

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

REYNALDO ALBINO-MARTINEZ, JOSE
NICOLAS CHAVEZ-VARGAS, GENER
ALEJANDRO CHINCHILLA-FLORES, CRAIG
DOBLE, and MIGUEL ANGEL APARICIO
NAVAS,

Petitioner-Plaintiffs,

- against -

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

Respondent-
Defendants.

Case No. _____

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

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OTHER AUTHORITIES

Alejandro Zúñiga, *News Briefs (or No Briefs): The Latest News from Costa Rica*,
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Immigration Court Backlog Tool, TRAC REPORTS, INC.,
https://trac.syr.edu/phptools/immigration/court_backlog/31

James Asquith, *Coronavirus Travel Update—Over 90% of People Live Under Travel Restrictions*, Forbes (last updated Apr. 2, 2020),
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INTRODUCTION

1. Petitioner-Plaintiffs (“Plaintiffs”) are immigration detainees being held at the Monroe County Jail (“Monroe”) and the St. Clair County Jail (“St. Clair”), who are particularly vulnerable to serious illness or death if infected by COVID-19, and who face a heightened risk of contracting the virus unless they are released immediately.

2. The novel coronavirus that causes COVID-19 has quickly led to a global pandemic. As of April 6, 2020, over 1,214,466 people worldwide have received confirmed diagnoses of COVID-19, and over 67,767 of those people have died. There is no vaccine against COVID-19, and there is no known cure. No one is immune from contracting the illness. COVID-19 is most likely to cause serious illness and elevated risk of death for older adults and those with certain underlying medical conditions or disease.

3. The COVID-19 virus 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. That treatment can require the use of specialized equipment, like ventilators. The pandemic has put ventilators in high demand and short

supply around the world, and has even led to shortages of less specialized equipment such as face masks, gloves, and other personal protective equipment (“PPE”). Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity. The only known effective measures to reduce the risk of serious illness or death caused by COVID-19 for vulnerable people are social distancing and improved hygiene. As a result, unprecedented public health measures are being undertaken in all fifty states and around the world.

4. People in enclosed group environments, where they live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships and nursing homes. This problem is particularly acute with respect to people who are confined in jails and other correctional facilities, for whom it is virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, even with the best-laid plans. The enormity of the dangers faced by people in such facilities has become self-evident as more of them are testing positive for COVID-19 with each passing day. For instance, at the Rikers Island jail in New York City, the number of confirmed cases jumped from one to over 200 in roughly 12 days.

5. For this reason, leading public health experts have recommended the prompt release from custody of people such as Plaintiffs who are most vulnerable to COVID-19, protecting those with the greatest vulnerability to COVID-19 from transmission of the virus, and also allowing for greater risk mitigation for all people held or working in the jail. Release of the most vulnerable people such as Plaintiffs also reduces the burden on the region's limited health-care infrastructure, as it lessens the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.

6. Plaintiffs are older adults and/or have underlying medical conditions that create a high risk of serious COVID-19 infection.¹ If they continue to be detained at Monroe and St. Clair during the current outbreak of

¹ The underlying medical conditions that create a high risk of serious COVID-19 infection include, but are not limited to: blood disorders, such as sickle cell disease or taking blood thinners; chronic kidney disease; chronic liver disease, including cirrhosis and chronic hepatitis; cancer or cancer treatments; organ or bone marrow transplant; individuals taking immunosuppressant medications; HIV or AIDS; current or recent pregnancy in the last two weeks; diabetes; inherited metabolic disorders and mitochondrial disorders; heart disease, including coronary artery disease, congenital heart disease, and heart failure; lung disease, including asthma and COPD (chronic bronchitis or emphysema); neurological and neurologic development conditions such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury; severe obesity (body mass index [BMI] of 40 or higher); and any other condition or treatment that weakens the immune response.

COVID-19, they face a danger that is “so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk” and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

7. Accordingly, this Court should issue a Writ of Habeas Corpus and order Plaintiffs’ immediate release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause or, in the alternative, issue injunctive relief ordering Defendants to release Plaintiffs immediately, with appropriate precautionary public health measures, on the grounds that their continued detention violates the Due Process Clause.

PARTIES

8. Plaintiff Reynaldo Albino-Martinez is a citizen of Mexico who has been detained by ICE at St. Clair since February 5, 2020. Mr. Albino-Martinez is 55 years old, and suffers from diabetes and coronary artery disease, among other conditions. More recently, Mr. Albino-Martinez was hospitalized for three weeks with pneumonia. As a consequence, he is at high risk for severe illness or death if he contracts COVID-19.

9. Plaintiff Jose Nicolas Chavez-Vargas is a citizen of Mexico who has been detained by ICE at Monroe since February 20, 2020. Mr. Chavez-

Vargas is 50 years old, and suffers from heart disease and hypertriglyceridaemia, which means he has heightened levels of triglycerides (a type of fat) in his blood that puts him at a high risk of heart attack and stroke. As a consequence, he is at high risk for severe illness or death if he contracts COVID-19.

10. Plaintiff Gener Alejandro Chinchilla-Flores is a citizen of Costa Rica who has been detained by ICE at Monroe since February 25, 2020. Mr. Chinchilla-Flores suffers from chronic asthma. As a consequence, he is at high risk for severe illness or death if he contracts COVID-19.

11. Plaintiff Craig Doble is a citizen of the United Kingdom who has been detained by Immigration & Customs Enforcement (“ICE”) at Monroe since September 23, 2019. Mr. Doble suffers from hypertension. As a consequence, he is at high risk for severe illness or death if he contracts COVID-19.

12. Plaintiff Miguel Angel Aparicio Navas is a citizen of Guatemala who has been detained by ICE at Monroe since about February 20, 2020. For the last two years, he has suffered from an irregular heartbeat, pain in the left side of his chest, difficulty breathing, dizziness and stomach pain. Last year he made multiple visits to St. Joe Mercy Hospital in Ann Arbor to treat some

of these issues, where he was prescribed heart medicine. As a consequence, he is at high risk for severe illness or death if he contracts COVID-19.

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

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

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

16. Defendant William P. Barr is Attorney General of the United States and chief officer of the U.S. Department of Justice. He is responsible

for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, routinely does and transacts business in the Eastern District of Michigan, and is a legal custodian of Plaintiff. He is sued in his official capacity.

17. Defendant ICE is a federal law enforcement agency within the U.S. Department of Homeland Security. ICE is responsible for criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. Enforcement and Removal Operations, a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiffs.

JURISDICTION AND VENUE

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

19. Venue lies in the U.S. District Court for the Eastern District of Michigan, the judicial district in which Plaintiffs are currently in custody. Venue is proper in the Eastern District of Michigan under 28 U.S.C. § 1391, as venue is proper in any district in which a defendant resides.

FACTS

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

20. COVID-19 is a coronavirus that has reached pandemic status. As of April 6, 2020, over 1,214,466 people worldwide have received confirmed diagnoses of COVID-19, including over 307,318 people in the United States. Over 72,774 people have died as a result of COVID-19 worldwide, including at least 8,358 in the United States. The transmission of COVID-19 is expected to grow exponentially.

21. Older people face greater chances of serious illness or death from COVID-19. Certain underlying medical conditions increase the risk of serious COVID-19 disease for people of any age.

22. In many people, COVID-19 causes fever, cough, and shortness of breath. But for older people, as well as those with medical conditions that increase the risk of serious COVID-19 infection, shortness of breath can be severe. Moreover, the COVID-19 virus can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases can cause a permanent loss of respiratory capacity. COVID-19 may also target the heart muscle, causing a medical condition called myocarditis, or inflammation of the heart muscle, which can also affect the heart's electrical system, reducing the heart's ability to pump. Reduced pumping can lead to

rapid or abnormal heart rhythms in the short term, and to long-term heart failure that limits exercise tolerance and the ability to work. In addition, COVID-19 can trigger an over-response of the immune system, further damaging tissues in a cytokine-release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury.

23. 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.

24. Even some younger and healthier people who contract COVID-19 may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and, in extreme cases, extracorporeal mechanical oxygenation. But people in higher risk categories, such as Plaintiffs, will need advanced support, which requires highly specialized equipment that is in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse-to-patient ratios, respiratory therapists, and intensive care physicians. This level of support can quickly exceed local health-care resources.

25. The need for care, including intensive care, and the likelihood of death, are much higher from COVID-19 infection than from influenza. Sources differ, but all reports are grave: sources report fatality rates

ranging from nearly 2% to over 15% for populations at high risk for complications from COVID-19, like the elderly or those with preexisting conditions. Moreover, recent studies estimate that the COVID-19 fatality rate for the general population ranges from six to thirteen times as high as a severe seasonal influenza fatality rate, even in advanced countries with highly effective healthcare systems.

26. Patients in high-risk categories who do not die from COVID-19 often experience a prolonged recovery, including the need for extensive rehabilitation for profound reconditioning, loss of digits, neurologic damage, and the loss of respiratory capacity.

27. There is no vaccine against COVID-19, nor is there any known medication to prevent or treat infection from COVID-19. On March 26, 2020, Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases (NIAID), estimated that a vaccine could be developed in 18 months. This estimation is optimistic. Vaccines typically take between eight and 10 years to develop. Vaccines usually must be tested in four phases before they attain regulatory approval: (1) animal testing, (2) small-group human testing to assess safety and monitor immune response, (3) medium-sized group testing to assess members of at-risk groups, and (4) large-scale testing on thousands of people. Moreover, more time is needed after approval

to distribute the vaccine across the country. With these long trials and distribution schedules in mind, other experts have expressed reservations about the 18-month estimate given by Dr. Fauci.

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

29. Projections by the Centers for Disease Control and Prevention (“CDC”) indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the pandemic without effective public health intervention, with as many as 1.7 million deaths in the United States alone.

B. Plaintiffs Face an Elevated Risk of COVID-19 Transmission

30. As of April 7, 2020, there were 18,970 confirmed cases of COVID-19 and 845 deaths from COVID-19 in Michigan.

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

suspending through April 13 all activities unnecessary to sustain or protect life. The order requires employees to work from home unless they are considered “essential” or they work in jobs related to public safety, health care, or other critical industries. The order also requires individuals who leave their home to adhere to social distancing measures recommended by the CDC, including “remaining at least six feet away from people outside the individual’s household to the extent feasible under the circumstances.”

32. The Michigan Department of Corrections has already placed four prisons on partial lockdown because of the rising number of inmates testing positive for the virus. It is highly likely, if not inevitable, that COVID-19 will reach Monroe and St. Clair if it is not already present.

33. Indeed, over the past two weeks, hundreds of COVID-19 diagnoses have been confirmed at local, state, and federal correctional facilities across the United States. In Michigan, press reports say that at least 207 prisoners and more than 50 staff have contracted COVID-19 across the Department of Corrections’ 29 facilities. This week, the first Michigan prison inmate died with COVID-19. The problem is almost certainly worse than reported given the dearth of available testing in such facilities.

34. The conditions at detention facilities such as Monroe and St. Clair, which are enclosed group environments where inmates live and sleep

in close proximity, pose a heightened public health risk for the spread of COVID-19. Other enclosed group environments, such as cruise ships and nursing homes, have seen extremely high COVID-19 transmission rates. The danger is even greater at Monroe and St. Clair, where inmates are rarely more than six feet apart, scant medical resources are available, and many detainees are at high risk of serious infection.

35. At Monroe, Plaintiffs and other detainees sleep in dormitories that house between 40 and 100 people. Beds are only 3 to 4 feet apart from each other. Detainees continue to eat their meals communally, multiple times per day. Detainees sleep close together and spend most of their days in the same room, and are rarely, if ever, more than six feet from one another. For soap, detainees share a single gallon container of liquid soap, which they constantly have to remind jail staff to replenish. Detainees have not been given facemasks or other PPEs. Staff only began using PPEs on April 6. Hand sanitizer has not been distributed, and the jail is currently infested with maggots.

36. At St. Clair, detainees reside in rooms with 15 to 20 other detainees. Detainees are rotated in and out of these rooms often, so all detainees are exposed to numerous other different detainees on a regular basis. Detainees are not given access to gloves, masks, or hand sanitizers. Staff only

sometimes use masks and gloves. St. Clair has taken some steps to lower its population, but St. Clair County Sheriff Tim Donnellon admitted just last week that it is impossible for corrections staff and inmates not to regularly come into contact.²

37. Jails like Monroe and St. Clair also lack the medical infrastructure necessary to address the spread of infectious disease and treatment of people most vulnerable to illness in detention. During the H1N1 influenza epidemic in 2009, for example, jails and prisons were sites of severe outbreaks. Monroe and the Calhoun County Correctional Center, another facility in Michigan that houses ICE detainees, each experienced mumps outbreaks just last year. News reports suggested an ICE detainee from Guatemala connected the outbreak between both facilities when the detainee was transferred between the Monroe and Calhoun County Correctional Center.

38. Defendants cannot adequately ensure Plaintiffs' safety. Monroe and St. Clair simply cannot adhere to the CDC's social distancing

² Laura Fitzgerald, *St. Clair County Sheriff, Courts Reducing Jail Population to Lessen the Spread of Coronavirus*, PORT HURON TIMES HERALD (last updated Apr. 3, 2020), <https://www.thetimesherald.com/story/news/2020/04/02/st-clair-county-jail-reducing-inmate-population-during-coronavirus-pandemic/5110937002/>.

guidelines. They are crowded detention facilities. Detainees, staff and visitors regularly come and go. It is impossible for Plaintiffs to shelter in place, free from the risk of interacting with strangers who may be carriers for the disease.

39. Given the even greater risk of infection posed by COVID-19, and the fact that inmates cannot engage in proper hygiene and isolate themselves from infected residents or staff, it is only a matter of time until the virus reaches Monroe and St. Clair and rapidly infects the inmates and detainees, including Plaintiffs. The early evidence bears this out: for example, the rate of infection in New York City jails is more than seven times as high as the rate of infection in New York City overall. Indeed, ICE has not grappled with the fact that COVID-19 may spread asymptotically, having instituted no protocol for testing of detainees or staff and other individuals, like vendors and attorneys, who enter the detention facility exhibiting no symptoms. It may be that the virus is already present at Monroe and St. Clair and has begun to spread.

40. The staff at jails like Monroe and St. Clair also have a higher risk of contracting coronavirus due to the lack of protective gear and the impossibility of social distancing. Accordingly, detainees in Michigan and other Michigan facility staff are at very high risk for contracting the virus.

Indeed, at a single jail in New York City, 286 inmates already have tested positive for coronavirus. It is only a matter of time until Monroe and St. Clair face a similar crisis.

41. On March 29, Governor Whitmer issued Executive Order 2020-29, the purported aim of which is to protect vulnerable populations in jails from the spread of COVID-19. But the executive order falls far short of achieving that objective. For example, the order requires staff to implement safety measures when someone displays symptoms of the virus, but that cannot be effective against a virus where many of those who are infected may suffer from only mild symptoms or even be entirely asymptomatic while still carrying and spreading the disease.

42. Other jails around the country have tried similar mitigation efforts to no avail. The virus continues to infiltrate and spread through correctional facilities. The top doctor at New York City's Rikers Island Facilities has lamented how extensive mitigation efforts failed to slow the spread of the disease at the jail. He joins a chorus of public health experts in concluding that for such efforts to be effective, they must be paired with a reduction in the number of people incarcerated.

43. Recognizing the limits of any social distancing or hygiene-based mitigation strategy in a correctional facility, Governor Whitmer included in

Executive Order 2020-29 a recommendation that individuals who are older or have underlying health conditions, among others, be considered for early release. Some county jails in Michigan have already begun to reduce their inmate populations. Macomb County Jail, for example, has reduced its inmate population from 875 to 648.

44. And, when correctional facilities have been unwilling to take appropriate action to address the heightened danger of COVID-19 infection, courts have not hesitated to intervene and protect the civil liberties, and lives, of those most vulnerable to infection. For example, two New York judges recently ordered the release of ICE detainees who were at high risk of serious COVID-19 infection because of an outbreak in their respective jails. *Basank v. Decker*, No. 20-cv-2518, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Coronel v. Decker*, ___ F. Supp. 3d ___, No. 20-cv-2472, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020). Similarly, on March 31, the District Court for the Middle District of Pennsylvania granted a Temporary Restraining Order releasing a group of individuals at high risk for serious infection from ICE detention. *Thakker v. Doll*, ___ F. Supp. 3d ___, No. 1:20-cv-480 (M.D. Pa. Mar. 31, 2020). Likewise, two federal courts in California have ordered the release of immigrants due to the pressing health concerns created by ICE detainment. *Castillo v. Barr*, ___F.3d___, 20-cv-0065, 2020 WL 1502864 (C.D.

Cal. Mar. 27, 2020); *Hernandez v. Wolf*, CV 20-60017-TJH (C.D. Cal. Apr. 1, 2020). A few days ago, this Court granted a Temporary Restraining Order releasing a similarly situated medically vulnerable immigrant petitioner at Calhoun County Correctional Facility in Michigan. *Malam v. Adducci*, No. 20-10829, — F. Supp. 3d —, 2020 WL 1672662 (E.D. Mich. Apr. 6, 2020).

C. People Most Vulnerable to COVID-19 Should Be Released from ICE Detention

45. Leading public health experts have recommended that Plaintiffs, and other high-risk detainees, be released from Monroe and St. Clair and similar correctional facilities.

46. Dr. Robert Greifinger, a physician who has worked in correctional health care for over 30 years, has declared that “the only way to mitigate COVID-19 is to use scrupulous hand hygiene and social distancing.” He has cautioned that the risks for COVID-19 are especially great for “elderly adults or those with underlying disease” who, if infected, “are likely to suffer illness and death.” This fact, combine with ICE’s inability to sufficiently protect its detainees, has led Dr. Greifinger to conclude that “ICE must release all people with risk factors to prevent serious illness including death.”

47. Plaintiffs in this case are people who are particularly vulnerable to serious illness or death if infected by COVID-19 and are currently detained

at Monroe or St. Clair as they await the resolution of their civil immigration cases.

48. **Reynaldo Albino-Martinez** is a citizen of Mexico who has been detained by ICE at St. Clair since February 5, 2020. Mr. Albino-Martinez came to the United States in 1989 and has not departed the country since then. Mr. Albino-Martinez was ordered removed by Immigration Judge Mark J. Jebson of Detroit Immigration Court on March 31, 2020. His attorney reserved appeal of the decision at that time.

49. Mr. Albino-Martinez is 55 years old, and suffers a number of serious medical conditions. These include insulin-dependent diabetes, coronary heart disease, rotator cuff tears, posterior subcapsular polar cataracts, depression, diabetic terinopathy, pterygium, astigmatism, myopia, presbyopia, diabetic peripheral neuropathy, hyperlipidemia, ulnar neuropathy in his right eye, and acid reflux disease. More recently, Mr. Albino-Martinez was diagnosed with pneumonia, for which he was transferred from St. Clair to McLaren Port Huron Hospital. Mr. Albino-Martinez was hospitalized and treated for three weeks for his pneumonia. Mr. Albino-Martinez was discharged from the hospital on March 4, 2020, and was in the St. Clair County Jail medical unit for continued rehabilitation until approximately March 27, 2020.

50. Mr. Albino-Martinez is critically vulnerable to COVID-19 due to his diabetes and recent pneumonia.

51. **Jose Nicolas Chavez-Vargas** is a citizen of Mexico who has been detained by ICE at Monroe since February 20, 2020. Mr. Chavez-Vargas was denied bond on March 20, 2020 and requested voluntary departure on April 1, 2020. He is scheduled for voluntary departure by April 15, 2020.

52. Mr. Chavez-Vargas is 50 years old and has heart disease. He also has hypertriglyceridaemia, which means he has heightened levels of triglycerides (a type of fat) in his blood that puts him at a high risk of heart attack and stroke. He usually follows a strict diet, limiting starches and fats, but he has had to abandon it while in detention.

53. Mr. Chavez-Vargas is critically vulnerable to COVID-19 because of his heart condition.

54. **Gener Alejandro Chinchilla-Flores** is a citizen of Costa Rica who has been detained by ICE at Monroe since February 25, 2020. Mr. Chinchilla-Flores came to the United States approximately 19 years ago on a B-1 visa. Mr. Chinchilla-Flores was originally scheduled to leave the United States by March 27, 2020. ICE has delayed that departure date indefinitely.

55. Mr. Chinchilla-Flores suffers from chronic asthma, for which he uses an inhaler. He has had multiple asthma attacks in the past year. He has yet to be provided an inhaler while in detention.

56. Mr. Chinchilla-Flores is critically vulnerable to COVID-19 because of his asthma.

57. **Craig Doble** is a citizen of the United Kingdom who has been detained by ICE at Monroe since September 23, 2019. From September 21, 2019 to September 23, 2019, he was detained at Oakland County Jail by local law enforcement. He has been in detention for over six months. Mr. Doble initially came to the United States in 2015 under an H2B visa. He has not departed the United States since his last H2B entrance in 2017.

58. Mr. Doble suffers from hypertension that developed during detention about four months ago. His family also has a history of high blood pressure. Mr. Doble has further experienced shortness of breath and chest pain stemming from his hypertension. In detention, Mr. Doble has not received any medication to control his blood pressure. Rather than receiving appropriate medical care, Mr. Doble has been given a magnesium supplement for anxiety and depression.

59. Mr. Doble is critically vulnerable to COVID-19 because of his hypertension.

60. **Miguel Angel Aparicio Navas** is a citizen of Guatemala who has been detained by ICE at Monroe since around February 20, 2020. Mr. Aparicio Navas does not have a criminal history, and was taken into ICE custody after being issued a ticket for driving without a license.

61. For the last two years, Mr. Aparicio Navas has suffered from an irregular heartbeat, pain in the left side of his chest, difficulty breathing, dizziness and stomach pain. Last year he made multiple visits to St. Joe Mercy Hospital in Ann Arbor to treat some of these issues, where he was prescribed heart medicine. In March 2020, two weeks into his detention at Monroe, Mr. Aparicio Navas fell ill with fever and a cough. He met with a nurse, who only advised him to get rest.

62. Mr. Aparicio Navas is critically vulnerable to COVID-19 due to his heart condition.

LEGAL BACKGROUND

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

63. “[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As civil detainees, Plaintiffs’ detention is governed by the Fifth

Amendment. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).³ Under the Fifth Amendment, civil detention may not “amount to punishment of the detainee.” *Bell*, 441 U.S. at 535.

64. Because of Plaintiffs’ underlying health conditions and in some cases age, which make them especially vulnerable to infection from COVID-19, the condition of their confinement is not “reasonably related to a legitimate governmental objective”; instead it is “arbitrary or purposeless[.]” *See Bell*, 441 U.S. at 539. *See also J.H. v. Williamson Cty., Tennessee*, 951 F.3d 709 (6th Cir. 2020) (applying *Bell* test to pre-trial detainee’s conditions of confinement claim); *Turner v. Stumbo*, 701 F.2d 567, 572 (6th Cir. 1983) (same).

65. Plaintiffs’ detention is not “reasonably related” to its objective because it creates a serious risk of imminent illness and death. *See Bell*, 441 U.S. at 539. This risk is urgent, imminent, and unrelated to any legitimate

³ Plaintiffs’ continued detention also violates the Eighth Amendment’s prohibition of cruel and unusual punishment—a much stricter standard than the Fifth Amendment’s ban on any punishment, which applies here. This is because Defendants have ignored “a condition of confinement that is sure or very likely to cause serious illness” by crowding Plaintiffs into living quarters with others who have “infectious maladies . . . even though the possible infection might not affect all of those exposed.” *Helling*, 509 U.S. at 32-33. *See Bell*, 441 U.S. at 539; *Thakker*, 2020 WL 1671563, at *8 n.15 (ordering immediate release of immigration detainees due to COVID-19 under the Fifth Amendment and, citing *Helling*, finding that plaintiffs had also met the “more exacting Eighth Amendment standard”).

governmental goal, as several federal courts have already held. *See, e.g., Malam*, 2020 WL 1672662, at *12; *Xochihua-Jaimes v. Barr*, No. 18-71460, —F. App’x. —, 2020 WL 1429877 at *1 (9th Cir. Mar. 24, 2020) (*sua sponte* ordering immediate release of immigrant petitioner “[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers”); *Thakker*, 2020 WL 1671563, at *8 (ordering immediate release of immigrant petitioners because “we can see no rational relationship between a legitimate government objective and keeping Petitioners detained in unsanitary, tightly-packed environments”).

66. When the government fails to meet its obligation to provide adequate medical care, courts have a responsibility to remedy the resulting constitutional violation. *See Brown v. Plata*, 563 U.S. 493, 511 (2011) (“When necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.”). The power to remedy constitutional violations arising from government confinement falls within the Court’s broad power to fashion equitable relief. *See Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978).

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

the release of detained individuals. *See, e.g., Malam*, 2020 WL 1672662 (ordering release of detainee in California due to threat of COVID-19); *Hernandez v. Wolf*, No. 20-60017-TJH (C.D. Cal. Apr. 1, 2020) (same); *Thakker v. Doll*, No. 1:20-cv-480, —F. Supp. 3d—, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020) (same for 13 detainees in Pennsylvania); *Coronel v. Decker*, No. 20-cv-2472, —F. Supp. 3d—, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020) (ordering release of four medically vulnerable immigrant plaintiffs held in New York and New Jersey detention centers due to threat of COVID-19); *Basank v. Decker*, No. 20-cv-2518, 2020 WL 1481503, at *1 (S.D.N.Y. Mar. 26, 2020) (same, for ten immigrant plaintiffs who “suffer[] from chronic medical conditions, and face[] an imminent risk of death or serious injury in immigration detention if exposed to COVID-19”); *Calderon Jimenez v. Wolf*, No. 18-10225-MLW, Dkt. 507 (D. Mass. Mar. 26, 2020) (ordering grant of bail for an immigrant detainee held in Plymouth County, Massachusetts because “being in jail enhances risk”). On March 23, 2020, the Ninth Circuit ordered, *sua sponte*, the release of an immigrant petitioner “[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers.” *Xochihua-Jaimes*, No. 18-71460, —F. App’x—, 2020 WL 1429877, at *1 (9th Cir. Mar. 23, 2020).

B. Petitioner Chinchilla-Flores Must Be Released Because, as a Result of the COVID-19 Crisis Impact on International Travel and Removals, His Removal Is Not Significantly Likely in the Reasonably Foreseeable Future

68. Mr. Chinchilla-Flores has been detained since February 25, 2020. As a result of the COVID-19 crisis, Mr. Chinchilla-Flores is not significantly likely to be removed in the reasonably foreseeable future, and therefore must be released pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001) *See Ali v. Dep't of Homeland Security*, No. 4:20-cv-00140, 2020 WL 1666074 (S.D. Tex. Apr. 2, 2020) (granting release on the basis of petitioner's unforeseeable removal to Pakistan due to the novel coronavirus pandemic).

69. Mr. Chinchilla-Flores was scheduled to depart the United States on March 27, 2020, but ICE has indefinitely delayed that departure date. He is detained under 8 U.S.C. § 1231, the statute governing post-order detention. 8 U.S.C. § 1231(a)(2) authorizes a 90-day period of mandatory post-final-order detention during which time ICE is supposed to effectuate removal, also known as “the removal period,” § 1231(a)(1)(A).

70. Individuals whom the government is unable to remove during the 90-day removal period should be released under conditions of supervision. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision.”). These

conditions include periodic reporting and other “reasonable written restrictions on the alien’s conduct.” *Id.*

71. Mr. Chinchilla-Flores will clearly be detained far longer than the 90-day removal period.

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

73. Mr. Chinchilla-Flores has no criminal history. There is no hearing process by which he could appeal the government’s unilateral determination that he should be detained past the 90-day removal period.

74. In *Zadvydas v. Davis*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) authorizes continued detention beyond the removal period only insofar as removal is “reasonably foreseeable.” 533 U.S. at 699. That is because, to satisfy due process, detention must “bear a reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (citations omitted). Because the principal purpose of the post-final-order detention statute is to effectuate removal, if removal cannot be effectuated, detention bears no reasonable relation to its purpose. *Id.* at 697. Thus, in order to avoid

the serious constitutional problem that would be created if the statute authorized detention in such circumstances, the Court construed Section 1231(a)(6) as authorizing post-final-order detention only for a “period reasonably necessary to secure removal,” a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six-month period, if a detainee provides “good reason” to believe that his or her removal is not significantly likely in the reasonably foreseeable future, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the individual must be released.

75. Petitioner Chinchilla-Flores will clearly be detained longer than six months. The COVID-19 crisis provides good reason to believe his removal is not significantly likely in the reasonably foreseeable future. Where the “purpose of Petitioner’s detention is no longer possible in the foreseeable future, his continued detention is unreasonable, and thus, unauthorized by § 1231(a)(6),” even though he has been detained less than six months. *Ali*, No. 4:20-cv-00140, at *7. *Zadvydas* does “not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court [can] find that the detention is unconstitutional.” *Id.*

76. Therefore, Mr. Chinchilla-Flores must be released unless Defendants provide evidence that rebuts Petitioner's showing that removal is unlikely in the reasonably foreseeable future.

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

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

79. International travel has come to a virtual standstill. Sixty-four global airlines have completely suspended operations, and U.S. airlines have greatly reduced operations.⁴ Delta will cut its international flights by 80%.⁵ American Airlines plans to cut its international flights by 90% through April

⁴ Thomas Pallini, *64 Global Airlines Have Completely Stopped Flying Scheduled Flights Due to Travel Bans, Airspace Closures, and Low Demand for Travel – See the Full List*, BUS. INSIDER (Apr. 1, 2020), <https://www.businessinsider.com/coronavirus-global-airlines-stopping-flights-suspending-operations-2020-3>.

⁵ Kelly Yamanouchi, *Delta Says it Still Flies to All Points in its Domestic Network*, ATLANTA JOURNAL-CONSTITUTION (Apr. 3, 2020), <https://www.ajc.com/blog/airport/delta-says-still-flies-all-airports-its-domestic-network/Rym2MyGFFHdanXuKP7VPpK/>.

and May.⁶ It is unclear when regular commercial air travel will resume, and, even when it does, it will likely take a great deal of time before regular routes are reestablished to many countries, meaning that it is likely to remain extremely difficult to effectuate removals.

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

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

⁶ Keith Griffin, *American Airlines Cuts International Flights by 90% Through May – but Vows NOT to Halt Domestic Service During the Coronavirus Crisis*, DAILY MAIL (Apr. 3, 2020), <https://www.dailymail.co.uk/news/article-8186105/American-Airlines-cuts-international-flights-90-May.html>.

quarantine, it is unclear that deportees, who are unlikely to have the resources to isolate in a hotel for several weeks, will be admitted.

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

83. The slowing and shutdown of consular and embassy services will also affect removals to countries where transit visas through third countries are necessary in order to remove a person because there are no direct flights to the country of deportation. Because many deportees are escorted by ICE

officers on such flights, in order to travel through the transit country or countries, ICE needs to procure transit visas not just for the deportee, but also for the ICE escorts.

84. Likewise, immigration case processing in the United States has been severely curtailed as a result of the pandemic. As of 2020, there were over 1.1 million cases pending in the immigration court system, and the average wait for a disposition in Michigan is almost two years.⁷ While the Detroit Immigration Court remains open for detainee hearings, detainees are being encouraged to waive their right to in-person appearances in favor of telephonic appearances, and to work with the Department of Justice to take certain facts out of controversy.⁸ Thus, those detainees who wish to press their right to fair procedures will see their cases delayed in a system that is heavily backlogged under the best of circumstances.

⁷ See *Immigration Court Backlog Tool*, TRAC REPORTS, INC., https://trac.syr.edu/phptools/immigration/court_backlog/.

⁸ MARK JEBSON, U.S. IMMIGRATION JUDGE, STANDING ORDER: TELEPHONIC APPEARANCE DUE TO COVID-19 IN DETAINED CASES BEFORE JUDGE MARK JEBSON IN THE DETROIT IMMIGRATION COURT (MAR. 26, 2020). Regarding the right to an in-person hearing generally, IMMIGRATION COURT PRACTICE MANUAL, DEPARTMENT OF JUSTICE, CHAPTER 4 (2008) (“[E]videntiary hearings on the merits may only be conducted by telephone conference if the respondent consents after being notified of the right to proceed in person or through video conference.”).

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

86. Defendants seek to deport Mr. Chinchilla-Flores to Costa Rica. Costa Rica has banned entry to all foreigners through at least April 12, 2020, and those allowed to enter are subject to a 14-day quarantine.⁹ Most airlines have suspended service to Costa Rica.¹⁰

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

⁹ See James Asquith, *Coronavirus Travel Update—Over 90% of People Live Under Travel Restrictions*, FORBES (last updated Apr. 2, 2020), <https://www.forbes.com/sites/jamesasquith/2020/04/02/april-update-coronavirus-travel-update-90-of-countries-have-travel-restrictions/#279a455d3024>; U.S. Embassy in Costa Rica, COVID-19 Information.

¹⁰ See Alejandro Zúñiga, *News Briefs (or No Briefs): The Latest News from Costa Rica*, TICO TIMES (Mar. 31, 2020), <https://ticotimes.net/2020/03/31/news-briefs-or-no-briefs-the-latest-news-from-costa-rica>

C. ICE Has the Authority to Release Detained People in Its Custody

88. It is well within ICE’s authority to comply with constitutional requirements by releasing people who are vulnerable to severe illness or death if they contract COVID-19. For example, the regulations governing ICE’s release authority state that serious medical conditions are a reason to parole an individual, as “continued detention would not be appropriate” in such cases. 8 C.F.R. § 212.5(b)(1).

89. ICE not only has the authority to exercise its discretion to release individuals from custody, but has routinely done so for especially vulnerable detainees like Plaintiffs.

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

91. ICE’s discretion applies regardless of the statutory basis for a noncitizen’s detention.

D. This Court Has the Authority to Order Plaintiffs’ Release

92. While the circumstances of this case are certainly unusual, the Court’s authority to order Plaintiffs’ release to ensure their constitutional rights are protected is well established. District courts have “ample authority”

to address “each element” contributing to a constitutional violation. *Hutto v. Finney*, 437 U.S. 678, 687 (1978).

93. Courts regularly have exercised this authority to remedy constitutional violations caused by overcrowding. *See Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983) (concluding that court did not exceed its authority in directing release of low-bond pre-trial detainees as necessary to reach a population cap) *cert. denied*, 465 U.S. 1108 (1984).

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

95. These constitutional principles make clear, consistent with the opinions of leading public health experts, that releasing Plaintiffs is the only viable remedy to ensure their safety from the threat to their health that COVID-19 poses. Plaintiffs are older adults and people with underlying medical conditions and in some cases who also are older, and who are at particularly grave risk of severe illness or death if they contract COVID-19.

96. In the face of this great threat, social distancing and hygiene measures are Plaintiffs’ only defense against COVID-19. Those protective

measures are impossible at Monroe and St. Clair, where Plaintiffs share sleeping quarters, toilets, sinks and showers, eat and recreate in communal spaces, and are necessarily in close contact with the many other detainees and officers around them. Because these conditions pose a heightened risk of infectious spread, Plaintiffs face unreasonable harm from continued detention.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive Due Process (Unlawful Punishment)

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

98. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment or does not ensure those detainees' safety and health.

99. Defendants are subjecting Plaintiffs to heightened risk of contracting COVID-19, for which there is no vaccine, known treatment, or cure. Because of Plaintiffs' particular vulnerabilities, they risk serious illness and death if infected with COVID-19. Defendants are subjecting Plaintiffs to

a substantial risk of serious harm, in violation of Plaintiffs' rights under the Due Process Clause.

100. Leading public health experts agree that Plaintiffs "are at grave risk of severe illness and death" if they remain at jails like Monroe and St. Clair. Accordingly, Defendants' detention of Plaintiffs amounts to punishment and fails to ensure their safety and health.

101. There is no reasonable relationship between a legitimate government objective and keeping Petitioners detained in their current conditions.

102. For these reasons, Defendants' ongoing detention of Plaintiffs violates the Due Process Clause.

COUNT TWO

Defendants' Detention of Petitioner Chinchilla-Flores Where Removal Is Not Significantly Likely in the Foreseeable Future Violates 8 U.S.C. § 1231(a)(6)

103. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

104. Due process requires that immigration detention bear a reasonable relation to its purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Rosales-Garcia v. Holland*, 322 F.3d 386, 411 (6th Cir. 2003). The principal purpose of the statute that authorizes post-final-order detention, 8 U.S.C. § 1231, is to effectuate removal. Where removal cannot be effectuated,

detention is not reasonably related to its purpose, would violate due process, and is not statutorily authorized.

105. Petitioner Chinchilla-Flores has met his burden of establishing good reason to believe that his removal is not reasonably likely in the foreseeable future. Defendants have not rebutted this showing, as they have provided no evidence that Mr. Chinchilla-Flores's removal is reasonably foreseeable. Absent such evidence, Petitioner's detention is not authorized by statute and he is entitled to immediate release under an order of supervision.

PRAYER FOR RELIEF

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

- a. Issue a Writ of Habeas Corpus and order Plaintiffs' immediate release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause;
- b. In the alternative, issue injunctive relief ordering Defendants to immediately release Plaintiffs, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause;

- c. Issue a declaration that Defendants' continued detention in civil immigration custody of individuals at increased risk for severe illness, including older individuals and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;
- d. Declare that for persons held in post-order detention under 8 U.S.C. § 1231, including Plaintiff Chinchilla-Flores, there is good reason to believe that, due to the COVID-19 crisis, there is no significant likelihood of their removal in the reasonably foreseeable future, and that such persons, including Plaintiff Chinchilla-Flores, must be released unless the government can rebut that showing;
- e. Find that Defendants have failed to rebut the showing of Plaintiff Chinchilla-Flores that his removal is not significantly likely in the reasonably foreseeable future; order the government immediately to release Plaintiff Chinchilla-Flores from detention under orders of supervision; and enjoin Defendants from re-detaining Plaintiff unless or until Defendants can establish that his removal is significantly likely in the reasonably foreseeable future;

- f. Award Plaintiffs their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that this Court may deem fit and proper.

Dated: April 7, 2020

Respectfully submitted,

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