

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

JOAQUIN HERRERA-HERRERA,

Petitioner-Plaintiff,

v.

MICHAEL DOWNEY, in his individual capacity and official capacity as Sheriff of Kankakee County; 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.

Case No. \_\_\_\_\_

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

**INTRODUCTION**

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. Over four million people have tested positive for the virus, and more than a quarter-million people have died, with the numbers rising daily.<sup>1</sup> The death toll in the United States, and Illinois, is also steadily rising. There is no vaccine against COVID-19, and there is no known cure. It is no

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<sup>1</sup> World Health Org., *WHO Coronavirus Disease (COVID-19) Dashboard*, <https://covid19.who.int/> (last visited May 12, 2020), attached as Ex. 1 to the Declaration of Nusrat J. Choudhury (hereafter “the Choudhury Decl.”).

longer a question of whether and when, but of how many victims and who dies.

2. Like two other detainees whom this Court recently ordered to be released from the Jerome Combs Detention Center (“JCDC”) in Kankakee County, Petitioner-Plaintiff Joaquin Herrera-Herrera (“Petitioner”) is held in *civil detention* by U.S. Immigration and Customs Enforcement (“ICE”) at JCDC while he awaits disposition of his immigration case. He has the serious, pre-existing medical conditions of hypertension, prostate cancer, and a persistent head bump that he fears may be a tumor. He wakes every morning with fatigue, confusion, blurry vision, chest pain, and difficulty breathing, and also wakes frequently with tinnitus. Moreover, Mr. Herrera-Herrera is over 60 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 individuals who, like Petitioner, are more than 50 years old or have one of the pre-existing medical or health conditions that increase 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. For others, COVID-19 can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage tissues in other vital organs including the heart and liver. Patients with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity.

4. Because COVID-19 spreads exponentially, meaning that a single infection can grow into hundreds in a matter of days, the only known measure to mitigate widespread contagion is to deprive COVID-19 of the fuel it needs by allowing people to practice social

distancing to reduce the number of infections and ease the strain on overwhelmed local health systems. This is why officials around the world have implemented extraordinary measures, like closing schools, courts, sporting events, theaters, and other congregate settings. Across the United States, 316 million people have been urged to stay home under a statewide or local order.<sup>2</sup>

5. Since declaring Illinois a disaster area on March 9, 2020, Illinois Governor J.B. Pritzker has issued numerous executive orders that reflect the critical importance of social distancing to combat the COVID-19 pandemic.<sup>3</sup> On March 20, 2020, Governor Pritzker ordered everyone to stay at home and cease all non-essential activities, banned gatherings of 10 or more people, and required people to maintain a distance of at least six feet between themselves and others when leaving home to pursue essential activities.<sup>4</sup> 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

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<sup>2</sup> Sarah Mervosh, *See Which States and Cities Have Told Residents to Stay Home*, N.Y. Times, updated (Apr. 20, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>, attached as Ex. 24 to the Choudhury Decl.

<sup>3</sup> *See* State of Ill., *Executive & Administrative Orders*, <https://www2.illinois.gov/government/executive-orders> (last visited May 12, 2020), attached as Ex. 2 to the Choudhury Decl.; State of Ill., *Coronavirus (COVID-19) Response*, <https://coronavirus.illinois.gov/s/> (last visited May 12, 2020), attached as Ex. 3 to the Choudhury Decl.

<sup>4</sup> *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>, attached as Ex. 4 to the Choudhury Decl.; *Ill. Exec. Order in Response to COVID-19 (COVID-19 Executive Order No. 31)*, Ill. Exec. Order 2020-33 (Apr. 30, 2020), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-33.aspx>, attached as Ex. 5 to the Choudhury Decl.

“their close proximity and contact with each other in housing units and dining halls.”<sup>5</sup>

6. 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.

7. Experts accurately predicted mass contagion within correctional facilities.<sup>6</sup> In the Cook County Jail, the number of confirmed COVID-19 cases skyrocketed from 2 to 353 in the two weeks following March 23, 2020.<sup>7</sup> 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.<sup>8</sup> There were only three confirmed cases in the Stateville Correctional Facility in Illinois on March 25, 2020.<sup>9</sup> But in less than two weeks, 49 inmates and 17 staff members at the facility

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<sup>5</sup> 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>, attached as Ex. 6 to the Choudhury Decl.

<sup>6</sup> 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.”), attached as 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](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 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.”), attached as Ex. 8 to the Choudhury Decl.

<sup>7</sup> 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>, attached as Ex. 9 to the Choudhury Decl.

<sup>8</sup> See Cook Cty. Sheriff’s Office, *COVID-19 Cases at CCDOC*, <https://www.cookcountysheriff.org/covid-19-cases-at-ccdoc/> (last visited May 12, 2020), attached as Ex. 10 to the Choudhury Decl.

<sup>9</sup> *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),

had tested positive for coronavirus.<sup>10</sup> That number has since increased to 271 inmates and 207 staff.<sup>11</sup>

8. There are already 881 confirmed cases of COVID-19 among ICE detainees in 42 facilities across the country.<sup>12</sup> More than 50% of detainees who are tested have been confirmed to have the disease.<sup>13</sup> In southern Illinois, 17 ICE detainees have contracted COVID-19 in the Pulaski County Detention Center.<sup>14</sup>

9. 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].”<sup>15</sup> The ICE Facilities Study finds that after entering a facility like the JCDC, coronavirus will infect between 77% and 99% of detainees

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<https://www.chicagotribune.com/coronavirus/ct-coronavirus-pandemic-chicago-illinois-news-20200325-swgp5hlecrbabjqx52etj2rruq-story.html>, attached as Ex. 11 to the Choudhury Decl.

<sup>10</sup> Josh McGhee, *Stateville Prison Outbreak Signals COVID-19 Threat to Inmates, Surrounding Hospital Systems*, Chi. Reporter (Apr. 13, 2020), <https://www.chicagoreporter.com/stateville-prison-outbreak-signals-covid-19-threat-to-inmates-surrounding-hospital-systems/>, attached as Ex. 12 to the Choudhury Decl.

<sup>11</sup> See Ill. Dep’t of Corrections, *COVID-19 Response: Confirmed Cases*, <https://www2.illinois.gov/idoc/facilities/Pages/Covid19Response.aspx> (last visited May 12, 2020), attached as Ex. 13 to the Choudhury Decl.

<sup>12</sup> U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, <https://www.ice.gov/coronavirus> (last visited May 12, 2020), attached as Ex. 14 to the Choudhury Decl.

<sup>13</sup> *Id.* (reporting that out of 1,736 detainees tested, 881 were confirmed to have COVID-19).

<sup>14</sup> *Id.*

<sup>15</sup> 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](https://whistleblower.org/wp-content/uploads/2020/04/Irvine_JUH_ICE_COVID19_model.pdf), attached as Ex. 15 to the Choudhury Decl.

within months.<sup>16</sup>

10. In this unprecedented crisis, ICE continues to hold medically vulnerable immigrants in the JCDC, despite the growing danger of infection as the virus continues to spread in the surrounding community and in ICE facilities around the country, and despite the special vulnerability of detainees who have existing medical or health conditions or who are elderly.<sup>17</sup>

11. Current conditions and procedures in place for ICE detainees at the JCDC are insufficient to prevent the introduction of coronavirus or to prevent its rapid transmission among both detainees and staff. ICE and the JCDC are not informing Petitioner or other detainees how to prevent coronavirus transmission; they are not taking adequate measures to allow for social distancing (let alone the six-foot distancing recommended by the Centers for Disease Control and Prevention (“CDC”)); they are not requiring that all staff wear gloves and masks; they are not providing detainees with prophylactic equipment such as masks, gloves, hand sanitizer, paper towels, or sufficient cleaning supplies; and they are not regularly sanitizing common areas and objects. They are also not regularly screening detainees for symptoms and are not consistently quarantining individuals with symptoms. These failures put all detainees in jeopardy—especially those at high risk of severe disease and death. The only viable public health strategy available, given the lack of a vaccine for prevention or effective treatment at this stage of the pandemic, is to release individuals who can be considered at high risk of severe disease if infected with COVID-19.

12. As of May 11, 2020, Kankakee County recorded 33 coronavirus-related deaths,

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<sup>16</sup> *Id.* at 6 & Table 1 (reporting that a 500-person facility will have between 386 and 494 infected people in 90 days).

<sup>17</sup> 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/index.html>, attached as Ex. 16 to the Choudhury Decl.

and 753 people having tested positive for the virus.<sup>18</sup> The latter number likely under-represents total cases in the county, because the virus can present asymptotically,<sup>19</sup> and the CDC recommends against testing those with mild symptoms.<sup>20</sup> 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, such as accessing hand sanitizer or personal protective equipment.

13. Petitioner's public health and medical experts attest that the crowded conditions at the JCDC make social distancing, the most vital preventative measure, impossible. Petitioner is in a crowded pod, using the same tables and equipment as dozens of other detainees, and must stand in line close to others in order to get food and medicine, making it impossible to keep six feet of distance from other people. He must eat sitting right next to other detainees during meals served in unsanitary conditions, or in his cell where he cannot socially distance from his cellmate. Based on the inability to practice CDC-recommended social distancing and good hygiene practice and the unhygienic feeding and bathrooms situations, Petitioner's experts testify that the conditions greatly heighten likelihood of contagion, putting Petitioner at grave risk of serious illness and death.

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<sup>18</sup> See Kankakee Cty. Health Dep't., *Daily COVID-19 Update for Kankakee County* (May 11, 2020), [https://www.kankakeehealth.org/images/COVID-19\\_Daily\\_update\\_5.11.pdf](https://www.kankakeehealth.org/images/COVID-19_Daily_update_5.11.pdf), attached as Ex. 17 to the Choudhury Decl.

<sup>19</sup> 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 Ex. 18 to the Choudhury Decl.

<sup>20</sup> Ctrs. For Disease Control and Prevention, *Testing for COVID-19*, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html> (last visited May 6, 2020), attached as Ex. 19 to the Choudhury Decl.

14. 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. Courts have long recognized that the Eighth Amendment’s prohibition on cruel and unusual punishment forbids the government from leaving incarcerated people to suffer and die from infectious disease. The nature of the pandemic and the conditions of confinement at the JCDC make it impossible for Respondents to protect the vulnerable Petitioner from risk of infection. That risk of harm, which includes a one-in-seven chance of death, is “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 Petitioner’s rights to due process as a *civil* detainee, which prohibits Respondents from confining him 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.”). The conditions in the JCDC pose an “objectively unreasonable” risk to Mr. Herrera-Herrera’s health and life in violation of due process. *Hardeman v. Curran*, 933 F.3d 816, 822–23 (7th Cir. 2019).

15. The risks to Petitioner in JCDC as well as to the general public, moreover, are obvious. Two medical experts for the Department of Homeland Security recently wrote a letter to Congress warning of the unique dangers COVID-19 poses to ICE detention facilities, describing current conditions as a “tinderbox” threatening to overwhelm local hospital systems with the patient flow from detention center outbreaks, making health resources less available for local communities.

16. Courts have increasingly recognized that release from detention is the only way to protect vulnerable detainees from COVID-19. In two decisions in this District in recent weeks, Chief Judge Darrow and Judge Myerscough ordered the release from JCDC of medically



vulnerable ICE detainees because of the dangers posed by the coronavirus, even though no cases of COVID-19 had yet been confirmed in the facility. *See Hernandez v. Kolitwenzew*, No. 20-cv-2088-SLD, Dkt. 12, at \*16–18 (C.D. Ill. Apr. 23, 2020); *Favi v. Kolitwenzew*, No. 20-cv-2087, 2020 WL 2114566, Dkt. 24, at \*32–46 (C.D. Ill. May 4, 2020).

17. Chief Judge Darrow explained the risk of coronavirus to a medically vulnerable ICE detainee in the JCDC and ruled that conditions violated due process:

Detention facilities, and other congregate settings, present an increased danger for the spread of COVID-19 if it is introduced into the facility as infectious diseases communicated by air or touch are more likely to spread in these environments. . . . Whenever the government detains or incarcerates someone, it has an affirmative duty to provide conditions of reasonable health and safety. . . . Civil detainees are entitled to more considerate treatment and conditions of confinement than convicted prisoners. . . . While [JCDC] has taken a number of measures . . . to prevent the spread of the virus, Petitioner maintains that even in light of these measures, to the extent they have been implemented, Petitioner is still at a substantial risk of suffering serious harm by remaining in detention. The Court agrees. . . . In light of the seriousness of the pandemic, the Court finds these precautions are insufficient [to] address Petitioner’s medical needs and conditions of confinement. . . . 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* on Apr. 6, 2020)). Judge Myerscough similarly held:

The COVID-19 pandemic has infected over a million people and claimed over 60,000 lives in the United States alone. The situation at the Cook County Jail and others across the country has shown just how rapidly this virus can spread in a jail-like setting. For individuals like Petitioner, with a heightened risk of serious illness or death from COVID-19, there can be no doubt that 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 heightened risk due to his underlying health conditions. . . . [T]he Court finds that JCDC measures are insufficient to minimize Petitioner’s risk of harm given the Government’s limited continued interest in Petitioner’s detention. . . . [T]he Government makes no attempt to argue that JCDC is actually enforcing

CDC-recommended social distancing beyond merely posting signs and reminding detainees of distancing only while lined up for meals. . . . Given the lack of meaningful ability to social distance, should any staff member or detainee contract COVID-19, it would likely be only a matter of time before the virus would spread. . . . Moreover, a lack of COVID-19 cases only matters if there are sufficient measures in place to prevent it from entering—as it is unquestionably spreading in Illinois and Kankakee County. . . . As the Supreme Court has made clear, . . . a petitioner need not wait until he is actually injured in order to obtain preventive relief. . . . The risk of exposure to COVID-19 constitutes exactly the type of “unsafe, life-threatening condition” that “need not await a tragic event” in order to be remedied. . . . Accordingly, the Court finds that Petitioner is entitled to relief on his conditions of confinement claim until the risks of the COVID-19 pandemic subside.

*Favi v. Kolitwenzew*, 2020 WL 2114566, Dkt. 24, at \*35, 37–41, 44–45 (quoting *Helling v. McKinney*, 509 U.S. 25, 33–34 (1993)).

18. In *Hernandez v. Kolitwenzew*, Chief Judge Darrow refused to wait for “evidence that COVID-19 is in the facility,” and ordered the release of a JCDC detainee at medical risk, citing numerous decisions by federal courts nationwide that have ordered the release of medically vulnerable ICE detainees before the identification of a confirmed case of COVID-19 in the detention facility at issue. No. 20-cv-2088-SLD, Dkt. 12, at \*18–19 (C.D. Ill. Apr. 23, 2020).

19. Similarly, Judge Myerscough held that the lack of current “known cases of COVID-19 in the [JCDC] facility” is not determinative of 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.” *Favi*, 2020 WL 2114566, at \*11 (citing *Fofana v. Albence*, No. 20-10869, 2020 WL 1873307, at \*9 (E.D. Mich. Apr. 15, 2020) and *Malam v. Adducci*, No. 20-10829, 2020 WL 1873307, at \*9 (E.D. Mich. Apr. 17, 2020)).

20. Many courts are in accord. Federal courts around the country have released 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., Xochihua-Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877, 798 Fed.Appx. 52 (9th Cir. Mar. 24, 2020); *Jimenez v. Wolf*, No. 1:18-cv-10225-MLW, Dkt. 507, Mem. and Order (D. Mass. Mar. 26, 2020); *Bravo Castillo v. Barr*, No. 20-605-TJH (AFMx), 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020); *Hernandez v. Wolf*, No. 20-cv-617, Dkt. 17 (C.D. Cal. Apr. 1, 2020); *Robles v. Wolf*, No. 5:20-cv-627-TJH-GJS, Dkt. 32, at \* 35-39 (C.D. Cal. Apr. 2, 2020); *Malam v. Adducci*, No. 20-10829, Dkt. 23, 2020 WL 1672662 (E.D. Mich. Apr. 5, 2020) (as amended on April 6, 2020); *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, 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. 19-cv-05191, 2020 WL 1865303 (N.D. Cal. Apr. 14, 2020); *Fofana v. Albence*, No. 2:20-cv-10869-GAD-DRG, Dkt. 15 (E.D. Mich. Apr. 15, 2020); *Vazquez Barrera v. Wolf*, No. 20-cv-01241, ECF, Dkt. 41 (S.D. Tex. April 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. Dep't of Homeland Sec.*, No. 2:20-cv-03172-ODW (MRWx), 2020 WL 1939386 (C.D. Cal. Apr. 22, 2020).

21. Petitioner thus brings this action to enforce his rights under the Fifth Amendment to the U.S. Constitution against the government officials who detain him in a facility that places him at risk of losing his life to COVID-19. This Court has the authority and the obligation to order Respondents-Defendants (“Respondents”) to comply with the Fifth Amendment and release Petitioner from civil detention. For the reasons discussed below and in the accompanying

legal memorandum, this Court should immediately grant Petitioner's emergency request for a writ of habeas corpus, or issue a temporary restraining order or preliminary injunction, requiring ICE to temporarily release Petitioner from custody so that he has a chance to avoid infection that is likely to lead to his serious illness, and possibly even his death, from COVID-19.

### **JURISDICTION AND VENUE**

22. 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).

23. Venue lies in the United States District Court for the Central District of Illinois because Petitioner is detained by Respondents Michael Downey, Chad Koltitzew, 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. Petitioner**

24. Petitioner Joaquin Herrera-Herrera is a 60-year-old citizen of Mexico who has been detained by ICE at JCDC since February 7, 2020. Herrera-Herrera Decl. ¶¶ 2, 9–11, 26. He came to the United States in 1965, at age six, as a legal permanent resident, and has resided in the Chicago area for 55 years. *Id.* ¶¶ 19, 22. For 37 years, Mr. Herrera-Herrera was self-employed, placing and servicing vending machines in restaurants and doctors' offices. *Id.* ¶ 4. His three children and two grandchildren are U.S. citizens, and before his confinement, Mr. Herrera-Herrera had been a principal caregiver for his grandson from the grandson's infancy to

when he was seven years old. *Id.* ¶¶ 3. Mr. Herrera-Herrera was rendered into ICE custody after completing a sentence for driving under the influence. *Id.* ¶ 26. He has two prior DUI convictions and two minor drug possession convictions—none more recent than 2007. *Id.* ¶ 24. He has never been charged with a violent crime. *Id.* ¶ 25.

25. Mr. Herrera-Herrera suffers from hypertension and a lump on his head that he fears to be cancer, particularly in light of his history of prostate cancer. *Id.* ¶¶ 6–12, 14. Mr. Herrera-Herrera’s age and serious health conditions place him at high risk of severe illness or death if he contracts COVID-19.

## **B. Respondents**

26. Respondent Michael Downey is the Sheriff of Kankakee County, Illinois. Under state law, Respondent Downey has “the custody and care” of the JCDC, where Petitioner is detained. *See* 55 ILCS 5/3-6017. He is therefore Petitioner’s physical custodian and a proper respondent to Petitioner’s emergency petition for a writ of habeas corpus. Respondent Downey is sued in his official and individual capacities solely for habeas, injunctive, and declaratory relief.

27. Respondent Chad Kolitwenzew is the Chief of Corrections of the JCDC, where Petitioner is detained. Respondent Kolitwenzew is the immediate, physical custodian of the Petitioner, and is therefore a proper respondent to Petitioner’s emergency petition for a writ of habeas corpus. He is sued in his official and individual capacities solely for habeas, injunctive, and declaratory relief.

28. 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 Petitioner. 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.

29. 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 Petitioner 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.

30. Respondent Chad Wolf is the Acting Secretary for DHS. In this capacity, he has responsibility 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 Petitioner. 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 Petitioner. Petitioner sues Respondent Wolf in his official and individual capacities solely for habeas, injunctive, and declaratory relief.

#### STATEMENT OF FACTS

**A. COVID-19 poses a grave risk of harm, including serious illness and death, to people age 50 and over and those with certain medical or health conditions.**

31. COVID-19 is a disease caused by coronavirus that has reached pandemic status. According to the World Health Organization, as of May 12, 2020, more than four million people

have been diagnosed with COVID-19 in 215 countries or territories around the world and 283,271 have been confirmed to have died as a result.<sup>21</sup> In the United States, more than 1.3 million people have been diagnosed with the disease and 80,820 people have died thus far.<sup>22</sup> In Illinois, there are at least 83,021 confirmed cases and 3,601 deaths.<sup>23</sup>

32. The rates of infection are exponential, not linear, meaning that, for each person infected one day, the next day we should expect to see not one, but many more instances of infection. Venters Decl. ¶¶ 10, 13–14. Without effective public health interventions, projections by the CDC indicate about 200 million people in the United States could be infected over the course of the pandemic, with as many as 1.5 million people dying from this infection. Golob Decl. ¶ 11.

33. 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, meaning that out of 100 vulnerable people infected, fifteen will die. *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.

34. 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.

35. COVID-19 may also target the heart muscle, causing a medical condition called

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<sup>21</sup> Ex. 1 to the Choudhury Decl.

<sup>22</sup> Ctrs. for Disease Control and Prevention, *Coronavirus Disease (COVID-19), Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited May 12, 2020), attached as Ex. 20 to the Choudhury Decl.

<sup>23</sup> Ex. 3 to the Choudhury Decl.

myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure that limits exercise tolerance and the ability to work. *Id.*

36. 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.*

37. 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-19. *Id.* ¶ 3; Venters Decl. ¶ 25, 29. According to the CDC, these underlying conditions include: heart disease, lung disease, moderate-to-severe asthma, liver disease, a BMI over 40, diabetes, kidney disease, or an immune compromising condition, such as cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, or prolonged use of corticosteroids and other immune weakening conditions. Golob Decl. ¶ 3; Venters Decl. ¶ 25.<sup>24</sup> Additional risk factors include hypertension and a history of smoking. Venters Decl. ¶ 25. While patients over 70 are at the highest risk, age-related risks of severe disease from infection increase starting at age 50. Golob Decl. ¶ 3; Venters Decl. ¶ 25.

38. The CDC recognizes that hypertension (high blood pressure) is a “comorbidit[y] known to increase the health risks associated with COVID-19 infections and, thus, the likelihood of requiring medical intervention after infection.” U.S. Dep’t of Health and Human Services,

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<sup>24</sup> Ctrs. For Disease Control and Prevention, *Coronavirus Disease 2019 (COVID019): People Who Are at Higher Risk*, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (last visited May 12, 2020), attached as Ex. 21 to the Choudhury Decl.



Ctrs. for Disease Control and Prevention, Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists (Mar. 20, 2020), [https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons\\_Final\\_3-20-20\\_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf), attached as Ex. 27 to the Choudhury Decl.

39. Courts have recognized that hypertension places people at risk of severe illness or death from COVID-19. *See, e.g., 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 Centers for Disease Control & Prevention, 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](http://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html)).

40. There is no vaccine to prevent COVID-19. Golob Decl. ¶ 10. There is no known cure or anti-viral treatment for COVID-19 at this time. *Id.* The only way to protect vulnerable people from serious health outcomes, including death, is to prevent them from being infected with the coronavirus—the virus that causes COVID-19. *Id.*

41. People develop COVID-19 when they come into contact with respiratory droplets that contain the coronavirus.<sup>25</sup> Such contact can occur at a distance up to six feet. Golob Decl. ¶ 10. 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. *Id.*

42. Increasingly, research shows that social distancing is the primary means of risk

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<sup>25</sup> Ctrs. For Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): How It Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited May 12, 2020), attached as Ex. 22 to the Choudhury Decl.

mitigation. Venters Decl. ¶ 28. Distancing must occur before individuals display symptoms, as 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.”<sup>26</sup> The CDC recommends a social distance of around six feet to minimize the risk of spread. *Id.*

43. 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.<sup>27</sup>

44. Illinois has 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. It has 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.<sup>28</sup> 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. ¶ 50.<sup>29</sup>

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<sup>26</sup> Ctrs. For Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Protect Yourself*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited May 12, 2020), attached as Ex. 23 to the Choudhury Decl.

<sup>27</sup> Sarah Mervosh, *See Which States and Cities Have Told Residents to Stay Home*, N.Y. Times, updated (Apr. 20, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>, attached as Ex. 24 to the Choudhury Decl.

<sup>28</sup> Ex. 4 to the Choudhury Decl.

<sup>29</sup> Siobhan Roberts, *Flattening the Coronavirus Curve*, N.Y. Times (Mar. 27, 2020), <https://www.nytimes.com/article/flatten-curve-coronavirus.html>, attached as Ex. 25 to the Choudhury Decl.

**B. Conditions for ICE detainees in the JCDC increase the risk of coronavirus infection.**

45. The conditions for ICE detainees in the JCDC contravene all medical and public health directives for risk mitigation. People live in close quarters and cannot achieve the “social distancing” needed to effectively prevent the spread of COVID-19. Nor is such social distancing a possible solution, given the crowding of the facilities and the limitations on space. Schriro Decl. ¶ 25(c), 27; Venters Decl. ¶¶ 20–21, 28, 33, 44.

46. Mr. Herrera-Herrera is housed in a pod that holds up to 48 ICE detainees; each floor of the pod has six cells, with two bunk beds in each cell (four beds total) and no ladders, and with the cells surrounding an area called the dayroom. Herrera-Herrera Decl. ¶¶ 28, 30. Each cell has a toilet and sink located opposite the entrance. *Id.* ¶ 29.

47. Mr. Herrera-Herrera shared his cell with three cellmates until about three weeks ago, and now shares his cell with one cellmate. *Id.* ¶ 30. The cells are too small to allow cellmates ever to be six feet apart. For example, when Mr. Herrera-Herrera had three cellmates, the cellmate who shared his bunk bed had to get close to him and step on his mattress to pull himself up to the top bunk. *Id.*

48. The close quarters are particularly horrifying for Mr. Herrera-Herrera because many people have been coughing recently. *Id.* ¶ 46. Currently, two or three people in his pod with cold symptoms have not been moved or, to his knowledge, tested. *Id.* ¶ 47. After the detainees requested testing, the staff began taking the detainees’ temperatures daily, but still have not tested for COVID-19. *Id.* ¶¶ 46–47.

49. Other aspects of detention also preclude implementation of social distancing, and increase transmission opportunities. Shared use of common facilities generates further opportunities for infection. High-touch surfaces and objects, such as phones, tables, chairs,

books, fixtures in bathrooms, cells, and common spaces, and surfaces in various staging and holding areas, such as intake and the medical unit, “are not sanitized or replaced routinely.” Schiro Decl. ¶¶ 25, 33, 34. Food preparation and service are handled without a screening protocol to ensure that people who serve meals and clean the area are not sick or symptomatic and are wearing appropriate PPE to ensure they do not transmit infection. *Id.* ¶ 26.

50. For instance, at the JCDC, most detainees in the Petitioner’s pod spend most of their day (eating meals, coloring, sketching, watching television, and playing cards, checkers, and chess) at the dayroom’s five tables, each with eight stools inches apart from each other, which do not allow social distance of six feet between individuals. Herrera-Herrera Decl. ¶¶ 31–32, 45. Because he cannot keep social distance in the dayroom, Mr. Herrera-Herrera spends most of his time in his cell, but social distance is difficult there too. *Id.* ¶¶ 30, 32. People cannot practice social distancing because there is simply nowhere for them to go.

51. Social distancing is also impossible when the detainees must stand in line close together for medication, meals, and showers. *Id.* ¶¶ 33, 41, 44, 48.

52. A nurse dispenses medications to closely lined-up detainees (eight or more detainees in the morning and about 13 in the evening) from a cart at the door of the “bubble” (the correctional officers’ office). *Id.* ¶¶ 13, 40. It is impossible to maintain six feet distance in line, and the officers do not instruct detainees to do so. *Id.* ¶¶ 40, 48.

53. Detainees line up closely for meals at the same place, where certain detainees hand out trays of food from a cart. *Id.* ¶¶ 42–44. The trays are stacked one on top of another, with the tray on top touching the uncovered food on the tray below. *Id.* ¶ 43. Until May 8, the detainees who serve meals did not wear masks or gloves, and often they do not wear hairnets. *Id.* ¶ 42. It is impossible to maintain six feet distance in line. *Id.* ¶ 44.

54. Two detainees clean the dayroom tables after lunch and dinner, but not after breakfast, and they sweep and mop the dayroom floor after dinner. *Id.* ¶ 54.

55. The telephones are cleaned at the same time as the rest of the dayroom, but they are not cleaned between uses. *Id.* ¶ 55. Unless Mr. Herrera-Herrera cleans the phone before using it (using a small personal supply of disinfectant), he can feel oils from the skin of prior users. *Id.* A few detainees cover the phone with a sock when they use it, but most do not. *Id.*

56. The detainees clean their own cells. *Id.* ¶ 58. Cleaning supplies are provided only once per day. *Id.* ¶ 59. Each morning the guards provide, for all 12 cells in the pod, a single bucket of water pre-mixed with an unknown cleaning agent (whose strength, by smell, seems to vary day to day, often seeming weak and watery), spray bottles with similarly unknown and inconsistent cleaning fluids, a broom, and a mop. *Id.* ¶ 58. By the time Mr. Herrera-Herrera gets the bucket, the water may be filthy and the spray bottles empty. *Id.* The guards refuse to provide additional disinfectant when requested. *Id.*

57. Every couple of weeks, the toilet in Cell 9 of Mr. Herrera-Herrera's pod clogs and overflows. *Id.* ¶ 60. When this happened recently, the guards refused to give the detainees any disinfectant to clean the floor, but only a bucket and mop, and the detainees had to pick up feces using pieces of paper. *Id.*

58. Detainees are not provided masks, gloves, or hand sanitizer. *Id.* ¶¶ 41, 52, 61. They are provided only small bars of soap (hotel-size or even smaller); they must request new bars of soap as needed, but how much they get depends on the guard on duty, and the jail sometimes runs out (recently for two days), leaving the detainees with no soap unless they can afford to buy their own at the commissary. *Id.* ¶ 52.

59. Mr. Herrera-Herrera's pod has two levels, with a shared shower on each level. *Id.*

¶ 33. Each bathroom has two shower stalls, but for a long time two of the four shower stalls were broken, so all the detainees used the remaining two shower stalls. *Id.* The detainees had to line up closely for showers (with no possible social distance), waiting as much as an hour for their turn.

*Id.*

60. The showers are cleaned only once a week, on Saturdays. *Id.* ¶ 56.

61. There was a recent infestation of inch-long worms in the shower area on the pod's lower level. *Id.* ¶ 34. The upper-level showers also had worms until their entry hole was sealed.

*Id.*

62. Detainees are not provided paper towels to dry their hands after hand washing, but must use their personal towels. *Id.* ¶ 53. Detainees are each provided one personal towel and washcloth for bathing, which may be laundered only on Sundays, Mondays, Wednesdays, and Fridays. *Id.*

63. The laundry is handled by several detainees. *Id.* ¶ 57. Without wearing masks or gloves, they dump the clean laundry on the dayroom tables for sorting and distributing—often before lunch, when the tables have not been cleaned after breakfast. *Id.*

64. These crowded conditions, in sleeping, social, and sanitary areas, and the shared objects, such as tables, telephones, and microwaves (*id.* ¶ 51), maximize the likelihood that coronavirus will spread rapidly across the JCDC, infecting vulnerable detainees and leading to serious cases of COVID-19. Venters Decl. ¶¶ 12, 16–17, 23, 44. Rapid spread is also likely because of the lack of access to hand washing and sanitizing supplies and the failure to establish standard use of gloves and masks. *Id.* ¶ 44.

65. We have already seen exponential spread of coronavirus in other facilities. Cook County Jail has become an epicenter of infection with the number of confirmed cases of COVID-

19 in the jail skyrocketing from two to 353 in the two weeks following March 23, 2020 (Venters Decl. ¶ 17<sup>30</sup>), and to 898 inmates and staff as of May 11, 2020.<sup>31</sup> Coronavirus has also spread rapidly in the Illinois Department of Corrections. On March 25, 2020, one incarcerated person and two correctional officers at Stateville Correctional Facility in Illinois tested positive for the coronavirus.<sup>32</sup> By April 3, 2020, 49 inmates and 17 staff members at the facility had tested positive for coronavirus,<sup>33</sup> and that number has since increased to 271 inmates and 207 staff.<sup>34</sup>

66. There is growing evidence of contagion and inadequate medical care in JCDC. Since COVID-19 has become a known public health threat, the JCDC has failed to take adequate precautions. Venters Decl. ¶ 44. The measures taken are insufficient to prevent spread across the facility. For example, correctional officers in regular contact with detained individuals did not begin wearing masks until April, and do not wear gloves even when they put handcuffs and waist shackles on detainees and take them to court or medical appointments. Herrera-Herrera Decl. ¶ 36.

67. The comings and goings of detainees and staff further increase the risk of contagion. Merely “screening,” rather than testing, new detainees and staff cannot detect contagious, asymptomatic individuals arriving at the facility. *See* Golob Decl. ¶ 13; Venters Decl. ¶¶ 29, 34, 37, 41. By the time someone is known to have the virus, it is far too late to prevent its spread—especially in congregate living environments like JCDC. *See id.* ¶¶ 11–19.

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<sup>30</sup> *See Cook County Jail Now Reports 210 Inmates Have Now Tested Positive for COVID-19*, NBC Chi. (Apr. 4, 2020), <https://www.nbcchicago.com/news/coronavirus/cook-county-jail-now-reports-210-inmates-have-tested-positive-for-covid-19/2250366/>, attached as Ex. 26 to the Choudhury Decl.

<sup>31</sup> Ex. 10 to the Choudhury Decl.

<sup>32</sup> Ex. 11 to the Choudhury Decl.

<sup>33</sup> Ex. 12 to the Choudhury Decl.

<sup>34</sup> Ex. 13 to the Choudhury Decl.

68. One of the most insidious features of the novel coronavirus is that asymptomatic carriers may transmit the virus without knowing it. *See* Golob Decl. ¶ 6–13; Venters Decl. ¶¶ 14, 24. That is why public health experts have repeatedly emphasized that social distancing, exacting hygiene, and the use of face coverings and gloves are the only effective ways to prevent coronavirus transmission in the absence of widespread testing. *See* Golob Decl. ¶ 10; Venters Decl. ¶¶ 26–30, 33.

69. Recent experience and scientific research confirm that once the virus enters a jail or prison, rapid spread is all but inevitable. As noted above, a recent study found that, after entering a facility of a size comparable to the JCDC, coronavirus will infect between **12%** and **81%** of detainees within 30 days, between **52%** and **97%** of detainees within 60 days, and between **77%** and **99%** of detainees within 90 days.<sup>35</sup> *See also* Venters Decl. ¶¶ 16–18 (describing exponential transmission in New York City jails and Cook County Jail, and ICE facilities’ inability to prevent the same). It is “beyond dispute that detention facilities are built to house as many people as possible,” almost guaranteeing that they “will be hit by COVID-19 when the rest of the community is, staff and their families included.” *Fofana v. Albence*, No. 20-10869, 2020 WL 1873307, at \*10 (ED. Mich. Apr. 15, 2020) (citation omitted).

70. The jail has not provided clear information about the coronavirus or COVID-19 to the detainees. Detainees have learned about the issue from television news or from people outside the jail. Herrera-Herrera Decl. ¶ 35. The medical staff did not even mention the virus to Mr. Herrera-Herrera during his recent medical appointments. *Id.* Guards doing their rounds do not check in with detainees to see how they are doing. *Id.* ¶ 50.

71. On or about April 7, 2020, an officer posted a notice in Mr. Herrera-Herrera’s pod

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<sup>35</sup> Ex. 15 to the Choudhury Decl.



advising detainees to wash their hands and sneeze in their shirts, without mentioning COVID-19, but addressing only “germs” in general. *Id.* ¶ 37. On April 15, 2020, an officer posted a notice about COVID-19 (advising detainees to wash their hands, to cover their mouths when sneezing, and to social distance), but the officer did not discuss the content of the notice with detainees. *Id.* ¶ 38. Detainees have not been given any pamphlets, handouts, or other written materials about how to protect against COVID-19. *Id.* ¶ 39. And social distancing is not possible at the jail. *Id.* ¶¶ 30–33, 44–45, 48.

72. More than a month ago, the officers posted a notice stating that no one at the JCDC had tested positive for COVID-19. *Id.* ¶ 46. A week after this notice, when most detainees at the JCDC were sick and coughing at the same time, all the detainees signed a petition asking for medical staff to test them for COVID-19. *Id.* ¶ 46. Two days later, the nurses started taking the detainees’ temperatures every day, but they did not test for COVID-19. *Id.*

73. As of May 11, 2020, there were 753 confirmed cases of COVID-19 and 33 deaths from the disease in Kankakee County.<sup>36</sup> Yet, there is no indication that the JCDC is performing tests of staff who have ongoing community contacts and are likely to bring coronavirus into the facility. Golob Decl. ¶ 13; Venters Decl. ¶¶ 11, 14. Even if the JCDC takes the temperatures of staff, such screening measures cannot guard against introduction of the virus into the facility, because people with coronavirus infection may be asymptomatic or not yet presenting symptoms. *Id.*

74. It is only a matter of time before confirmed cases of COVID-19 occur in the JCDC. There are already seventeen confirmed cases of COVID-19 among ICE detainees in the Pulaski County Detention Center in southern Illinois, which, like the JCDC, houses both ICE

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<sup>36</sup> See Ex. 17 to the Choudhury Decl.

detainees and people in pre-trial and post-conviction criminal matters.<sup>37</sup>

75. A lack of proven cases of COVID-19 where there is little to no testing is “functionally meaningless for determining if there is a risk for COVID-19 transmission in a community or institution.” Golob Decl. ¶ 7. In other jurisdictions where testing has been made available to correctional officers who enter and leave facilities regularly, the rates of infection are high. Venters Decl. ¶¶ 16–17 (describing New York City jail system and Cook County Jail). These officers are further vectors of the virus: like detainees, they may be asymptomatic while still contagious. As a result, it is simply a question of when the virus will be introduced into these immigration detention facilities—if it has not been introduced into the facilities already.

76. Once introduced, it will be impossible to stop the spread of the virus within the facility, where social distancing measures are impossible. Venters Decl. ¶¶ 18–19; Schriro Decl. ¶ 21. CDC guidance specifically recommends implementing social distancing strategies to increase the physical space between incarcerated and detained persons, “ideally 6 feet between all individuals, regardless of the presence of symptoms,” but Respondents continue to hold Petitioner in conditions where he is unable to socially distance. Herrera-Herrera Decl. ¶¶ 30–34, 41, 44–45, 48, 61.

**C. Continued ICE detention is unsafe for those most vulnerable to COVID-19.**

77. Without a vaccine or cure for COVID-19, 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.

78. 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

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<sup>37</sup> Ex. 14 to the Choudhury Decl.

not regularly sanitized, and where individuals are regularly exposed to potential vectors of infection, public health experts with experience in detention and correctional settings have recommended release of vulnerable individuals from custody. Golob Decl. ¶ 14; Venters Decl. ¶ 48; Schriro Decl. ¶¶ 18, 42, 55, 56.

79. Once infection spreads throughout the JCDC, the burden of caring for these individuals 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. Thus, high-risk individuals should be released from detention centers before it is too late.

**D. Petitioner must be released from ICE custody because he is particularly vulnerable to serious illness and death if infected by coronavirus.**

80. Petitioner is especially vulnerable to serious illness and death if he is infected with the coronavirus and develops COVID-19, but Respondents nonetheless continue to detain him at the JCDC while he awaits adjudication of his immigration case.

81. Plaintiff Joaquin Herrera-Herrera is a 60-year-old father of three U.S. citizens and grandfather of two U.S. citizens, and has been a legal permanent resident of the U.S. since age 6. Herrera-Herrera Decl. ¶¶ 2–3, 19. He suffers from hypertension as well as a head lump that raises serious concern due to his history of prostate cancer. *Id.* ¶¶ 6, 12, 14.

82. Mr. Herrera-Herrera was diagnosed with hypertension in 2008, and has been taking medication for hypertension since his diagnosis. *Id.* ¶¶ 6–11. While detained, he was initially given no medication for hypertension, and then given an unidentified medication. *Id.* ¶¶ 8–11. The medical staff at the jail have not provided him information on treatment of his hypertension or what symptoms to watch for, and have been dismissive of his condition. *Id.* ¶¶ 16–18. He attempts to self-treat by walking the stairs to remain active, but wakes each

morning tired, confused, with blurry vision, and short of breath. *Id.* ¶¶ 15, 17. Hypertension is a condition that places Mr. Herrera-Herrera at high risk of serious complications and death from COVID-19. Venters Decl. ¶ 25; *see also Bahena Ortuño v. Jennings*, No. 20-CV-02064-MMC, 2020 WL 1866122, at \*1 (N.D. Cal. Apr. 14, 2020) (recognizing hypertension as making detainee at medically increased risk from coronavirus, citing authorities).

83. Mr. Herrera-Herrera was also diagnosed with prostate cancer three and a half years ago, and had prostate surgery in December 2016. *Id.* ¶ 12. He has been unable in detention to have his annual follow-up prostate examination, which was due in December 2019. *Id.* This month (May 2020), medical staff drew blood but did not explain what it was for. *Id.* Current and former cancer patients may be at increased risk from coronavirus.<sup>38</sup>

84. In addition, for nine months Mr. Herrera-Herrera has had a lump on his head, which has grown larger. *Id.* ¶ 14. He fears it may be a tumor. *Id.* Before he was detained, Mr. Herrera-Herrera received a referral for a screening examination at the University of Chicago, but no appointments were available before his detention. *Id.* Mr. Herrera-Herrera raised concern about this lump during a recent exam for severe neck pain, but the JCDC doctor dismissed the lump as part of his “bone structure.” *Id.*

**E. ICE continues to expose Petitioner to dangerous conditions of confinement despite being advised of these dangers.**

85. 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 have medical conditions that make them vulnerable to serious illness or death

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<sup>38</sup> *See* Am. Cancer Soc’y, *What Cancer Patients, Their Families, and Caregivers Need to Know About the Coronavirus*, <https://www.cancer.org/latest-news/common-questions-about-the-new-coronavirus-outbreak.html>; <https://www.cancer.gov/contact/emergency-preparedness/coronavirus#if-i-have-cancer-am-i-at-higher-risk-of-getting-covid-19> (last visited May 12, 2020), attached as Ex. 29 to the Choudhury Decl.

from COVID-19 is to practice social distancing and increased hygiene. Only these practices mitigate the risk of contracting this novel virus that has no cure. Golob Decl. ¶ 10.

86. 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.”<sup>39</sup>

87. JCDC is not ensuring social distancing that follows CDC guidance, putting all detainees, and especially those at high risk of severe disease and death, in jeopardy. Venters Decl. ¶ 44(e), 47. Petitioner is forced to sleep close to his cellmate, in a small cell that does not allow them to keep six feet of distance from each other. Herrera-Herrera Decl. ¶ 30. He spends all day in close company with up to 48 detainees, whether in his cell or packed tightly in line for meals, medication, or showers. *Id.* ¶¶ 28–33, 40, 42–48, 61.

88. Nor will the policy of “cohorting” prevent the spread of the virus to Petitioner. Contrary to CDC recommendations to cohort individually, ICE cohorts many people together. Even if ICE is to implement this policy at the facilities, asymptomatic transmission will allow individuals to infect others before showing the signs that would trigger the cohorting measures.

89. CDC guidance on correctional and detention facilities emphasizes that there are many opportunities for the coronavirus to be introduced into a facility, including from staff and transfer of incarcerated/detained persons. Venters Decl. ¶ 19.<sup>40</sup> ICE claims to be following CDC guidance at its facilities. But asymptomatic transmission of the virus means that monitoring fever of staff or detainees is inadequate for identifying all who may be infected and preventing

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<sup>39</sup> Ctrs. for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>, attached as Ex. 30 to the Choudhury Decl. at 11.

<sup>40</sup> Ex. 30 to the Choudhury Decl. at 2.

transmission. *See* Golob Decl. ¶¶ 6–7.

90. Respondents also expose Petitioner to unsanitary conditions that increase the risk of infection and spread. He shares a sink and toilet with his cellmate, and everyone shares the showers. Herrera-Herrera Decl. ¶¶ 29, 33. Mr. Herrera-Herrera and the other detainees clean their own cells, but are provided only minimal supplies shared by all detainees in the pod: a single bucket filled with a premixed cleaning solution of variable strength, a single broom and mop, and spray bottles also filled with premixed and inadequate solutions—. *Id.* ¶¶ 58–59. The showers are only cleaned once a week. *Id.* ¶ 56. The dayroom tables and telephones are cleaned by detainees only after lunch and dinner—not after breakfast or in between each use. *Id.* ¶¶ 54–55.

91. Respondents have been aware of the serious hygiene issues at 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 Respondent Guadian 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 individuals.<sup>41</sup>

92. Neither Mr. Guadian nor any other agency official has responded to the letter

93. To the contrary, ICE has resisted the release of medically vulnerable detainees from the JCDC. ICE released two medically vulnerable detainees from JCDC on April 23, 2020, and May 4, 2020, only after this Court determined that JCDC conditions pose a substantial risk of severe illness or death to the detainees from COVID-19 and ordered their release. *See Hernandez*, No. 20-cv-2088-SLD, Dkt. 12; *Favi*, 2020 WL 2114566.

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<sup>41</sup> 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), attached as Ex. 31 to the Choudhury Decl.

94. CDC guidance recognizes that incarcerated/detained persons are at heightened risk for COVID-19 infection once the virus is introduced to a facility.<sup>42</sup> All of the risks are present here, where Petitioner is over the age of 50, suffers from hypertension, cannot practice social distancing, shares common spaces, and touches common surfaces, and where new individuals and staff come into the JCDC each day.

95. Yet ICE continues to detain Petitioner, and many other medically vulnerable people, in contradiction of medical advice. Even if ICE has implemented screening measures, which they have not, these measures are insufficient to prevent introduction of the virus into a setting where it will spread like wildfire.

### LEGAL FRAMEWORK

#### **A. Immigrant detainees are entitled to constitutional due process protections against exposure to infectious disease.**

96. 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). The Fifth Amendment requires the Respondents to provide Mr. Herrera-Herrera due process.

97. 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

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<sup>42</sup> Ex. 30 to the Choudhury Decl. at 2.

Eighth Amendment.”).

98. A civil detainee’s due process claim against conditions of confinement is “subject *only* to the objective unreasonableness inquiry,” which is less exacting than the “Eighth Amendment deliberate-indifference standard.” *Hardeman v. Curran*, 933 F.3d 816, 822, 24 (7th Cir. 2019) (emphasis added); *see also Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018). The conditions of confinement for an individual in immigration detention must be “reasonably related to a legitimate goal.” *Hardeman v. Curran*, 933 F.3d at 823. Conditions of confinement that either serve no legitimate purpose or are not reasonably related to a legitimate governmental objective constitute unconstitutional punishment.

99. The “objective reasonableness” analysis requires considering the cumulative effect of the challenged conditions because, “[s]ome conditions of confinement may establish [a constitutional] violation in combination when each alone would not do so.” *Gray v. Hardy*, 826 F.3d 1000, 1005 (7th Cir. 2016) (addressing Eighth Amendment claim) (quoting *Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006)); *see also Favi*, 2020 WL 2114566, at \*9 (articulating the “objectively unreasonable” standard); *Hernandez*, No. 2:20-cv-2088-SLD, Dkt. 12, at \*15 (same).

100. The government has an affirmative duty to provide conditions of reasonable health and safety to the people it holds in its custody and violates due process when it fails to provide for basic needs, such as food, clothing, shelter, medical care, and reasonable safety. *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989).

**B. Respondents are violating Petitioner’s due process rights.**

101. JCDC conditions place Mr. Herrera-Herrera at an objectively unreasonable risk of severe illness or death from COVID-19, and thereby violate his due process rights.

102. Two judges of this Court have now found that the measures taken by JCDC to



prevent the spread of the coronavirus were “[i]n light of the seriousness of the pandemic . . . insufficient [to] address Petitioner’s medical needs and conditions of confinement.” *Hernandez*, No. 2:20-cv-2088-SLD, Dkt. 12, at \*17. 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 Court found that “Petitioner’s continued detention under these conditions is objectively unreasonable and violates his substantive due process rights under the Fifth Amendment.” *Id.* at 19–20. Likewise, in *Favi*, the Court found that “Petitioner’s continued detention [at JCDC] under these conditions is not objectively reasonable,” given his serious medical conditions. *Favi*, 2020 WL 2114566, at \*12.

103. Both *Hernandez* and *Favi* refer to a laundry list of preventative measures that Respondents claim have been taken at JCDC, including “a disinfection routine three times a day, which includes door handles, toilets, showers, and tables”; “temperature checks of each detainee twice a day”; “staff wear[ing] 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.” *Favi*, 2020 WL 2114566, at \*4; *see also 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.” *Id.* at 4. The same was true nearly a month later, when Mr. Herrera-Herrera signed his declaration.

104. Mr. Herrera-Herrera observes that the only information that JCDC has provided detainees about COVID-19 are posters advising handwashing and social distancing, with no

explanation of how to achieve this in the jail. Herrera Decl. ¶¶ 38–39. Detainees must stand close together in line in order to receive their medication and meals, and jail staff do not instruct them to stay six feet apart. *Id.* ¶¶ 40, 44–45. Most detainees still spend their day 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.* ¶¶ 31–32, 45, 57. Detainees are not given masks, gloves, or hand sanitizer. *Id.* ¶ 41, 52, 61.

105. Petitioner’s expert, Dr. Homer Venters, a physician, internist, and epidemiologist, reviewed the declaration that corrections chief Chad Kolitwenzew submitted in *Favi*. Venters Decl. ¶ 41–42. Dr. Venters notes that the Petitioner’s declaration refutes many of the claims that Chief Kolitwenzew made about the jail’s COVID-19 response. *Id.* In any case, Dr. Venters found that the measures described “in Chief Kolitwenzew’s declaration would be inadequate even if fully implemented.” *Id.* ¶ 42. This confirms the finding in *Favi* that even if actually practiced, the “JCDC measures are insufficient to minimize Petitioner’s risk of harm.” *Favi*, 2020 WL 2114566, at \*10.

106. Like the petitioners in both *Hernandez* and *Favi*, “Mr. Herrera-Herrera has pre-existing medical conditions—notably, hypertension—which place him at heightened risk of serious illness or death should he contract COVID-19 infection.” Venters Decl. ¶ 44(a). The risk is aggravated by JCDC medical staff’s infrequent blood pressure checks and apparent misunderstanding of hypertension care, as well as their failure to investigate symptoms of morning fatigue, light-headedness, and shortness of breath. *Id.*

**C. ICE regularly releases people from immigration detention because they suffer serious medical conditions or are medically at-risk.**

107. ICE 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.

108. ICE has a range of highly effective tools at its disposal to ensure that individuals report for court hearings and other appointments, including conditions of supervision. For example, ICE’s Intensive Supervision Appearance Program (“ISAP”) relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. *Id.* ¶ 47 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. *See id.* ¶ 45.

109. Here, due process requires ICE to release Mr. Herrera-Herrera because civil detention has become punitive and 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 requests is neither unprecedented nor unmanageable for the agency.

**D. This Court has authority to order Petitioner’s release to vindicate his Fifth Amendment rights, and such relief is necessary here.**

110. Relief is appropriate in this case whether as a grant of Petitioners’ 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 Petitioners’ immediate release by issuing a temporary restraining order or preliminary injunction.

111. Claims for “immediate discharge from . . . confinement” fall within the “core of habeas corpus,” *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973). Petitioner seeks 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).

112. Mr. Herrera-Herrera also has 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).

113. This Court has “broad” equitable powers and “substantial flexibility” to fashion a remedy for the ongoing violation of Petitioners’ rights, including release from detention “[w]hen necessary to ensure compliance with a constitutional mandate.” *Brown v. Plata*, 563 U.S. 493, 538 (2011); *see also Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978).

114. 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. 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.” 563 U.S. at 533–34.<sup>43</sup>

### 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)

115. Petitioner re-alleges and incorporates by reference as if fully set forth herein the allegations in all preceding paragraphs.

116. 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.

117. By detaining Petitioner in the JCDC, Respondents are subjecting Petitioner to an objectively unreasonable heightened risk of contracting COVID-19, for which there is no vaccine

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<sup>43</sup> 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).

and no cure. Petitioner is particularly vulnerable to serious medical complications from COVID-19 and is at risk of illness and death as long as he is held in detention. By subjecting Petitioner to this risk, Respondents are maintaining detention conditions that amount to punishment and fail to ensure safety and health in violation of Petitioner's due process rights.

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

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

#### **PRAYER FOR RELIEF**

WHEREFORE Petitioner requests that the Court grant the following relief:

- a. Issue a Writ of Habeas Corpus and order Petitioner's immediate release, with appropriate precautionary public health measures, on the ground that his continued detention violates the Due Process Clause;
- b. Issue injunctive relief ordering Respondents to immediately release Petitioner, with appropriate precautionary public health measures, on the grounds that his continued detention 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, including all people over the age of 50 and people of any age with underlying medical conditions that may increase the risk of serious

illness or death from COVID-19, violates the Due Process Clause;

- d. Award Petitioner his 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: May 14, 2020

Respectfully Submitted,

/s/ Rebecca K. Glenberg  
*Counsel for Petitioner-Plaintiff.*

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*Counsel for Petitioner-Plaintiff*  
*\* Admission pending.*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that on May 14, 2020, she caused a copy of the above and foregoing EMERGENCY 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) and to the following:

**By Summons Process Service:**

Michael Downey, Sheriff  
Sheriff of Kankakee County  
3000 Justice Way  
Kankakee, IL 60901

Chad Kolitwenzew  
Chief of Corrections of the Jerome Combs Detention Center  
3050 Justice Way  
Kankakee, IL 60901

**By US Certified Mail:**

Robert Guadian  
Enforcement and Removal Operations  
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Chicago, IL 60605

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Deputy Director and Senior Official Performing the Duties of the Director  
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Chad Wolf  
Acting Secretary of Homeland Security  
Office of Executive Secretary, MS 0525  
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/s/ Rebecca K. Glenberg\_\_\_\_\_

CIVIL COVER SHEET

E-FILED Thursday, 14 May 2020 05:30:28 PM Clerk, U.S. District Court, ILCD

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS MICHAEL DOWNEY, in his individual capacity and official capacity as Sheriff of Kankakee County; 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,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**Section I(c) – Plaintiffs’ Attorneys**

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\* *Admission pending.*