, U.S. Immigration and Customs Enforcement, et al. (Mar. 17, 2020), Dkt 7-3 at 99-102 (Ex. 31 to the Choudhury Decl.).

Ill. May 19, 2020); *Ruderman v. Kolitwenzew*, No. 20-cv-2082, 2020 WL 2449758 (C.D. Ill. May 12, 2020); *Favi v. Kolitwenzew*, No. 20-cv-2087, 2020 WL 2114566 (C.D. Ill. May 4, 2020); *Hernandez v. Kolitwenzew*, No. 20-cv-2088-SLD, Dkt. 12 (C.D. Ill. Apr. 23, 2020).

142. CDC guidance recognizes that detained people are at heightened risk for COVID-19 infection once the virus is introduced to a facility.⁴⁶ All of the risks are present here because Petitioners are all people who are 50 or older and/or have preexisting medical or health conditions that place them at increased risk of severe complications and death from COVID-19. Petitioners cannot ensure social distancing, must share common spaces and even cells with others, and must touch common surfaces without sanitation in between. New people, including staff, come into the JCDC each day.

143. Yet, ICE continues to detain Petitioners in contradiction of the advice of medical and public health experts and in conditions in which the coronavirus will rapidly spread once introduced, infecting up to 99% of all detainees within three months.⁴⁷ As discussed above, the JCDC's screening measures are insufficient to prevent introduction of the virus into a setting where it will spread like wildfire endangering all people who are at high risk of severe COVID-19 due to age and/or medical or health conditions.

LEGAL FRAMEWORK

I. Medically Vulnerable Immigrant Detainees are Entitled to Due Process Protection Against Heightened Risk of Exposure to COVID-19, a Potentially Lethal Infectious Disease.

144. “[W]hen the State takes a person into its custody and holds him there against his will, . . . when [it] so restrains an individual’s liberty that it renders him unable to care for himself,

⁴⁶ Dkt. 7-3 at 82 (Ex. 30 to the Choudhury Decl., at 2).

⁴⁷ See ICE Facilities Study, Dkt. 7-2 at 31–47 (page 6 & Table 1, reporting that a 500-person facility will have between 386 and 494 infected people in 90 days).

and at the same time fails to provide for his basic human needs—[including] reasonable safety—it transgresses the substantive limits on state action set by . . . the Due Process Clause.” *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989).

145. Immigrant detainees, even those with prior criminal convictions, are civil detainees entitled to the same Fifth Amendment due process protections as any other pretrial detainee. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Due process entitles civil detainees to more considerate treatment and conditions of confinement than people convicted of criminal offenses, whose conditions of confinement are designed to punish. *See Davis v. Wessel*, 792 F.3d 793, 800 (7th Cir. 2015) (recognizing that conditions of confinement for civil detainees violate due process if they are “express[ly] inten[ded] to punish”) (citing *Bell v. Wolfish*, 441 U.S. 520, 538 (1979)); *see also Belbachir v. Cnty. of McHenry*, 726 F.3d 975, 979 (7th Cir. 2013) (ICE detainees are entitled to “at least as much protection as” and “probably more” than “convicted criminals are entitled to under the Eighth Amendment”).

146. As civil detainees, Petitioners must show “*only*” that the challenged conditions are *objectively* unreasonable—a less exacting standard than “deliberate-indifference.” *Hardeman v. Curran*, 933 F.3d 816, 822–24 (7th Cir.2019) (emphasis supplied); *see also Ochoa*, 2020 WL 2850706, at *10 (articulating the “objectively unreasonable” standard); *Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at *27–28 (same). Reasonableness is measured by the cumulative effect of challenged conditions. *Gray v. Hardy*, 826 F.3d 1000, 1005 (7th Cir. 2016) (addressing Eighth Amendment claim). The conditions of confinement for an individual in immigration detention must be “reasonably related to a legitimate goal.” *Hardeman*, 933 F.3d at 823 (quoting *Wilson v. Seiter*, 501 U.S. 294, 303 (1991)). Conditions of confinement that either serve no legitimate purpose or are not reasonably related to a legitimate governmental objective violate due process.

II. The Government’s Continued Detention of Petitioners Under Current JCDC Conditions is Objectively Unreasonable in Violation of the Right to Due Process.

147. As discussed further below, like the petitioners in *Ochoa*, *Herrera-Herrera*, *Ruderman*, *Favi*, and *Hernandez*, each Petitioner has at least one, if not more, preexisting medical or health condition recognized by the CDC and/or ICE as placing them at high risk of serious illness and death from COVID-19. Several Petitioners are also age 50 or older, and therefore also have additional increased risk of severe COVID-19 due to age, which CDC guidelines make clear is a risk factor *independent* of underlying medical and health conditions.⁴⁸

148. JCDC conditions place Petitioners, all of whom are medically vulnerable, at an objectively unreasonable risk of severe illness and death from COVID-19. As a result, the continued detention of each Petitioner in these dangerous conditions is not reasonably related to the purpose of each Petitioner’s detention, particularly “when there are a plethora of means other than physical detention at [the Government’s] disposal by which they may monitor civil detainees and ensure that they are present at removal proceedings, including remote monitoring and routine check-ins.” *Herrera-Herrera*, No. 2:20-cv-2129-SEM-TSH, Dkt. 26 at 39 (citing *Thakker v. Doll*, No. 1:20-cv-480, 2020 WL 1671563, 8 (M.D. Pa. Mar. 31, 2020)) (internal quotation marks omitted).

149. Courts of this District have found on five separate occasions in recent months that the measures taken by JCDC to prevent coronavirus transmission were “[i]n light of the seriousness of the pandemic . . . insufficient” to minimize the risk of severe illness and death from COVID-19 to medically vulnerable ICE detainees in the facility. *Hernandez*, No. 2:20-cv-2088-SLD, Dkt. 12, at 17; *see also Ochoa*, 2020 WL 2850706, at *12–13; *Herrera-Herrera*, No.

⁴⁸ CDC, *CDC Updates, Expands List of People at Risk for Severe COVID-19 Illness*, attached as Ex. 63 to Supp. Choudhury Decl.

2:20-cv-2120-SEM-TSH, Dkt. 36, at 36–37; *Ruderman*, 2020 WL 2449758, at *12; *Favi*, 2020 WL 2114566, at *11. Given “the totality of the circumstances—which include Petitioner’s heightened risk of serious illness or death from COVID-19, the inability of other jails and detention centers to control the spread of the virus once it enters the facility, and the limits of the precautionary measures taken by the facility and that could conceivably be taken at the facility in light of the potential for asymptomatic spread,” the *Hernandez* court found that “Petitioner’s continued detention under these conditions is objectively unreasonable and violates his substantive due process rights under the Fifth Amendment.” *Hernandez*, No. 2:20-cv-2088-SLD, Dkt. 12, at 19–20. And even more recently, in *Ochoa*, *Herrera-Herrera*, *Ruderman*, and *Favi*, courts determined that “considering the totality of the circumstances,” continued detention in the JCDC of the medically vulnerable detainees in those cases was “excessive in relation to the Government’s legitimate nonpunitive governmental purpose” for detention. *Ochoa*, 2020 WL 2850706, at *12 (citing *Kingsley v. Hendrickson*, 576 U.S. 389 (2015) (internal quotation marks omitted)); *Herrera-Herrera*, No. 2:20-cv-2120-SEM-TSH, Dkt. 36, at 38–39 (same); *Ruderman*, 2020 WL 2449758, at *13 (same); *Favi*, 2020 WL 2114566, at *12 (same).⁴⁹

150. The *Ochoa*, *Herrera-Herrera*, *Ruderman*, *Favi*, and *Hernandez* decisions refer to preventative measures that Respondents claim have been taken at JCDC, including the distribution of masks to detainees; screening new detainees and staff through temperature checks; separation of new detainees from the general population for five to fourteen days; conduct of “a disinfection routine three times a day, which includes door handles, toilets, showers, and tables”; reduction of the ICE detainee population in the JCDC; and “staff wear[ing]

⁴⁹ Although this Court reached a different conclusion when considering Mr. Crainic’s motion for a temporary restraining order, it nevertheless observed that JCDC conditions remain “serious.” Dkt. 52 at 28–29.

gloves, a hair net, and face mask” during meal distribution and “verbally remind[ing] the detainees to maintain a distance of six feet from the detainee in front of them.” *Ochoa*, 2020 WL 2850706, at *2–3; *Herrera-Herrera*, No. 2:20-cv-2120-SEM-TSH, Dkt. 36, at 14–17; *see also Ruderman*, 2020 WL 2449758, at *3–4; *Favi*, 2020 WL 2114566, at *4; *Hernandez* No. 20-cv-2088-SLD, Dkt. 12, at 7–8. The *Favi* court noted, however, that “[d]espite Respondent’s declaration that these policies were [in] place as of March 9, 2020, Petitioner reports that, at least as of his release on April 10, 2020, many of these measures were not practiced.” 2020 WL 2114566, at *4.

151. Despite Respondents’ measures, however, this Court recently recognized in *Ochoa* that “[d]etainees still appear to be largely relying on voluntary social distancing measures of others, and it is not clear whether the policies of JCDC are being uniformly executed in practice.” 2020 WL 2850706, at *11.

152. Moreover, each decision ordering the release of medically vulnerable ICE detainees from the JCDC due to the risk of harm from COVID-19 recognizes that the lack of an identified case of COVID-19 in the facility does not resolve whether current conditions violate due process. *See Ochoa*, 2020 WL 2850706 at *12 (recognizing that even without a confirmed case of COVID-19 in the JCDC, “the only way to determine if the virus is present in the facility is to do wide-spread testing for the virus, which Respondent has not alleged has occurred, and may not be practical given nationwide limited testing capacity”); *Favi*, 2020 WL 2114566, at *11 (lack of known current cases does not resolve whether conditions violate due process “in light [of] the individual petitioner’s health conditions and inadequate precautions taken at the facility to prevent potential introduction and spread of COVID-19”); *Herrera-Herrera*, No. 2:20-cv-2120-SEM-TSH, Dkt. 36, at 36; *Ruderman*, 2020 WL 2449758, at *12; *Hernandez*, No. 20-

cv-2088-SLD, Dkt. 12, at 19–20. Moreover, as shown by the ICE Facilities Study, once COVID-19 enters a facility like JCDC, it will infect between 77% and 99% of detainees within 90 days. Dkt. 7-2 at 37, 40, 43 (Table 1).

153. In the face of comparable circumstances, federal courts around the country have acted by releasing medically vulnerable ICE detainees because detention conditions place them at substantial risk of severe illness or death from COVID-19 even in the absence of a confirmed case in the facility. *See, e.g., Hernandez v. Wolf*, No. 20-cv-617, Dkt. 17 (C.D. Cal. Apr. 1, 2020); *Robles Rodriguez v. Wolf*, No. 5:20-cv-627-TJH-GJS, Dkt. 2, at 35–39 (C.D. Cal. Apr. 2, 2020); *Malam*, 2020 WL 1672662; *Ortuño v. Jennings*, No. 20-cv-2064-MMC, 2020 WL 1701724 (N.D. Cal. Apr. 8, 2020); *Malam v. Adducci*, No. 2:20-cv-10829-JEL-APP, 2020 WL 1809675 (E.D. Mich. Apr. 9, 2020); *Bent v. Barr*, No. 4:19-cv-06123-DMR, 2020 WL 1812850 (N.D. Cal. Apr. 9, 2020); *Doe v. Barr*, No. 3:20-cv-02141-LB, 2020 WL 1820667 (N.D. Cal. Apr. 12, 2020); *Perez v. Wolf*, No. 5:19-cv-05191-EJD, 2020 WL 1865303 (N.D. Cal. Apr. 14, 2020); *Fofana v. Albence*, No. 20-10869, 2020 WL 1873307 (E.D. Mich. Apr. 15, 2020); *Vazquez Barrera v. Wolf*, No. 20-cv-01241, ECF, Dkt. 31 (S.D. Tex. Apr. 17, 2020); *Amaya-Cruz v. Adducci*, No. 1:20-cv-789, 2020 WL 1903123 (N.D. Ohio Apr. 18, 2020); *Zaya v. Adducci*, No. 5:20-cv-10921-JEL-APP, Dkt. 9 (E.D. Mich. Apr. 18, 2020); *Singh v. Barr*, No. 20-cv-02346-VKD, 2020 WL1929366 (N.D. Cal. Apr. 20, 2020); *Kaur v. U.S. Dep’t of Homeland Sec.*, No. 2:20-cv-03172-ODW (MRWx), 2020 WL 1939386 (C.D. Cal. Apr. 22, 2020).

154. Although “[t]he Government places great weight on its claim that it has largely implemented all of the guidance from the CDC,” this Court and others nationwide “have found [that] the CDC’s guidelines, while important, are not dispositive standing alone.” *Ochoa*, 2020

WL 2850706, at *11.

155. Although JCDC staff occasionally tell people to stay six feet apart, detainees frequently violate the social distancing requirements without consequence. Rositas-Martinez Decl. ¶¶ 42, 51–52; Misankov Decl. ¶¶ 26, 29, 31, 38; Ibrahim Decl. ¶¶ 23, 29; Chinchilla-Rivas Decl. ¶ 26. Most detainees still spend their days seated close together at tables in the dayroom, playing cards and board games at the same tables where they will later eat and sort laundry. *Id.* They continue to stand close together in line in order to receive their medication and meals. Rositas-Martinez Decl. ¶¶ 43, 51–54; Misankov Decl. ¶¶ 29, 31. Detainees are not given gloves or hand sanitizer. Misankov Decl. ¶ 34; Rositas-Martinez Decl. ¶¶ 68–69; Gonzalez Torres Decl. ¶ 37.

156. Petitioner’s expert, Dr. Homer Venters, found that the jail still has no unified COVID-19 mitigation plan, and that the absence of role clarity that such a plan provides “can increase transmission of the virus and the likelihood of serious illness or death,” and cause “staff and supervisors quickly [to] become overwhelmed by the tasks of seeking out the latest guidelines or protocols.” Venters Decl. ¶ 5(a). Moreover, “[t]here are not sufficient medical staff to conduct screenings of high-risk or quarantine patients at any time or to maintain medical monitoring of isolation patients with COVID-19 symptoms.” *Id.* ¶ 5(b). The jail’s protocols for new admission housing are inadequate to identify new detainees with coronavirus infection and procedures for sick call do not promptly track emerging signs of COVID-19 in the JCDC. *Id.* ¶ 5(c)-(d). This confirms that even if Respondent’s measures are actually implemented, they “are insufficient to minimize Petitioner’s risk of harm.” *Herrera-Herrera*, No. 2:20-cv-2120-SEM-TSH, Dkt. 36, at 34.

157. Due to COVID-19, immigration courts are moving glacially.⁵⁰ As discussed below, numerous countries have closed their borders and are not accepting international flights due to COVID-19. Whether Petitioners are in ongoing immigration proceedings or awaiting deportation after entry of a final order of removal, Petitioners face the prospect of lengthy detention in dangerous conditions due to the COVID-19 pandemic.

158. But ICE can readily release Petitioners in order to reduce their elevated risk of severe illness and death from COVID-19 while in the JCDC. The agency has a longstanding practice of releasing particularly vulnerable detainees on medical grounds. As founding Director of the ICE Office of Detention Policy and Planning, Dr. Dora Schriro, explains, “ICE exercises discretion to release or decline to detain medically vulnerable individuals, even when those individuals are, per statute, mandatorily detained.” Schriro Decl. ¶ 23.

159. As discussed in further detail below, Respondents must immediately release Petitioners to prevent their serious illness and/or death because there is no legitimate concern that Petitioners might be dangerous. Moreover, if any such concern exists for any Petitioner, that concern can be directly addressed through the many alternatives to detention at ICE’s disposal. Schriro Decl. ¶¶ 44–49. Dr. Schriro explains:

Alternatives to detention are effective because they are tailored to an individual depending on their levels of need and risk in the community [while] maximiz[ing] medically vulnerable and low-risk people’s ability to remain healthy in the community while protecting public safety and the integrity of court proceedings and other legal requirements.

Id. ¶ 49.

⁵⁰ As of May 2020, there were over 1.1 million cases pending in the immigration court system, and the average wait for a disposition in Chicago was 894 days. *See Immigration Court Backlog Tool*, TRAC Reports, Inc., https://trac.syr.edu/phptools/immigration/court_backlog/ (last visited June 26, 2020), Dkt. 7-6 at 2.

160. Indeed, 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. This Court has availed itself of such conditions in other recent cases.⁵¹

161. For example, ICE’s Intensive Supervision Appearance Program (“ISAP”) relies on the use of electronic bracelet monitors, GPS and Voice-ID technology, home and office visits, and reporting to supervise participants.⁵² 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.⁵³

a. Florian Cranic

162. The detention of Mr. Florian Cranic is objectively unreasonable in light of his heightened medical risk of harm from COVID-19 and the government’s limited interest in continuing to detain him.

163. Mr. Cranic suffers from multiple medical conditions—including diabetes, hypertension, and reduced right-lung capacity—that the CDC determined are risk factors for serious illness and death from COVID-19. CDC, *Coronavirus Disease (COVID-19), People of Any Age with Underlying Medical Conditions*, attached as Ex. 62 to the Supp. Choudhury Decl.; Cranic JCDC Med. Recs., Dkt. 7-4 at 130–131, 134, 137 (Ex. 40 to the Choudhury Decl.);

⁵¹ See *Herrera-Herrera v. Kolitwenzew*, No. 2:20-cv-2120, Dkt. 31 (C.D. Ill. May 19, 2020) (ordering release on conditions); *Favi v. Kolitwenzew*, No. 20-CV-2087, 2020 WL 2114566, at *12 (C.D. Ill. May 4, 2020) (same).

⁵² Schriro Decl. ¶ 47; U.S. Immigration and Customs Enforcement, Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program (May 11, 2005), https://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf, Dkt. 7-6 at 48–49 (Ex. 51 to the Choudhury Decl.)

⁵³ U.S. Gov’t Accountability Office, *GAO-15-26, Report to Congressional Committees, Alternatives to Detention: Improved Data and Collection and Analyses Needed to Better Assess Program Effectiveness* 30 (2014), <https://www.gao.gov/assets/670/666911.pdf>, Dkt. 7-7 at 35 (Ex. 53 to the Choudhury Decl.)

Crainic Decl., Dkt. 2, ¶ 7.

164. Mr. Crainic receive diabetes medication at JCDC and, to this day, frequently feels dizzy and cannot feel his fingers or toes on a daily basis. Crainic Decl., Dkt. 2, ¶ 8, 16.

165. Despite efforts to protect himself—including wearing a mask⁵⁴ and practicing social distancing—Mr. Crainic still must share a small cell with a cellmate, while also being exposed to other detainees while waiting for meals and medicine, in addition to exposure through surfaces in common areas. *See* Supp. Crainic Decl., Dkt. 32, ¶ 6, 10–11.

166. Mr. Crainic’s “unique medical conditions place him at an increased risk of serious illness or death” from COVID-19 contracted at JCDC. *Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at 38; *see also id.* at 32 (“hypertension . . . places Petitioner at an increased risk of serious illness or death” from COVID-19); *Gomes v. U.S. Dep’t of Homeland Sec., Acting Sec’y*, No. 20-cv-453-LM, 2020 WL 2514541, at *15–16 (D.N.H. May 4, 2020) (“hypertension . . . places individuals at a high probability of developing severe disease from COVID-19”).

167. Mr. Crainic can be safely released from JCDC. He does not pose a flight risk, as Mr. Crainic shares a house with his daughter (a lawful permanent United States resident) in Glenview, Illinois and is very connected with his community. Crainic Decl., Dkt. 2, ¶ 5. Additionally, Mr. Crainic has no history of violent crime and does not pose a public safety threat.

168. Further, any concerns regarding whether Mr. Crainic poses a flight risk may be addressed through release conditions imposed by this Court and ICE. *See Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at 39 (noting the “plethora” of alternatives to detention ICE may use to

⁵⁴ It is difficult for Mr. Crainic to wear a mask due to his reduced right lung capacity. *See* Supp. Crainic Decl., Dkt. 32, ¶ 3. After five-to-ten minutes of wearing a mask, he starts to cough and struggles to breath, making it difficult to wear a mask for hours at a time, such as when his cellmate is in their cell, when Mr. Crainic is waiting to receive medical care, or when he sleeps. *Id.*

ensure presence at deportation). Mr. Crainic has secured a release plan and will follow the Court's requirements and CDC recommendations for social distancing and wearing personal protective equipment when leaving the JCDC and will undertake 14 days of self-quarantine when at home. Supp. Crainic Decl., Dkt. 32, ¶ 12.

169. In light of the totality of the circumstances—including Mr. Crainic's significant risk of severe COVID-19 due to diabetes, hypertension, reduced right-lung capacity, his age (nearly 50), and his lack of a violent criminal history, strong community ties (including his daughter), and willingness to abide by whatever release conditions this Court imposes—the continued detention of Mr. Crainic as a *civil* detainee in the JCDC is objectively unreasonable. *See Hardeman v. Curran*, 933 F.3d 816, 822–24 (7th Cir. 2019).

b. Mumin Fatai Owolabi

170. The detention of Mr. Owolabi is objectively unreasonable in light of his heightened medical risk of harm from COVID-19 and the government's limited interest in continuing to detain him.

171. Mr. Owolabi has been diagnosed with not one but *two* medical conditions (hypertension and diabetes) that the CDC has determined are risk factors for serious illness and death from COVID-19. Owolabi Decl. ¶ 8; Supp. Venters Decl. ¶ 15; CDC, *Coronavirus Disease (COVID-19), People of Any Age with Underlying Medical Conditions*, attached as Ex. 62 to the Supp. Choudhury Decl. While he is taking medication for these conditions, his blood pressure readings are consistently above normal or at the high end of normal. Owolabi Decl. ¶ 10; *see also* Glenberg Decl. Ex. A at JCDC-USA0454, 0459, 0462, 0465–0471.

172. Petitioner's expert, Dr. Venters, concludes that hypertension and diabetes place Mr. Owolabi at an elevated risk of severe COVID-19. Supp. Venters. Decl. ¶ 13.

173. Mr. Owolabi does what he can to protect himself, including spending most of the

day in his cell and eating meals there, wearing a mask, socially distancing himself when possible and practicing good hygiene. Owolabi Decl. ¶¶ 31–37. But because of his medical conditions, Mr. Owolabi nevertheless faces a high risk of harm from severe COVID-19 contracted in the JCDC. *See Perez v. Wolf*, No. 5:19-cv-05191-EJD, 2020 WL 1865303, at *13 (N.D. Cal. Apr. 14, 2020).

174. The sole purpose for Mr. Owolabi’s detention is to ensure his deportation to Nigeria pursuant to a final order of removal. But his continued detention in conditions that pose such a grave risk to his health and life is not reasonably related to advancing this objective, much less any other legitimate, nonpunitive government objective.

175. Respondents have detained Mr. Owolabi for more than a year and a half (and months since the issuance of a final order of removal) with the intention of removing him soon. *See Glenberg Decl. Ex. I at 3* (United States’ Third Supp. Discovery Disclosure). But they readily acknowledge that they have so far been unable to secure travel arrangements for Mr. Owolabi in light of the pandemic. *Id.* Indeed, the Nigerian federal government suspended all international and domestic commercial flights into and within Nigeria.⁵⁵ As of June 19, 2020, there were 18,480 confirmed cases of COVID-19 in the country.⁵⁶ On April 23, 2020, all Nigerian state governors even banned interstate travel within Nigeria, and President Buhari announced a cessation of movement in the Federal Capital Territory and in Lagos and Ogun States to reduce the spread of COVID-19.⁵⁷ A nationwide curfew was put into place as of June 2,

⁵⁵ U.S. Embassy & Consulate in Nigeria, COVID-19 Information, <https://ng.usembassy.gov/u-s-citizen-services/covid-19-information/> (last accessed June 26, 2020) attached as Ex. 65 to the Supp. Choudhury Decl.

⁵⁶ *Id.*

⁵⁷ *Id.*

2020 from 10:00 PM-4:00 AM every day for that same reason.⁵⁸ In other words, there is no telling when travel arrangements may be made for Mr. Owolabi's deportation to Nigeria, but it seems highly unlikely this can be achieved in July as Respondents suggest. Thus, Mr. Owolabi faces lengthy detention in dangerous conditions in the JCDC where he is at heightened risk of contracting potentially lethal COVID-19 unless he is released.

176. Moreover, this Court can safely release Mr. Owolabi because he poses no public safety threat or flight risk. Mr. Owolabi has no criminal record and has extensive community ties in the United States, which ensure that he will appear for his deportation flight. *Owolabi Dec.* ¶¶ 4–5, 38.

177. Mr. Owolabi has a home to go to in Chicago, Illinois with his wife and stepsons, who are all U.S. citizens. *Id.* ¶¶ 4, 39–44. He has a brother in Houston, Texas who is also a U.S. citizen. *Id.* ¶ 5. Mr. Owolabi has secured a safe way to travel to his home if he is released, has will self-quarantine for 14 days once at home, and has agreed to follow whatever conditions are imposed on him by this Court. *Id.* ¶¶ 39–44; *Kingsbury Dec.* ¶¶ 3–7. These facts support a finding that Mr. Owolabi is not a threat to the community or a flight risk, and that he should be released from the JCDC to enable him to protect himself from COVID-19 through social distancing, vigilant hygiene, and other measures.

178. In light of the totality of the circumstances—which include Mr. Owolabi's significant risk of severe COVID-19 due to hypertension and diabetes, his lack of criminal history, his strong community ties, his confirmed release plan, and his willingness to abide by whatever release conditions this Court will impose—the continued detention of Mr. Owolabi as a *civil* detainee in the JCDC is objectively unreasonable. *See Hardeman*, 933 F.3d at 822–24.

⁵⁸ *Id.*

c. Mario Arnaldo Gonzalez Torres

179. The detention of Mr. Gonzalez Torres is objectively unreasonable in light of his heightened medical risk of harm from COVID-19 and the government’s limited interest in continuing to detain him.

180. Mr. Gonzalez Torres has hypertension and elevated cholesterol and triglycerides. Gonzalez Torres Decl. ¶¶ 7, 9. He is also clinically obese and suffers from frequent headaches, heartburn, stomach and rectal pain. Gonzalez Torres Decl. ¶¶ 6, 8, 10. The CDC has determined hypertension and obesity are risk factors for serious illness and death from COVID-19.⁵⁹

181. Petitioner’s expert, Dr. Venters, concludes that these conditions place Mr. Gonzalez Torres at an elevated risk of severe COVID-19. Supp. Venters. Decl. ¶¶ 27–29. His “unique medical conditions place him at an increased risk of serious illness or death” from COVID-19. *Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at 38.

182. The sole purpose for Mr. Gonzalez Torres’s detention is to ensure his deportation to Cuba pursuant to a final order of removal. But his continued detention in conditions that pose such a grave risk to his health and life is not reasonably related to advancing this objective, much less any other legitimate, nonpunitive government objective.

183. Respondents have detained Mr. Gonzalez Torres for more than ten months since he appeared at the U.S.-Mexico border to seek political asylum. Gonzalez Torres Decl. ¶¶ 12–14, 39. He has been detained for several months since the denial of his application and the issuance of a final order of removal. *See id.* ¶ 15, 39; Glenberg Decl. Ex. I at 3 (United States’ Third Supp. Discovery Disclosure. The government readily acknowledges that they have so far been unable

⁵⁹ CDC, *Coronavirus Disease 2019 (COVID-19), People of Any Age with Underlying Medical Conditions*, Ex. 62 to the Supp. Choudhury Decl.; *see also* Venters Decl. ¶ 25; Supp. Venters Decl. ¶ 9.

to secure travel arrangements for Mr. Gonzalez Torres. *Id.*

184. On April 2, 2020, Cuba suspended all international flights until August 1, 2020. The country is currently facing “shortages of basic medical supplies,” including those used to detect cases of COVID-19 and prevent the spread of coronavirus like most over the counter medications such as antifever or oral rehydration medications, thermometers, respiratory face masks, gloves, and other personal protective equipment.” Given the COVID-19 crisis in Cuba, it is unclear when travel arrangements may be made for Mr. Gonzalez Torres’s deportation, but it will not take place any earlier than the first week of August 1, 2020. By that time, Mr. Gonzalez Torres will have been in immigration custody for 90 days after the issuance of a final order of removal with the BIA’s decision affirming the denial of his asylum application. *See* Glenberg Decl. Ex. K at ICE-USA1237–41.

185. Thus, Mr. Gonzales Torres faces lengthy detention in dangerous conditions in the JCDC where he is at heightened risk of contracting potentially lethal COVID-19 unless he is released.

186. Moreover, this Court can safely release Gonzalez Torres because he poses no public safety threat or flight risk. He has no criminal record, Gonzalez Torres Decl. ¶ 42, and has extensive community ties in the United States—including his brother and aunt, who are Lawful Permanent Residents, and his U.S. citizen cousin—which ensure that he will appear for his deportation flight. *Id.* ¶ 4. Moreover, Mr. Gonzalez Torres has secured a safe way to travel to a destination where he can self-quarantine for 14 days before traveling to his home in Florida. *Id.* ¶ 40. These facts support a finding that Mr. Gonzalez is not a threat to the community or a flight risk, and that he should be released from the JCDC to enable him to protect himself from COVID-19 through social distancing, vigilant hygiene, and other measures.

187. Moreover, any concerns regarding whether Mr. Gonzalez Torres poses a flight risk may be addressed through release on conditions imposed by this Court and ICE, and Mr. Gonzalez is committed to complying with all such conditions. Gonzalez Torres Decl. ¶ 40; *see Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at 39 (noting the “plethora” of alternatives to detention ICE may use to ensure presence at deportation).

188. In light of the totality of the circumstances—which include Mr. Gonzalez Torres’s significant risk of severe COVID-19 due to hypertension, obesity, elevated cholesterol and triglycerides, and other ailments, as well as his lack of criminal history, strong community ties, confirmed release plan, and willingness to abide by whatever release conditions this Court will impose—the continued detention of Mr. Gonzalez Torres as a *civil* detainee in the JCDC is objectively unreasonable. *See Hardeman*, 933 F.3d at 822–24.

d. Orlando Rafael Chinchilla-Rivas

189. The detention of Mr. Chinchilla-Rivas is objectively unreasonable in light of his heightened medical risk for severe COVID-19 and the government’s limited interest in continuing to detain him.

190. Mr. Chinchilla-Rivas suffers from untreated asthma, is obese, and has an extensive history of smoking. Chinchilla-Rivas Decl. ¶¶ 7–17 (discussing asthma and lack of treatment at the JCDC); *id.* ¶ 20 (reporting height and weight that corresponds to a BMI of 31.1); *id.* ¶ 21 (discussing history of smoking half a pack of cigarettes each day for around nine years until October 2019). The CDC recognizes that moderate-to-severe asthma, obesity, and a history of smoking are risk factors for serious illness and death from COVID-19. CDC, *Coronavirus Disease 2019 (COVID-19): People of Any Age with Underlying Medical Conditions*, attached as Ex. 62 to the Supp. Choudhury Decl.; *see also Ochoa*, 2020 WL 2850706, at *11 (“[T]he Court finds that Petitioner’s asthma places him at increased risk of serious illness or death should he

contract COVID-19, even if it is not as heightened a risk as someone with severe asthma”).

Petitioner’s expert, Dr. Venters, concludes that these conditions place Mr. Chinchilla-Rivas at an elevated risk of severe COVID-19. Supp. Venters. Decl. ¶ 21.

191. Moreover, the record shows that the JCDC refuses to provide Mr. Chinchilla-Rivas with an inhaler even though the CDC clearly advises that people with moderate-to-severe asthma keep their asthma under control during the pandemic by strictly observing their asthma treatment plan and minimizing stress.⁶⁰ Mr. Chinchilla-Rivas is unable to follow either of these CDC’s directives when Respondents deny him access to the inhaler upon which he has relied throughout his life to manage and treat the symptoms of his asthma. Chinchilla-Rivas Decl. ¶ 19. Based on his untreated asthma, obesity, and history of smoking, Mr. Chinchilla-Rivas’s “unique medical conditions place him at an increased risk of serious illness and death” from COVID-19. *Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at 36.

192. The sole purpose for Mr. Chinchilla-Rivas’s detention is to ensure his appearance in ongoing removal proceedings. But his continued detention in conditions that pose such a grave risk to his health and life is not reasonably related to advancing this objective, much less any other legitimate, nonpunitive government objective.

193. Moreover, this Court can safely release Mr. Chinchilla-Rivas because he poses no public safety threat or flight risk. His sole criminal conviction was for a non-violent misdemeanor in March 2019, for which he received a suspended sentence, one year of probation, and was ordered to pay court fees. Chinchilla-Rivas Decl. ¶¶ 47–48. He fully complied with the conditions of his probation and paid the court-imposed fees. *Id.* Moreover, Mr. Chinchilla-Rivas

⁶⁰ Ctrs. For Disease Control and Prevention, *Coronavirus Disease 2019 (COVID019): People with Moderate to Severe Asthma*, Ex. 61 to the Supp. Choudhury Decl.

has demonstrated a willingness and ability to comply with the reasonable requests of law enforcement, as required to obtain a U-nonimmigrant visa. *Id.* ¶ 45.

194. Further, Mr. Chinchilla-Rivas has created a detailed release plan that ensures the health and safety of himself and his family. Chinchilla Decl. ¶¶ 47–49. If released, his mother, Maria Chinchilla-Rivas, has agreed to pick him up from JCDC and take him to her home in Indianapolis, Indiana. *Id.* She will pick him up in a full-size vehicle with three rows and enough space to allow for social distancing while traveling from JCDC to her home. *Id.* Ms. Chinchilla-Rivas will also bring masks, gloves and sanitizer for her and her son to use while traveling to her home. *Id.*

195. While released, Mr. Chinchilla-Rivas will remain at his mother's home in Indianapolis, Indiana, where he will have his own room in which to quarantine himself from the rest of the household for at least 14 days. *Id.* During his time in quarantine, Ms. Chinchilla-Rivas will perform all errands to allow her son to remain quarantined, including shopping for groceries and obtaining his medication. *Id.* She will also provide him with his meals by placing them in front of his bedroom door. *Id.* The meals will be served on disposable plates with disposable utensils so that there will be no need to wash or touch Mr. Chinchilla-Rivas's used plates or utensils. *Id.* Mr. Chinchilla-Rivas agrees to comply with the conditions imposed by the court in order to be released. *Id.*

196. Mr. Chinchilla-Rivas does not pose a flight risk given his strong ties to the community and his family, with whom he would reside if ordered released. He regularly attends his local church in Indianapolis, Indiana and hopes to eventually be able to continue pursuing his education.

197. Moreover, any concerns regarding whether Mr. Chinchilla-Rivas poses a danger

to the community or a flight risk may be addressed through release on conditions imposed by this Court and ICE, and Mr. Chinchilla-Rivas is committed to complying with all such conditions.

Chinchilla-Rivas Decl. ¶ 51; *see Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at 38.

198. In light of the totality of the circumstances—which include Mr. Chinchilla-Rivas’s significant risk of severe COVID-19 due to untreated asthma, obesity, and an extensive history of smoking, as well as his lack of a history of violent crime, demonstrated willingness to comply with his criminal sentence and the reasonable requests of law enforcement, confirmed release plan, strong ties to the community and his family, and willingness to abide by whatever release conditions this Court will impose—the continued detention of Mr. Chinchilla-Rivas as a civil detainee in the JCDC is objectively unreasonable. *See Hardeman*, 933 F.3d at 822–24.

e. Yacub Sobhi Ibrahim

199. The detention of Mr. Ibrahim is objectively unreasonable in light of his heightened medical risk for severe COVID-19 and the government’s limited interest in continuing to detain him.

200. Mr. Ibrahim suffers from hypertension, which has resulted in severe medical episodes, including hospitalization. Ibrahim Decl. ¶¶ 6, 8–9. The CDC has determined that hypertension is a risk factor for serious illness and death from COVID-19.⁶¹ Mr. Ibrahim faces a significant risk of serious illness and death from COVID-19 due to his hypertension alone. *See Herrera-Herrera*, No. 2:20-cv-2120-SEM-TSH, at *32 (May 19, 2020) (“hypertension . . . places Petitioner at an increased risk of serious illness or death” from COVID-19); *Gomes v. U.S. Dep’t of Homeland Sec., Acting Sec’y*, No. 20-CV-453-LM, 2020 WL 2514541, at *15–16 (D.N.H. May 4 2020) (“hypertension . . . [places] individuals at a high probability of developing

⁶¹ Ctrs. for Disease Control and Prevention, People of Any Age with Underlying Medical Conditions, attached as Ex. 62 to the Supp. Choudhury Decl.

severe disease from COVID-19”) (internal quotation marks and citation omitted).

201. In addition, Mr. Ibrahim’s inconsistent blood pressure readings and JCDC staff’s failure to check his blood pressure regularly raises concerns that his blood pressure is not being adequately controlled or monitored. *See* Ibrahim Decl. ¶ 10. The CDC has stated that people whose chronic illnesses are uncontrolled, or poorly controlled, face a higher risk of potential death or serious illness due to COVID-19. Supp. Venters. Decl. ¶ 10.

202. Mr. Ibrahim also faces a significant risk of serious illness and death from COVID-19 due to his untreated asthma. Asthma alone is a risk factor for severe COVID-19. *See* CDC, *Coronavirus Disease 2019 (COVID-19): People with Moderate to Severe Asthma*, Ex. 61 to the Supp. Choudhury Decl.; CDC, *Coronavirus Disease 2019 (COVID-19): People of Any Age with Underlying Medical Conditions* Ex. 62 to the Supp. Choudhury Decl.; *Ochoa*, 2020 WL 2850706, at *11. This elevated risk is further compounded by the fact that Mr. Ibrahim is not receiving prescribed asthma medication, despite repeated requests. *See* Ibrahim Decl. ¶¶ 13, 14. Because his asthma is poorly controlled, Mr. Ibrahim faces an even higher risk of potential death or serious illness due to COVID-19.

203. Petitioner’s expert, Dr. Venters, concludes that hypertension and asthma place Mr. Ibrahim at an elevated risk of severe COVID-19. Supp. Venters. Decl. ¶ 34. Mr. Ibrahim’s “unique medical conditions place him at an increased risk of serious illness or death” from COVID-19. *Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at *39.

204. The sole purpose for Mr. Ibrahim’s detention is to ensure his deportation to Brazil following the denial of his asylum application and issuance of a final order of removal. *See* Ibrahim Decl. ¶¶ 20, 21; Glenberg Decl. Ex. I at 3 (United States’ Third Supp. Discovery Disclosure). But his continued detention in conditions that pose such a grave risk to his health

and life is not reasonably related to advancing this objective, much less any other legitimate, nonpunitive objective.

205. Mr. Ibrahim plans to cooperate with ICE in the arrangements for his deportation to Brazil. Ibrahim Decl. ¶ 20. But Brazil is not currently accepting flights due to COVID-19 and it is unknown when flights will resume. Mr. Ibrahim thus faces the prospect of lengthy detention in dangerous conditions in the JCDC where he is at heightened risk of potentially lethal COVID-19.

206. Moreover, this Court can safely release Mr. Ibrahim because he poses no public safety threat or flight risk that cannot be mitigated with the many alternatives to detention that are at ICE's disposal. *See Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at *38. Additionally, Mr. Ibrahim has strong ties to the community, which support the finding that he is not a flight risk. Mr. Ibrahim came to the United States when he was just four years old and has lived in Illinois nearly his entire life. Ibrahim Decl. ¶¶ 16, 17. Throughout his life, Mr. Ibrahim has been a contributing member of both society and to his family. *Id.* ¶¶ 4, 17.

207. Mr. Ibrahim has secured a safe way to be released from the JCDC. Mr. Ibrahim's mother, a United States citizen, has agreed for him to stay at her home should he be released. *Id.* ¶¶ 17, 37, 38. There, he would have his own room and bathroom, and sufficient space for social distancing, and the ability to self-quarantine for 14 days after release. *Id.* ¶ 38. Mr. Ibrahim would also be able to socially distance during his travel from the JCDC to his mother's home immediately after release. *Id.* ¶ 37. Mr. Ibrahim is committed to complying with any release conditions this Court and ICE may impose. *Id.*

208. In light of the totality of the circumstances—which include Mr. Ibrahim's significant risk of severe COVID-19 due to poorly controlled hypertension and untreated asthma,

as well as his confirmed release plan, strong ties to the community and his family, and willingness to abide by whatever release conditions this Court will impose—the continued detention of Mr. Ibrahim as a civil detainee in the JCDC is objectively unreasonable. *See Hardeman*, 933 F.3d at 822–24.

f. Ismail Misankov

209. The detention of Mr. Misankov is objectively unreasonable in light of his heightened medical risk for severe COVID-19 and the government’s limited interest in continuing to detain him.

210. Mr. Misankov has a recent history of respiratory issues, including pneumonia, as well as an extensive history of smoking. Misankov Decl. ¶¶ 6–9, 14. Both a history of smoking and a history of respiratory issues are risk factor for severe COVID-19. *See CDC, Coronavirus Disease 2019 (COVID-19), People of Any Age with Underlying Medical Conditions*, attached as Ex. 62 to the Supp. Choudhury Decl.; Venters Decl. ¶ 25; Supp. Venters Decl. ¶ 22; *Favi*, 2020 WL 2114566, at *12 (recognizing that petitioner’s illness with pneumonia more than a decade earlier “place[d] him at an increase[d] risk [of] serious illness or death” from COVID-19).

211. Mr. Misankov continues to suffer from the effects of these respiratory issues to this day and has not received proper treatment. Misankov Decl. ¶¶ 11–12. Though doctors prescribed him an inhaler, Mr. Misankov has yet to receive it despite multiple requests for that inhaler. *Id.* Mr. Misankov still has difficulty breathing when exercising. *Id.* ¶ 12. This recent fight with pneumonia makes Mr. Misankov’s condition, at high risk of a serious illness and perhaps death from COVID-19, objectively serious.

212. Petitioner’s expert, Dr. Venters, concludes that “[b]ecause [Mr. Misankov] continues to suffer from the effects of lung infection,” and has a history of smoking, he is at high risk for serious illness or death from COVID-19. Supp. Venters. Decl. ¶ 22. Mr. Misankov’s

“unique medical conditions place him at an increased risk of serious illness or death” from COVID-19. *Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at *39.

213. The sole purpose for Mr. Misankov’s detention is to ensure his appearance in ongoing immigration proceedings. But his continued detention in conditions that pose such a grave risk to his health and life is not reasonably related to advancing this objective, much less any other legitimate, nonpunitive government objective.

214. Moreover, this Court can safely release Mr. Misankov because he does not pose a flight risk due to his strong community ties. He is fully compliant with the immigration court and has requested voluntary departure. *Misankov Decl.* ¶ 22. Though the court denied voluntary departure, it is unclear how long Mr. Misankov’s immigration proceeding may take. *Id.*

215. Additionally, Mr. Misankov has shown his commitment to comply with the requests of immigration authorities. He was informed by ICE that the agency required more documents regarding his criminal conviction. *Misankov Decl.* ¶ 19. Mr. Misankov provided every document requested by ICE over four visits to their downtown offices from November 2019 to January 31, 2020. *Id.* ¶¶ 20–21. It was on his fourth visit that ICE detained Mr. Misankov. *Id.* ¶ 21.

216. When Mr. Misankov’s green card expired in 2015, he applied for a new one and received it in 2017. *Id.* ¶ 17. He hoped to remain in the United States through at least its expiration in 2027 before it was revoked. *Id.*

217. Mr. Misankov has developed friendships that tie him to the United States, as it has been his home for 15 years. *Id.* ¶ 39. These ties support the finding that he is not a flight risk.

218. Moreover, this Court can safely release Mr. Misankov because he poses no public safety threat or flight risk that cannot be mitigated with the many alternatives to detention that

are at ICE's disposal. *See Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at *38.

219. Though the Government may argue that Mr. Misankov's criminal history is a reason to keep him detained, Mr. Misankov's record was short lived as it only spanned the month of December 2010—nearly a decade ago. *See* Glenberg Decl. Ex. J at ICE-USA1364–73. Even so, Mr. Misankov has not had any criminal issues since 2010, served his time for his conviction, and has remained in good standing since that time. Misankov Decl. ¶ 18. He poses no danger to the community.

220. In light of the totality of the circumstances—which include Mr. Misankov's significant risk of severe COVID-19 due to a recent history of respiratory illness, including pneumonia, the failure of JCDC to provide him an inhaler, and his extensive history of smoking, as well as his confirmed release plan, strong ties to the community and his family, and willingness to abide by whatever release conditions this Court will impose—the continued detention of Mr. Misankov as a civil detainee in the JCDC is objectively unreasonable. *See Hardeman*, 933 F.3d at 822–24.

g. Juan Manuel Rositas-Martinez

221. The detention of Mr. Rositas-Martinez is objectively unreasonable in light of his heightened medical risk of harm from COVID-19 and the government's limited interest in continuing to detain him.

222. Mr. Rositas-Martinez suffers from hypertension and obesity, is older than 50, and has an extensive smoking history. Rositas-Martinez Decl. ¶¶ 2, 7–8, 15. Mr. Rositas-Martinez's advanced age, coupled with his medical conditions and smoking history, increase his risk of experiencing severe illness and death from COVID-19. Supp. Venters Decl. ¶¶ 23–26; CDC, *Coronavirus Disease (COVID-19), People of Any Age with Underlying Medical Conditions*, attached as Ex. 62 to the Supp. Choudhury Decl.

223. The sole purpose for Mr. Rositas-Martinez's detention is to ensure his appearance in ongoing immigration proceedings. But his continued detention in conditions that pose such a grave risk to his health and life is not reasonably related to advancing this objective, much less any other legitimate, nonpunitive government objective.

224. Mr. Rositas-Martinez has been detained in ICE custody for over 7 months awaiting a final determination in his immigration case. *Id.* ¶ 30. He does not yet have a final order of removal nor does he know when he will be removed should he receive such an order. *Id.* ¶ 24. He therefore faces potentially lengthy detention in the JCDC in conditions that increase his already elevated risk of harm from COVID-19.

225. Moreover, this Court can safely release Mr. Rositas-Martinez because he poses no public safety threat or flight risk that cannot be mitigated with the many alternatives to detention that are at ICE's disposal. *See Herrera-Herrera*, No. 20-cv-2120, Dkt. 36, at *38.

226. Since his guilty plea in 2015, Mr. Rositas-Martinez has demonstrated rehabilitation by taking a number of addiction and self-help courses while detained in criminal custody. *Id.* ¶¶ 27–28. Based on his good-time credits, Mr. Rositas-Martinez qualified for early release in November 2019, but he was taken into ICE custody the week before his parole. *Id.* ¶¶ 28–30.

227. If released, Mr. Rositas-Martinez has arranged to live with his sister and her family. *Id.* ¶ 74. His daughter has agreed to pick up Mr. Rositas-Martinez from the JCDC and drive him with the windows down and while wearing a mask to his sister's home in Cicero, Illinois, where Mr. Rositas will be able to self-quarantine for 14 days. *Id.* ¶¶ 76–77. Mr. Rositas-Martinez has committed to wearing a facemask whenever he is in public, including in the car, and adhere to a pre-arranged plan based on CDC guidelines to protect himself and everyone else

in his sister's home. *Id.* ¶¶ 76–77. Mr. Rositas-Martinez also agrees to comply with any additional conditions imposed by either this Court or ICE. *Id.* ¶ 79.

228. In light of the totality of the circumstances—which include Mr. Rositas-Martinez's hypertension, obesity, age over 50, extensive history of smoking, confirmed release plan, demonstrated rehabilitation, ties to his family, and his willingness to abide by whatever release conditions this Court will impose—the continued detention of Mr. Rositas-Martinez as a civil detainee in the JCDC is objectively unreasonable. *See Hardeman*, 933 F.3d at 822–24.

III. Release from Detention is the Only Effective Remedy for the Government's Ongoing Violations of Petitioners' Due Process Rights, and this Court Has Authority to Order Petitioners' Release.

229. Here, due process requires ICE to release Petitioners because civil detention is excessive in relation to any legitimate governmental objective and has become punitive. Release is the only remedy to prevent this impermissible punishment. The fact that ICE already has a longstanding practice of releasing immigrants on medical grounds, on conditions of supervision it deems necessary to address flight risk, indicates that the remedy Petitioner and the proposed Class requests is neither unprecedented nor unmanageable for the agency.

230. Relief is appropriate in this case whether as a grant of Petitioner's representative petition for a writ of habeas corpus pursuant to this Court's authority under 28 U.S.C. § 2241, or an exercise of the Court's jurisdiction under 28 U.S.C. § 1331 to remedy due process claims through inherent equitable powers. Under either authority, the Court may order the release of Petitioner and the proposed Class.

231. Claims for “immediate discharge from . . . confinement” fall within the “core of habeas corpus,” *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973). Petitioners seek immediate release because it is the only remedy that would redress the constitutional violations at issue here. This Court has recognized that such a remedy is available in habeas. “While a ‘run-of-the-

mill' condition of confinement claim may not touch upon the fact or duration of confinement, here, Petitioner is seeking immediate release based upon the claim that there are essentially no conditions of confinement that are constitutionally sufficient given the facts of the case.”

Hernandez, No. 20-cv-2088-SLD, Dkt. 12, at 12–13. Accordingly, “[c]ourts across the country addressing similar claims of civil immigration detainees during the COVID-19 pandemic have found that such a claim can proceed in a habeas corpus petition.” *Favi*, 2020 WL 2114566, at *6 (listing cases).

232. Petitioners also have an independent cause of action in equity under the Fifth Amendment. Federal courts have long recognized an implicit private right of action under the Constitution to secure prospective injunctive relief against unconstitutional government conduct. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010); *see also Bolling v. Sharpe*, 347 U.S. 497 (1954).

233. This Court has “broad” equitable powers and “substantial flexibility” to fashion a remedy for the ongoing violation of the rights of Petitioner and the proposed Class, including release from detention “[w]hen necessary to ensure compliance with a constitutional mandate.” *Brown v. Plata*, 563 U.S. 493, 511 (2011); *see also Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978).

234. For example, in *Duran v. Elrod*, the Seventh Circuit upheld a district court’s order requiring the Cook County Sheriff to release pretrial detainees in order to remedy the poor conditions at the county jail. 713 F.2d 292, 297–98 (7th Cir. 1983), *cert denied*, 465 U.S. 1108 (1984). More recently, in *Brown v. Plata*, the Supreme Court held that a district court could require California to reduce its prison population to remedy its persistent failure to provide constitutionally adequate medical and mental health care. 563 U.S. 493, 502 (2011). The Court

found that “[t]he State’s desire to avoid a population limit . . . creates a certain and unacceptable risk of continuing violations of the rights of sick and mentally ill prisoners, with the result that many more will die or needlessly suffer. The Constitution does not permit this wrong.” *Id.* at 533–34.⁶²

CLAIM ONE

FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND INJUNCTIVE AND DECLARATORY RELIEF

Unlawful Punishment and Cruel Treatment and Conditions of Confinement
(in violation of the Due Process Clause of the Fifth Amendment
to the U.S. Constitution, against all Respondents
in their official and individual capacities)

235. Petitioners re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

236. The Fifth Amendment to the U.S. Constitution guarantees that civil detainees, including all immigrant detainees, must be afforded due process. Government officials violate due process when they fail to satisfy their affirmative duty to provide conditions of reasonable health and safety to civil detainees held in their custody. Government officials also violate due process when they subject civil detainees to cruel treatment and conditions of confinement that amount to punishment.

237. By detaining Petitioners in the JCDC during the COVID-19 pandemic, Respondents are subjecting Petitioners to an objectively unreasonable and heightened risk of contracting COVID-19, for which there is no vaccine and no cure. Petitioners are particularly

⁶² Much of the discussion in *Brown* concerned whether the district court’s order requiring depopulation of prisons complied with the necessity and narrow tailoring requirements of the Prison Litigation Reform Act (“PLRA”). Such statutory constraints do not apply here because “the [PLRA] does not apply to immigration detainees.” *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1878 (2017).

vulnerable to serious medical complications from COVID-19 and are at risk of illness and death as long as they are held in detention. By subjecting Petitioners to this risk, Respondents are maintaining detention conditions that amount to punishment and fail to ensure safety and health in violation of Petitioners' due process rights.

238. Likewise, the continued detention of Petitioners in the JCDC is both objectively unreasonable and deliberately indifferent to the serious medical needs of Petitioners because only releasing Petitioners from custody can adequately protect them, and enable them to protect themselves, from COVID-19. Respondents are aware of the serious risk posed by COVID-19 to Petitioners and are failing to take the only action that can respond to the medical needs of Petitioners, which is to release them.

239. As the physical and legal custodians of Petitioners, Respondents may be subject to a writ of habeas corpus ordering Petitioners' release. Respondents may also be subject to an order of this Court issued in exercise of its inherent equitable powers, which requires Petitioners' release as a remedy for the violation of their Fifth Amendment rights to due process.

PRAYER FOR RELIEF

WHEREFORE Petitioners request that the Court grant the following relief:

- a. Issue Writs of Habeas Corpus and order the immediate release of Petitioners, with appropriate precautionary public health measures, on the ground that Respondents' continued detention of Petitioners violates the Due Process Clause;
- b. Issue injunctive relief ordering Respondents to immediately release Petitioners, with appropriate precautionary public health measures, on the grounds that Respondents' continued detention of Petitioners violates the Due Process Clause;
- c. Issue a declaration that Respondents' continued detention in civil immigration custody of individuals at increased risk for severe illness and death from COVID-19 violates due

process;

- d. Award Petitioners 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
- e. Grant any other and further relief that this Court may deem fit and proper.

Dated: June 26, 2020

Respectfully Submitted,

/s/ Nusrat J. Choudhury
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on June 26, 2020, she caused a copy of the above and foregoing AMENDED EMERGENCY JOINT PETITION FOR A WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF to be served on all counsel of record via the Court's electronic filing system (CM/ECF).

/s/ Nusrat J. Choudhury