

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MAURICIO COREAS,
Howard County Detention Center
7301 Waterloo Road
Jessup, MD 20794;

A [REDACTED] G [REDACTED] C [REDACTED]
Worcester County Detention Center
5022 Joyner Road
Snow Hill, MD 21863,

Petitioners-Plaintiffs,

v.

DONNA BOUNDS, *in her official capacity as
Warden,*
Worcester County Detention Center
5022 Joyner Road
Snow Hill, MD 21863;

JACK KAVANAGH, *in his official capacity as
Director,*
Howard County Detention Center
7301 Waterloo Road
Jessup, MD 20794;

JANEAN A. OHIN, *in her official capacity as
Acting Baltimore Field Office Director,*
U.S. Immigration and Customs Enforcement
31 Hopkins Plaza 7th Floor
Baltimore, MD, 21201;

MATTHEW T. ALBENCE, *in his official
capacity as Deputy Director and Senior Official
Performing the Duties of the Director of the U.S.
Immigration and Customs Enforcement,*
U.S. Immigration and Customs Enforcement
500 12th St., S.W.
Washington, DC 20536;

IMMIGRATION AND CUSTOMS
ENFORCEMENT,

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

Civil Action No. _____

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Washington, DC 20536,

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March 24, 2020

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

INTRODUCTION

1. Today’s global pandemic of COVID-19, caused by the novel coronavirus, has been characterized as the worst the world has seen since 1918. Several states and countries around the world—including the State of Maryland—have put in place significant restrictions on public gatherings, and many have imposed “shelter-in-place” orders in an attempt to control the spread of the disease. Public health experts, including the Centers for Disease Control and Prevention (“CDC”), have instructed that the only effective way to reduce the risk of severe illness or death for vulnerable individuals is social distancing and improved hygiene. Such distancing and hygiene measures are impossible to achieve in crowded detention centers. For this reason, more than 3,000 medical health professionals have urgently requested that Immigration and Customs Enforcement (“ICE”) immediately release immigration detainees in their custody, and two doctors who are medical experts for the Department of Homeland Security have sent a warning to Congress that keeping immigration detainees detained poses “an imminent risk to the health and safety of immigration detainees” and to the general public.¹

2. The coronavirus has already begun to spread to immigration detention facilities, including in Maryland. There is currently a quarantine due to COVID-19 exposure in the Worcester County Detention Center. Yet Respondents-Defendants (“Defendants”) continue to hold in detention thousands of individuals, including those at severe risk of serious illness or death if they were to contract COVID-19, despite the ready

¹ Catherine E. Shoichet, *Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention*, CNN (Mar. 20, 2020), available at <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

availability of community-based alternatives to detention such as release on conditions or on bond.

3. To date, nearly 350,000 individuals worldwide have been diagnosed with COVID-19, and the United States is one of the worst hit countries. Many more are likely infected, especially in the United States where testing for the virus has been extremely limited. Confirmed cases have begun to appear in several detention centers across the country,² including at the Worcester County Detention Center, and it is likely that many more detention centers have unconfirmed COVID-19 cases. It is impossible for people confined in prisons, jails, and detention centers to engage in the necessary social distancing and hygiene because people eat, sleep, and engage in activities in close proximity to each other, and basic supplies such as soap and hand sanitizer are often in short supply or completely unavailable at those facilities.³ Even with the measures ICE has purported to take to prevent the spread of COVID-19 in its facilities, immigration detention centers are a hotbed for spread of the virus.

4. Under these circumstances, release is the only meaningful way to mitigate the spread of the virus among immigration detainees. For individuals who are at high risk for serious illness or death from COVID-19, protection from the virus is a matter of life or death. In Maryland, as of the filing date of this case, there are nearly 300 confirmed cases

² See, e.g., Hamed Aleaziz, *A Medical Worker at An ICE Detention Facility For Immigrants Has Tested Positive For the Coronavirus*, BuzzFeed News, (Mar. 19, 2020), available at <https://www.buzzfeednews.com/article/hamedaleaziz/ice-medical-worker-coronavirus>.

³ Keri Blakinger and Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, the Marshall Project (Mar. 6, 2020), available at <https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus> (describing, for example, limited access to hand sanitizer and other precautionary measures).

and three deaths, and the numbers are rising exponentially. In the United States, the most concentrated instance of death from the virus happened in confined congregated spaces such as nursing homes and cruise ships.⁴

5. Petitioners-Plaintiffs (“Plaintiffs”) are individuals detained in ICE custody in Maryland who are particularly vulnerable to serious illness or death if infected by COVID-19. Plaintiffs have medical conditions that lead to a higher risk of serious COVID-19 infection. Maryland has seen a significant COVID-19 outbreak. The Governor has declared a State of Emergency, and has put in place widespread social distancing measures, including shutting down nonessential businesses and all public gatherings. These measures are impossible to implement in a crowded detention center, and ICE has taken no meaningful measures to curb the spread of the virus.

6. As set forth below, the danger posed by Plaintiffs’ detention during the COVID-19 pandemic is “so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk” and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993). Their continued detention also violates Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, because Defendants are failing to provide appropriate accommodations for Plaintiffs’ disabilities. Without this Court’s intervention, Plaintiffs continue to be at imminent risk of severe illness or death.

⁴ See Jon Swaine and Maria Sacchetti, *As Washington Nursing Home Assumed It Faced Influenza Outbreak, Opportunities to Control Coronavirus Exposure Passed*, Washington Post, (Mar. 16, 2020), available at https://www.washingtonpost.com/investigations/nursing-home-with-the-biggest-cluster-of-covid-19-deaths-to-date-in-the-us-thought-it-was-facing-an-influenza-outbreak-a-spokesman-says/2020/03/16/c256b0ee-6460-11ea-845d-e35b0234b136_story.html; Victoria Forster, *What Have Scientists Learned About COVID-19 And Coronavirus By Using Cruise Ship Data?* (Mar. 22, 2020), available at <https://www.forbes.com/sites/victoriaforster/2020/03/22/what-have-scientists-learned-from-using-cruise-ship-data-to-learn-about-covid-19/#59a862b7406d>.

JURISDICTION AND VENUE

7. This action arises under the Due Process Clauses of the Fifth Amendment to the United States Constitution and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*

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

9. Venue is proper in the District of Maryland pursuant to 28 U.S.C. § 2241(d) and pursuant to 28 U.S.C. § 1391(b) and (e).

PARTIES

10. Petitioner-Plaintiff Mauricio Coreas (“Mr. Coreas”) is currently detained by ICE at the Howard County Detention Center. He suffers from diabetes. He is therefore at high risk of severe illness or death if he contracts COVID-19. Prior to his detention, he resided in Prince George’s County.

11. Petitioner-Plaintiff A [REDACTED] G [REDACTED] C [REDACTED] (“Mr. G [REDACTED] C [REDACTED]”) is currently detained by ICE at the Worcester County Detention Center. He suffers from hypertension, prostate problems, including a prostate infection, chronic pain, and a rule/out diagnosis of an intellectual disability. He is therefore at high risk of severe illness or death if he contracts COVID-19. Prior to his detention, he resided in Prince George’s County.

12. Respondent-Defendant Donna Bounds is the Warden of the Worcester County Detention Center, where Plaintiff Ms. Castaneda detained. Defendant Bounds is a legal custodian of Plaintiff. She is sued in her official capacity.

13. Respondent-Defendant Jack Kavanagh is the Director of the Howard County Department of Corrections. As Director, he is responsible for overseeing the administration and management of the Howard County Detention Center, where Plaintiffs Coreas and Navarro are detained. Defendant Kavanagh is a legal custodian of Plaintiffs. He is sued in his official capacity.

14. Respondent-Defendant Janean A. Ohin is the ICE Baltimore Field Office Director. The Baltimore Field Office is responsible for carrying out ICE's immigration detention operations at all three Maryland detention centers that house immigration detainees. Defendant Ohin is a legal custodian of plaintiffs. She is sued in her official capacity.

15. Respondent-Defendant Matthew T. Albence is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Defendant Albence is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. Defendant Albence is a legal custodian of Plaintiffs. He is sued in his official capacity.

16. Respondent-Defendant ICE is a federal law enforcement agency within the Department of Homeland Security. ICE is responsible for the criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. Enforcement and Removal Operations ("ERO"), a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiffs.

FACTS

A. COVID-19 Poses Grave Risk of Harm, Including Serious Illness or Death, to Older Individuals and Those with Certain Underlying Medical Conditions.

17. COVID-19 is a coronavirus that has reached pandemic status. As of March 24, 2020, nearly 350,000 individuals worldwide have confirmed diagnoses, including more than 31,000 ,in the United States.⁵ More than 14,600 individuals worldwide have died as a result of COVID-19, including at least 400 in the United States.⁶ Those numbers are growing exponentially, with more than 40,700 new cases worldwide in the past day alone.⁷

18. Nationally, CDC projections indicate that over 200 million individuals in the United States could be infected with COVID-19 over the course of the epidemic without effective public health intervention, with as many as 1.5 million deaths in the worst projections.⁸

19. COVID-19 is a highly contagious disease that is easily transmitted through respiratory droplets, especially when one is within six feet of an infected individual.

20. COVID-19 can result in respiratory failure, kidney failure, and death. Infected individuals who do not die from the disease can face serious damage to the lungs, heart, liver, or other organs, resulting in prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity.

⁵ Coronavirus disease 2019 (COVID-19) Situation Report – 63,1, World Health Organization (Mar.ch 230, 2020), *available at* https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200323-sitrep-63-covid-19.pdf?sfvrsn=d97cb6dd_2. https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200321-sitrep-61-covid-19.pdf?sfvrsn=f201f85c_2.

⁶ *Id.*

⁷ *Id.*

⁸ James Glanz, et al., *Coronavirus Could Overwhelm U.S. without Urgent Action, Estimates Say*, New York Times (Mar. 20, 2020), *available at* <https://www.nytimes.com/interactive/2020/03/20/us/coronavirus-model-us-outbreak.html>.

21. Older individuals and those with certain medical conditions face greater chances of serious illness or death from COVID-19. Certain underlying medical conditions increase the risk of serious COVID-19 disease for individuals of any age, including lung disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems, blood disorders, inherited metabolic disorders, stroke, and pregnancy.

22. COVID-19 can also severely damage lung tissue, affect cardiac functions, and cause widespread damage to other organs. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.

23. Even some younger and healthier individuals who contract COVID-19 may require supportive care. And those who develop serious complications will need advanced support, including highly specialized equipment that is in limited supply and an entire team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. This level of support is especially difficult to provide to detained individuals.

24. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from influenza. According to recent estimates, the fatality of people infected with the coronavirus is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems.

25. Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation.

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

27. The only known effective measure to reduce the risk of severe illness or death to vulnerable individuals is to prevent them from being infected with the coronavirus. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures to prevent infection.

B. Detained Immigrants in Maryland Face an Elevated Risk of Contracting COVID-19.

28. The Worcester County and Howard County Detention Centers are located in Maryland, which is experiencing a coronavirus outbreak and has put in place a number of significant restrictions on public gatherings, including by closing down schools, bars, restaurants, and other public places. There is currently a quarantine in place at the Worcester County detention facility due to COVID-19.

29. As of March 24, 2020, there were nearly 300 COVID-19 cases in Maryland.⁹ The number of infected people is rising exponentially. At least three people in Maryland have so far died from the disease.¹⁰ There is an immediate and impending threat that the coronavirus will spread uncontrollably in the Worcester County Detention Center. It is virtually inevitable that it will reach and spread among the detainees in the Howard County Detention Center as well.

⁹ Coronavirus Disease 2019 (COVID-19) Outbreak, Maryland Department of Health (accessed Mar. 23, 2020), *available at* <https://coronavirus.maryland.gov/>.

¹⁰ *Id.*

30. COVID-19 spread quickly in Italy's jails, and has been already confirmed in other jails and immigrant detention centers in the United States.¹¹ Just this week, 17 employees and 21 detainees at the Rikers Correctional facility have so far tested positive for COVID-19.¹²

31. Given the shortage of COVID-19 tests in the United States, detention facilities cannot currently conduct aggressive, widespread testing to identify all COVID-19 cases.

32. In the absence of widespread testing, there is no way to be certain that COVID-19 is not already widespread in the Maryland detention centers. And given the rapid spread of COVID-19 throughout Maryland, and conditions in the Maryland detention facilities, it is only a matter of time before the disease becomes widespread among the detainee population.

33. According to Dr. Ranit Mishori, M.D., Senior Medical Consultant for the Physicians for Human Rights and an expert in immigration detention and other correctional health issues, an outbreak in the Maryland detention centers is "highly likely and . . . the consequences of rampant COVID-19 infection in the facility would be disastrous, especially for high-risk individuals like the plaintiffs in this case."

34. Conditions in the Maryland detention centers make rapid spread of COVID-19 very likely. In both detention centers, detainees are housed together in groups. The dormitories in these detention centers house many individuals in close quarters, well under

¹¹ See Hannah Summers, *'Everyone Will Be Contaminated': Prisons Face Strict Coronavirus Controls*, The Guardian (Mar. 23, 2020), available at <https://www.theguardian.com/global-development/2020/mar/23/everyone-will-be-contaminated-prisons-face-strict-coronavirus-controls>.

¹² *21 Inmates, 17 Employees Test Positive for COVID-19 on Rikers Island: Officials*, NBC New York (Mar. 22, 2020), available at <https://www.nbcnewyork.com/news/coronavirus/21-inmates-17-employees-test-positive-for-covid-19-on-rikers-island-officials/2338242/>.

the distance of six feet apart that the CDC recommends. Detainees use common spaces together, sharing tables, telephones, and bathrooms. The hallways are tight, and people in the hallways are constantly in very close proximity to each other. Bathrooms are used by large numbers of people and are not sanitized or disinfected after each use. Staff arrive and leave on a shift basis, and even asymptomatic staff could carry the infection into the facility.

35. Because of these conditions, outbreaks of infectious diseases are extremely common in confined detention centers. Individuals who are imprisoned or detained cannot protect themselves by social distancing as they could in the community. Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person to person, especially those that—like COVID-19—are transmitted by droplets through coughing and sneezing.

36. Additionally, the Maryland facilities do not adequately provide the mitigation measures that public health experts and the CDC recommend. Frequent handwashing and use of alcohol-based sanitizers are generally unavailable at the Maryland facilities, and it is impossible for individuals to remain six feet apart at all times.

37. Individuals detained in immigration detention centers, including in Maryland, are also more susceptible to experiencing complications from infectious diseases than the population at large. This is especially true for individuals with underlying conditions such as pregnancy, diabetes, lung disease, kidney disease, or other illness.

38. The two detention centers are also ill-equipped to manage an infectious disease outbreak. Neither facility has 24-hour medical care and they each have very limited on-site medical facilities. Putting infected individuals in solitary confinement is an

ineffective way to prevent transmission of the disease because air continues to flow outwards from those rooms to the rest of the facility. This makes containing the illness and caring for those who have become infected virtually impossible.

39. Infectious disease outbreaks such as COVID-19 can also exacerbate existing mental health conditions and can contribute to the development of new mental health conditions.

40. A coronavirus brought into a detention facility can quickly spread among the dense detainee cohort, including individuals, like Plaintiffs, who are at high risk of severe illness or death from COVID-19.

41. The coronavirus has already started to spread inside U.S. prisons and jails, and experts predict a mass contagion is only a matter of time.

42. In at least two ICE detention facilities outside Maryland, facility staff have contracted COVID-19.¹³ ICE has not specified what measures were being taken to protect detainees at those facilities and whether ICE is taking any precautionary steps to test other officials and detainees. And as previously noted, ICE has placed the Worcester County Detention Center on indefinite quarantine due to COVID-19 exposure.

43. Despite these widespread warnings, the Maryland detention facilities—like ICE facilities in general—remain woefully unprepared and incapable of taking necessary precautions to protect people in their custody against a life-threatening illness.

¹³ Hamed Aleaziz, *A Medical Worker At An ICE Detention Facility For Immigrants Has Tested Positive For The Coronavirus*, BuzzFeed News (Mar. 19, 2020), available at <https://www.buzzfeednews.com/article/hamedaleaziz/ice-medical-worker-coronavirus>.

C. ICE's Response to COVID-19 Is Insufficient To Prevent the Spread of This Life-Threatening Disease.

44. COVID-19 has already reached the Worcester County Detention Center, and is almost certain to reach the Howard County Detention Center. Detainees like Plaintiffs face inherent challenges to protect themselves from COVID-19 infection because they live, sleep, and use the bathroom in close proximity with others, and because “[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible.”¹⁴

45. Similarly, it will be impossible for people, including Plaintiffs, to take steps to protect themselves from infection, such as washing their hands with soap or distancing themselves from other individuals.

46. Given the general lack of available testing, it is equally impossible for detention facilities to consistently and adequately screen detainees and staff for new, asymptomatic infection. The Maryland detention centers also do not have the capacity to truly isolate spread of the disease through airborne respiratory droplets.

47. ICE's official guidance on COVID-19 does not state under what conditions detainees would be tested.¹⁵ Instead, the only measure ICE has committed to taking is to segregate those who meet CDC criteria for epidemiologic risk of exposure to the coronavirus. Even assuming adequate space, isolation of people who are ill is generally an

¹⁴ Keri Blakinger and Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, the Marshall Project (Mar. 6, 2020), available at <https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus> (describing, for example, limited access to hand sanitizer and other precautionary measures).

¹⁵ *ICE Guidance on COVID-19*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/covid19>.

ineffective way to prevent transmission of COVID-19 because air continues to flow outward from rooms to the rest of the facility.

48. ICE's official guidance also does not offer an effective way to determine who even has the virus. Since some COVID-19 carriers can be asymptomatic or not show symptoms for weeks after exposure, "screening people based on observable symptoms is just a game of catch up." *In re. Extradition of Alejandro Toledo Manrique*, No. 19-mj-71055, 2020 WL 1307109 (N.D. Cal. March 19, 2020) (ordering release on bond in part because government's management plan did not "say anything about testing").

49. Although ICE has temporarily suspended social visitation in all detention facilities, staff, contractors, and vendors continue to arrive and leave the detention centers. In addition, people are frequently transported to, from, and between facilities.

50. Anything short of aggressive screening and testing of all detainees, staff, officials and other care and service providers who enter the facility is insufficient to prevent infection. Neither ICE nor the Maryland facilities have the resources necessary to engage in such measures, especially considering the shortage in available tests.

51. Immigration detention facilities have faced outbreaks of other infectious diseases in recent years due to overcrowding, poor hygiene measures, medical negligence, and poor access to resources and medical care. As recently as last year, ICE mishandled and failed to take adequate measures to protect detainees in Virginia against outbreaks of chicken pox and mumps.¹⁶ And ICE has a long history of mishandling infectious and communicable diseases, struggling to contain them, and failing to follow nationally

¹⁶ Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (Jun. 14, 2019), available at https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox.

accepted standards. The Office of the Inspector General (“OIG”) of the Department of Homeland Security (“DHS”) even concluded in a 2019 report that ICE “does not adequately hold detention facility contractors accountable for not meeting performance standards,” “issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards,” and “does not adequately share information about ICE detention contracts with key officials.”¹⁷

52. Moreover, ICE has routinely failed to remedy inhumane conditions because, according to the OIG, “ICE does not adequately follow up on identified deficiencies or consistently hold facilities accountable for correcting them, which further diminishes the usefulness of inspections.”¹⁸

53. ICE has even publicly acknowledged the need to limit the spread of the virus and the number of people in its detention centers, announcing that it will delay enforcement actions to arrest fewer immigrants and will use alternatives to detention as a response to the COVID-19 outbreak for people who are not already detained.¹⁹ But the agency still has no plan to release vulnerable individuals who are currently in custody.²⁰

¹⁷ See Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, 1 (Jan. 29, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

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

¹⁹ See Maria Sacchetti and Arelis R. Hernández, *ICE to Stop Most Immigration Enforcement Inside the U.S., Will Focus on Criminals During Coronavirus Outbreak*, The Washington Post (Mar. 18, 2020), available at https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab_story.html

²⁰ Noah Lanard, *ICE Is Ignoring Recommendations to Release Immigrant Detainees to Slow the Spread of Coronavirus*, Mother Jones (Mar. 20, 2020), available at <https://www.motherjones.com/politics/2020/03/ice-is-ignoring-recommendations-to-release-immigrant-detainees-to-slow-the-spread-of-coronavirus/>.

54. Given the rapid spread of COVID-19, the likelihood of spread before a person infected with the virus is symptomatic, highly limited availability of testing, ICE's repeated failure to meet adequate standards for controlling infectious disease outbreaks in its facilities, and current conditions at the Maryland detention centers, Defendants cannot prevent the spread of COVID-19 in those facilities.

D. Individuals Most Vulnerable to COVID-19 Should Immediately Be Released.

55. The only viable public health strategy currently available in the United States is risk mitigation. For this reason, public health experts with experience in immigration detention and correctional settings have recommended the release of vulnerable detainees from custody.

56. As early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts to the Department of Homeland Security, shared concerns about the specific risk to immigrant detainees as a result of COVID-19 with the agency. These experts warned of the danger of rapid spread of the coronavirus in immigration detention facilities. In a whistleblower letter to Congress, Dr. Allen and Dr. Rich recommended that “[m]inimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases.” They concluded that “acting immediately will save lives not of only those detained, but also detention staff and their families, and the community-at-large.”

57. Dr. Ranit Mishori, Senior Medical Consultant for Physicians for Human Rights and an expert in immigration detention and other correctional health issues, has concluded that “[r]eleasing people from incarceration is the best and safest way to prevent the spread of disease and reduce the threat to the most vulnerable incarcerated people,” and

that “[i]mmediate release is crucial for individuals with chronic illnesses or other preexisting conditions.”

58. ICE has the authority to release individuals from custody on medical grounds and has routinely exercised its authority to release particularly vulnerable detainees like Plaintiffs. The former Acting Director of ICE, John Sandweg, has stated that “ICE can, and must, reduce the risk [COVID-19] poses to so many people, and the most effective way to do so is to drastically reduce the number of people it is currently holding.”²¹

59. Releasing the most vulnerable people, such as Plaintiffs, would also reduce the burden on regional hospitals and health centers. In case of an outbreak at a detention center, those institutions would bear the brunt of having to treat infected individuals from detention centers and have fewer medical resources available for the general population.

60. Indeed, governments in the United States and worldwide have recognized the threat posed by COVID-19 spread among detained and incarcerated populations and have released detained individuals for that reason. For example, Iran temporarily released more than 80,000 people to curb the spread of the virus.²² In the United States, several jurisdictions including Los Angeles and Chicago have also released detained individuals for the same reasons.²³

²¹ John Sandweg, *I Used to Run ICE. We Need to Release the Nonviolent Detainees*, The Atlantic Monthly (Mar. 22, 2020), available at <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>; Camilo Montoya-Galvez, “Powder kegs”: Call grow for ICE to Release Immigrants to Avoid Coronavirus Outbreak, CBS News (Mar. 19, 2020), available at <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>.

²² Parisa Hafezi, *Iran Temporarily Frees 85,000 From Jail Including Political Prisoners*, Reuters (Mar. 17, 2020), available at <https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-from-jail-including-political-prisoners-amid-coronavirus-idUSKBN21410M>.

²³ Michael Rezendes & Robin McDowell, *New York City Urged to Release Detainees From Rikers Island and Other Jails After 38 Test Positive for Coronavirus*, Time.com (Mar. 22, 2019), available at

E. Plaintiffs Are Particularly Vulnerable to Serious Illness or Death If Infected by COVID-19 and Should Be Released from Custody.

61. Plaintiffs in this case are individuals who are particularly vulnerable to serious illness or death if infected by COVID-19 and who are currently detained at the two Maryland facilities as they await adjudication of their immigration cases.

62. **Mauricio Coreas.** Mr. Coreas is a 52-year-old citizen of El-Salvador who is currently detained at the Howard County Detention Center. Mr. Coreas suffers from Type 2 diabetes.

63. Mr. Coreas is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his diabetes.

64. Mr. Coreas's diabetes qualifies as a disability under the Rehabilitation Act.

65. A [REDACTED] G [REDACTED] C [REDACTED]. Mr. G [REDACTED] C [REDACTED] is a 54-year-old citizen of Guatemala who is currently detained at the Worcester County Detention Center. He suffers from hypertension and prostate problems, including a prior prostate infection. He takes three prescription medications to treat those conditions.

66. Mr. [REDACTED] C [REDACTED] has sustained numerous traumatic injuries throughout his life to his head and other parts of his body. He has had several operations as a result. These injuries have caused chronic pain and mental health conditions, including possible brain injury, memory loss, and limited cognitive functioning.

<https://time.com/5807909/new-york-city-coronavirus-jails/>; Maura Dolan, Alene Tchekmedyian & Paige St. John, *California Releases More Jail Inmates Amid Coronavirus Crisis*, Los Angeles Times (Mar. 20, 2020), available at <https://www.latimes.com/california/story/2020-03-20/california-releases-more-jail-inmates-amid-coronavirus-crisis>; David Struett, *Cook County Jail Releases Several Detainees 'Highly Vulnerable' to Coronavirus*, Chicago Sun-Times, available at <https://chicago.suntimes.com/coronavirus/2020/3/17/21183289/cook-county-jail-coronavirus-vulnerable-detainees-released-covid-19>.

67. Mr. G [REDACTED] C [REDACTED] is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his numerous physical and mental health conditions.

68. Mr. G [REDACTED] C [REDACTED]'s health conditions qualify as disabilities under the Rehabilitation Act.

LEGAL FRAMEWORK

A. Plaintiffs Have a Constitutional Right to Reasonable Safety in Detention.

69. The government has a duty to provide conditions of reasonable health and safety to individuals in their custody. As the Supreme Court has explained, “when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As a result, the government must provide those in its custody with “food, clothing, shelter, medical care, and reasonable safety.” *Id.* at 200.

70. Because immigration detainees are civil detainees, their constitutional protections are derived from the Fifth Amendment, which provides greater protections than the Eighth Amendment. “Civil detainees ‘are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.’” *Heyer v. United States Bureau of Prisons*, 849 F.3d 202, 209 n.5 (4th Cir. 2017) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982)); see also *Brown v. Harris*, 240 F.3d 383, 388 (4th Cir. 2001) (“[T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication

of guilt in accordance with due process of law” (*quoting Ingraham v. Wright*, 430 U.S. 651, 671 n. 40 (1977)).

71. Due process rights of civil detainees such as immigration detainees “are *at least as great* as the Eighth Amendment protections available to a convicted prisoner.” *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983) (emphasis added); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (immigration detainees are civil detainees held pursuant to civil immigration laws).

72. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment’s prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. *See Helling v. McKinney*, 509 U.S. at 33 (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”)

73. The Supreme Court has explicitly recognized that the risk of contracting a communicable disease may constitute such an “unsafe, life-threatening condition” that threatens “reasonable safety” even under the higher standard imposed by the Eighth Amendment. *Id.*

74. The Eighth Amendment, which applies to persons convicted of criminal offenses, allows punishment as long as it is not cruel and unusual, but the Fifth Amendment’s due process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”); *Nelson v. Collins*, 659 F.2d 420, 425 (4th Cir. 1981).

75. In order to establish that a particular condition of detention constitutes impermissible punishment, a detainee must show either an expressed intent to punish, or a

lack of a reasonable relationship to a legitimate governmental purpose, from which an intent to punish may be inferred. *See Wolfish*, 441 U.S. at 538; *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988). Absent an explicit intention to punish a pretrial detainee, a court “must evaluate the evidence and ascertain the relationship between the actions taken against the detainee and the custodian’s supporting rationale.” *Williamson v. Stirling*, 912 F.3d 154, 178 (4th Cir. 2018). “That inquiry turns on whether the actions taken may validly be attributed to an alternative, nonpunitive rationale, and whether they appear ‘excessive in relation to the alternative purpose assigned.’” *Id.* (citations omitted).

76. The Fourth Circuit has also held that a pretrial detainee necessarily “makes out a due process violation if he shows ‘deliberate indifference to serious medical needs’ . . . because no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need for such treatment is apparent.” *Martin v. Gentile*, 849 F.2d 863, 871 (4th Cir. 1988) (citation omitted)).

77. In order to show that defendants acted with deliberate indifference, a plaintiff must show that (1) the plaintiff was exposed to a substantial risk of serious harm, and (2) the defendants knew of or disregarded that substantial risk to the plaintiff’s health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834, 837–38 (1994); *Thompson v. Virginia*, 878 F.3d 89, 97-98 (4th Cir. 2017).

78. A plaintiff “must establish a serious deprivation of his rights in the form of a serious or significant physical or emotional injury” or *substantial risk* to either injury. *Danser v. Stansberry*, 772 F.3d 340, 346-47 (4th Cir. 2014). Such a claim “may be based on a defendant’s conduct in exposing an inmate to an unreasonable risk of future harm.” *Smith v. Carpenter*, 316 F.3d 178, 188 (2d Cir. 2003). Where a risk is obvious, such as

during a contagious disease outbreak, it is fair for a factfinder to assume that the government official was aware of the risk. *See, e.g., Farmer v. Brennan*, 511 U.S. 825, 842 (1994).

B. Plaintiffs Have a Right to Reasonable Accommodations Under the Rehabilitation Act.

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

80. DHS regulations implementing the Rehabilitation Act mandate that “[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.” 6 C.F.R. § 15.30.

81. To state a claim under the Rehabilitation Act, a plaintiff must establish “(1) that he has a disability; (2) that he is otherwise qualified for the benefit in question; and (3) that he was excluded from the benefit due to discrimination solely on the basis of the disability.” *Baird v. Rose*, 192 F.3d 462, 467 (4th Cir. 1999).

82. To the extent possible, the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act should be construed to impose similar requirements; therefore, they require a plaintiff to demonstrate the same elements to establish liability. *Halpern v. Wake Forest Univ. Health Scis.*, 699 F.3d 454 (4th Cir. 2012).

83. A qualifying disability is any physical or mental impairment that “substantially limits one or more major life activities.” 42 U.S.C. § 12102; *see also* 29 U.S.C. § 705; 6 C.F.R. § 15.3(d). A “major life activity” includes “caring for oneself,

performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working” as well as “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” 42 U.S.C. § 12102(A)-(B).

84. The ADA mandates that “[t]he definition of disability . . . be construed in favor of broad coverage of individuals . . . to the maximum extent permitted by the terms of [the statute].” 42 U.S.C. § 12102(4)(A).

85. The Fourth Circuit has determined that a temporary impairment may qualify as a disability under the ADA if it is “sufficiently severe” to substantially limit a major life activity. *Summers v. Altarum Inst.*, 740 F.3d 325 (4th Cir. 2014).

C. This Court Has the Authority to Order Plaintiffs’ Release to Protect Their Constitutional and Statutory Rights.

86. “A district court enjoys wide discretionary authority in formulating remedies for constitutional violations..” *Smith v. Bounds*, 813 F.2d 1299, 1301 (4th Cir. 1987).

87. Although the Fourth Circuit has not had occasion to address this issue, courts in other circuits have exercised the authority to order release as a remedy for constitutional violations. *See, e.g., Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

88. The Supreme Court has also recognized that “[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011).

89. In the past two weeks, multiple courts have also ordered the release of detained or incarcerated persons in light of the severe threats posed by COVID-19. On March 23, 2020, in a published order, the Ninth Circuit *sua sponte* ordered release of an immigrant detainee because of the danger posed by COVID-19. “[I]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court *sua sponte* orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court.” *Xochihua-Jaimes v. Barr*, No. 18-71460 (9th Cir. Mar. 23, 2020) (Order).

90. Several other courts have ordered the release of individuals in the federal criminal system. *See, e.g., United States v. Stephens*, 1:15-cr-00095 (AJN), Doc. No. 2798 (S.D.N.Y. March 19, 2020) (explaining that “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent” and that “inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop”); *United States v. Barkman*, 3:19-cr-0052-RCJ-WGC, 2020 U.S. Dist. LEXIS 45628 (D. Nev. March 17, 2020) (modifying intermittent confinement as a condition of probation due to the COVID-19 pandemic); *In re. Extradition of Alejandro Toledo Manrique*, 2020 WL 1307109 (N.D. Cal. March 19, 2020) (ordering release on bond despite government assertions that facility has preparedness plan in place and no cases have been confirmed); *United States v. Raihan*, No. 20-cr-68 (BMC) (JO), Dkt. No. 20 at 10:12-19 (E.D.N.Y.

Mar. 12, 2020) (deciding to continue a criminal defendant on pretrial release rather than remand to the Metropolitan Detention Center in part due to risk of COVID-19).

91. The unprecedented coronavirus pandemic unquestionably calls for individuals' release, as multiple health experts have opined that no other measures would be sufficient or appropriate, especially for individuals with special vulnerability to severe illness or death from COVID-19.

92. The Rehabilitation Act provides for "reasonable accommodations" to ensure that individuals are not deprived of access to federally-administered benefits because of their disability. Because there is no reasonable accommodation available to protect vulnerable individuals from contracting COVID-19, and thereby being denied access to removal proceedings due to serious illness or even death, release is the only sufficient accommodation available.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS (UNLAWFUL PUNISHMENT)

93. The Fifth Amendment to the U.S. Constitution guarantees civil detainees, including immigration detainees, the right to be free from punitive conditions of confinement. The government violates this guarantee when conditions of confinement lack a reasonable relationship to any legitimate governmental purpose, *i.e.* when a custodian's actions are excessive in relation to their purpose.

94. Conditions of confinement lack a reasonable relationship to any legitimate governmental purpose when the government acts with deliberate indifference when failing to safeguard the health and safety of those in custody. The government acts with deliberate

indifference when it exposes detainees to a substantial risk of serious harm, and when it knows of or disregards that substantial risk to the detainee's health or safety.

95. Defendants have subjected Plaintiffs to conditions of confinement that increase their risk of contracting COVID-19, for which there is no known vaccine, treatment, or cure. Plaintiffs' underlying conditions—of which Defendants are or should be aware—render them especially vulnerable to severe illness or even death if they contract COVID-19. Defendants are therefore subjecting Plaintiffs to an unreasonable risk of serious harm and punitive conditions, in violation of their rights under the Due Process Clause.

96. Defendants' continued detention of Plaintiffs fails to adequately protect Plaintiffs from the risks of contracting COVID-19

97. Plaintiffs' ongoing confinement lacks a reasonable relationship to any legitimate governmental purpose and is excessive in relation to their purpose.

98. Defendants have exposed Plaintiffs to a substantial risk of serious harm.

99. Defendants have known of or disregarded the substantial risk of harm to Plaintiffs' health and safety.

100. Defendants have acted with deliberate indifference to Plaintiffs' health and safety.

101. Defendants continued detention of Plaintiffs violates the Due Process Clause.

SECOND CLAIM FOR RELIEF: VIOLATION OF THE REHABILITATION ACT (FAILURE TO PROVIDE REASONABLE ACCOMMODATION TO PERSONS WITH DISABILITIES)

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

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

104. The removal process is a benefit administered by DHS and Plaintiffs are entitled to participate in the removal process. The services, programs, and activities within the detention centers where DHS detains Plaintiffs receive substantial federal financial assistance.

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

106. By exposing them to a heightened risk of contracting COVID-19, Defendants are preventing Plaintiffs from participating in the removal process by reason of their disability.

107. By failing to take account of their special vulnerability to severe illness or death if they were to contract COVID-19, Defendants are preventing Plaintiffs from participating in the removal process by reason of their disability.

108. By failing to provide Plaintiffs adequate protection from COVID-19 through the only effective means to reduce the risk of severe illness or death, Defendants have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of removal proceedings and the services, programs, and activities within the detention centers with respect to Plaintiffs.

109. The only available “reasonable accommodation” that would mitigate Plaintiffs’ disability is release from detention. Defendants have failed to implement this reasonable accommodation, which would not be unduly burdensome nor require a fundamental alteration in the removal process or the programs and activities of the detention center.

110. Defendants’ ongoing detention of Plaintiffs constitutes discrimination because it is either disparate treatment of, or at the very least has a disparate impact on, people with qualifying disabilities who are at severe risk of serious illness or death if they were to contract COVID-19.

111. For these reasons, Defendants’ ongoing detention of Plaintiffs violates the Rehabilitation Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

a. Issue a writ of habeas corpus and order Plaintiffs' immediate release or placement in community-based alternatives to detention such as conditional release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause and/or the Rehabilitation Act;

b. In the alternative, issue injunctive relief ordering Defendants to immediately release Plaintiffs or place them in community-based alternatives to detention such as conditional release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause and/or the Rehabilitation Act;

c. Declare that Defendants' continued civil detention of individuals at increased risk for severe illness, including all people over the age of 50 and persons of any age with underlying medical conditions that increase the risk of serious illness or death upon contracting COVID-19 violates the Due Process Clause and/or the Rehabilitation Act;

d. Award Plaintiffs all costs incurred in maintaining this action, including reasonable attorneys' fees under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and

e. Grant Plaintiffs any other and further relief this Court deems just and proper.

Dated: March 24, 2020
Washington, D.C.

Respectfully submitted,

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