**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

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| KANAT UMARBAEV, JANE DOE, LEE ALEJANDRO ESPINOZA URBINA, ALFREDO HECHAVARRIA FONTEBOA, KIRK GOLDING, BEHZAD JALILI, JUAN FRANCISCO PORTILLO HERNANDEZ, EDGAR HARO OSUNA, OSITA NWOLISA, ENMANUEL FIGUEROA RAMOS, and PATRICIA ESTEBAN RAMON,<br><br>*Petitioners,*<br><br>v.<br><br>MARC J. MOORE, Dallas Field Office Director, Immigration and Customs Enforcement, Department of Homeland Security; JIMMY JOHNSON, Warden, Prairieland Detention Center; MATTHEW T. ALBENCE, Deputy Director of Immigration and Customs Enforcement, Department of Homeland Security; and CHAD WOLF, Acting Secretary of Department of Homeland Security, in their official capacities,<br><br>*Respondents.* | ) | Case No. 3:20-cv-01279-B |

**PETITIONERS' MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**

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## INTRODUCTION

In the midst of a highly contagious, once in a generation global pandemic that has brought air travel to a halt and led to the entire country essentially being placed on lockdown, ICE officials filled a plane with obviously sick individuals and flew them across the country to the Prairieland Detention Center (Prairieland) in Alvarado, Texas. The consequences of this decision are exactly as expected: Prairieland Detention Center quickly went from zero confirmed cases of COVID-19 to at least forty-three.

Petitioners Kanat Umarbaev, Jane Doe, Lee Espinoza Urbina, Alfredo Hechavarria Fonteboa, Kirk Golding, Behzad Jalili, Juan Portillo Hernandez, Edgar Haro Osuna, Osita Nwolisa, Enmanuel Figueroa Ramos, and Patricia Esteban Ramon are medically vulnerable individuals who are being held at Prairieland. Each of them has already tested positive for COVID-19 or faces a high risk of dying or becoming seriously ill if they do become infected. Despite the ongoing outbreak and the dire circumstances on the ground, Respondents have failed to take the steps necessary to ensure that Petitioners are held in constitutionally adequate conditions. Petitioners have all lived in the United States for years, have deep ties to the country, and present no risk to the community if they are released. As a result, their continued detention serves no legitimate purpose during the COVID-19 pandemic. Nonetheless, Respondents have refused to let them out of Prairieland. Petitioners filed a Writ of Habeas Corpus to secure their release from this unconstitutional detention, and they now move for a temporary restraining order in order to avoid the irreparable harm they will almost assuredly suffer absent immediate relief.

Social distancing is currently the only known way to contain COVID-19, and officials are not even meaningfully trying to facilitate social distancing inside Prairieland, let alone take other steps to prevent the disease from continuing to spread. To the contrary, cleaning supplies are

limited, detainees—including visibly ill detainees, are house in communal dorms where they must eat and sleep within six feet of one another, and detainees who test positive for COVID-19 are placed in punitive segregation cells, sometimes with other detainees, rather than medical facilities.

Recognizing the dire circumstances and the failure of ICE decisionmakers to ensure that detention satisfies minimal constitutional requirements, courts have begun to step in and order ICE to release detained individuals. *See, e.g.*, *Vazquez Barrera v. Wolf*, 4:20-CV-1241, 2020 WL 1904497, at *8 (S.D. Tex. Apr. 17, 2020) (ordering release of medically vulnerable individual from facility with COVID-19 cases); *Kaur v. United States Dep't of Homeland Sec.*, 220CV03172ODWMRWX, 2020 WL 1939386, at *3 (C.D. Cal. Apr. 22, 2020) (ordering release of detainee and explaining that courts "across the country have recognized that the risk posed in immigration detention facilities of contracting and dying from the virus is so severe that it constitutes an irreparable harm supporting a TRO").

On May 7, 2020, ICE confirmed the first death of a detainee from COVID-19. With social distancing impossible and facilities failing to effectively minimize the risk to detainees such as Petitioners, it is only a matter of time before more detainees die. The decision to detain Petitioners at high risk of severe illness or death, when those Petitioners pose no security threat to the community and have each identified a safe place where he or she can isolate, is both punitive and evidence of deliberate indifference of the constitutional rights of these individuals This Court should therefore join the other courts from "across the country" that have granted habeas and injunctive relief, and it should order Petitioners' immediate release because their continued detention violates the Fifth Amendment's Due Process Clause.

## FACTUAL BACKGROUND

### I. COVID-19 Is A Global Pandemic Requiring Drastic Intervention In All Areas Of Life

COVID-19 is a global pandemic. App'x at 17 (Amon Decl. ¶5). On March 13, 2020, the spread of COVID-19 in the United States led President Trump to formally declare a national emergency.[1]

To combat this virus, countries across the globe have taken the drastic measure of issuing stay-at-home orders, with governments closing schools, courts, collegiate and professional sports, theater, and other congregate settings in order to mitigate harm. App'x at 23 (Amon Decl. ¶15). Even with these measures in place, the virus has spread rapidly with devastating results. As of May 11, more than 4 million people around the world have tested positive for COVID-19, and nearly 285,000 of them have died. *Id.* (Amon Decl. ¶5). There are more than 1,346,723 confirmed cases in the United States alone, which have resulted in 80,000 confirmed deaths. *Id.* Texas has not escaped the pandemic. To date, more than 39,000 positive cases have been confirmed, and nearly 1,100 people have died from the disease. *Id.* Public health experts have repeatedly expressed that the best available tool for limiting the spread and decreasing the harm caused by the pandemic is social distancing by *all* individuals—not just those who display symptoms. App'x at 22 (Amon Decl. ¶¶13-15).

## II. Petitioners Are At Increased Risk Of Severe Illness And Death From COVID-19 Due To Underlying Medical Conditions

[1] Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (March 13, 2020), available at https://www.whitehouse.gov/presidential- actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.

COVID-19 is a serious disease that can result in respiratory failure and death in older patients and patients with chronic underlying conditions. App'x at 1-2 (Greifinger Decl. ¶¶4-5).

The virus appears to spread primarily between people who are within 6 feet from one another, via respiratory droplets. App'x at 22 (Amon Decl. ¶13). Individuals can spread the virus even if they are not actively symptomatic. *Id.* (Amon Decl. ¶¶ 13-14). It is also possible that a person can get COVID-19 by touching a surface or object that has the virus on it, and then touching their nose, mouth, or possibly their eyes. *Id.* (Amon Decl. ¶13). There is currently no known cure or treatment for COVID-19. App'x at 17 (Amon Decl. ¶6).

Individuals who are 65 or older or who have underlying medical conditions are at high risk of severe disease and death. *Id*. (Amon Decl ¶7). "The CDC identifies underlying medical conditions to include: blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders, including diabetes, metabolic disorders, heart and lung disease, neurological and neurologic and neurodevelopmental conditions, and current or recent pregnancy." App'x at 18 (Amon Decl. ¶8).

Data also indicate that "individuals who are over 45 years can be considered high risk for severe disease while those [who are 54 years and older] could be considered high risk for severe disease and death." *Id*. ¶9. Additionally, individuals with hypertension and post-traumatic stress disorder ("PTSD")[2] are at a heightened risk for severe illness if infected with COVID-19, and

[2] Mental illnesses, including posttraumatic stress disorder (PTSD), depression, and anxiety, inflict stress, which suppresses the immune system. There are numerous studies showing the association between stress and immunosuppression. *See* R. Glaser & JK Kiecolt-Glaser, *Stress-induced immune dysfunction: implications for health*, NAT. REV. IMMUNOLOGY 5: 243-251 (2005); SC Segerstrom & GE Miller, *Psychological stress and the human immune system: a meta-analytic study of 30 years of inquiry*, PSYCHOLOGY BULLETIN 130: 601-630 (2004); JD Johnson et al., *Catecholamines mediate stress-induced increases in peripheral and central inflammatory cytokines*, NEUROSCIENCE 135: 1295-1307 (2005). Studies have specifically demonstrated that PTSD is a disorder with an immunological component. Zhewu Wang & M. Rita I. Young, *PTSD, a Disorder with an Immunological Component*, 7 FRONTIERS IN IMMUNOLOGY (2016). Chronic PTSD is associated with autoimmune diseases, including rheumatoid arthritis, psoriasis, insulin-dependent diabetes, and thyroid disease. Joseph A. Boscarino,

people with HIV or AIDS may be as well. App'x at 18-19 (Amon Decl. ¶¶8, 10-11). "There is no vaccine to prevent COVID-19. There is no known cure or anti-viral treatment for COVID-19 at this time." App'x at 17 (Amon Decl. ¶5). Further, there is no evidence that being infected with COVID-19 offers immunity from subsequent infections. App'x at 19 (Amon Decl. ¶12(a)).

Petitioners are detainees at the Prairieland Detention Center ("PDC") and are particularly vulnerable to severe illness and death from COVID-19 due to underlying medical conditions.

- **Jane Doe** is a 49-year-old woman who is positive for HIV and suffers from PTSD. She has a place to live if released. App'x at 81, 83 (Doe Decl. ¶¶1-2, 4, 17).

- **Alfredo Hechavvaria Fonteboa** is a 32 year old man who has lung disease, asthma, irregular hemoglobin levels, and high blood pressure. He has a place to live if released. App'x at 85-86 (Hechavarria Fonteboa Decl. ¶¶1, 4, 20).

- **Kanat Umarbaev** is a 47-year-old man who has high blood pressure with a family history of strokes and has a history of significant bleeding and low hemoglobin. He is currently suffering from COVID-19. He has a place to live and quarantine if released. App'x at 92-93, 95-96 (Umarbaev Decl. ¶¶1, 9, 21, 28).

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*Posttraumatic Stress Disorder and Physical Illness: Results from Clinical and Epidemiological Studies*, 1032 ANN. N.Y. ACAD. SCI. 141-153 (2004). PTSD is also a risk factor for numerous types of infection. Tammy Jiang et al. *Posttraumatic Stress Disorder and Incident Infections: A Nationwide Cohort Study*, 30 EPIDEMIOLOGY 911-917 (2019). Similarly, studies have found that depression is associated with a higher risk of infection, as well as more serious infection and death from infection. AM Yohannes, *Depression in Survival Following Acute Infection*, J. OF PSYCHOSOMATIC RESEARCH 82-83 (2016). Individuals with PTSD, depression, and anxiety are also likely to experience an exacerbation of their symptoms during the coronavirus pandemic, which can lead to severe harm. *See* Allen S. Keller & Benjamin D. Wagner, *COVID-19 and Immigration Detention in the USA: Time to Act*, LANCET PUBLIC HEALTH (2020).

- **Lee Espinoza Urbina** is a 40-year-old man who has high blood pressure, is overweight, and has a history of bronchitis. During his detention at PDC he tested positive for COVID-19 and after about two weeks of battling the illness, he tested negative for COVID-19. He has a place to live if released. App'x at 56, 59-60 (Espinoza Urbina Decl. ¶¶1, 17, 21-22).

- **Juan Francisco Portillo Hernandez** is a 20-year-old man who, just a week prior to his detention at PDC, suffered from an illness that caused nausea, vomiting, and resulted in his spitting up blood. He has a place to live if released. App'x at 63-64 (Portillo Hernandez Decl. ¶¶1, 5, 15).

- **Kirk Golding** is a 26-year-old man who has asthma and allergies, and does not have access to an inhaler at PDC. He has a place to live if released. App'x at 67, 69 (Golding Decl. ¶¶1, 2, 6, 23).

- **Patricia Esteban Ramon** is 46-year-old woman who has diabetes, high blood pressure, and high cholesterol. She has a place to live if released. App'x at 71-72, 74 (Esteban Ramon Decl. ¶¶1, 7, 25).

- **Enmanuel Figueroa Ramos** is a 21-year-old man who has asthma and a weak immune system. He has a place to live if released. App'x at 85, 86 (Figueroa Ramos Decl. ¶¶1, 3, 16).

- **Edgar Haro Osuna** is a 47-year-old man who has type 2 diabetes, suffers from neuropathy, and anxiety. He has a place to live if released. App'x at 99-101 (Haro Osuna Decl. ¶¶1-2, 14, 21).

- **Behzad Jalili** suffers from PTSD. He has a place to live if released. App'x at 77, 79 (Jalili Decl. ¶¶6, 20).

- **Osita Nwolisa** is a 51-year-old man who has high blood pressure. He has a place to live if released. App'x at 104 (Nwolisa Decl. ¶¶1,6).

## III. Necessary Steps For Controlling The Rapid Spread Of COVID-19

The CDC and experts from around the globe have recognized the particular threat that COVID-19 poses in detention facilities, and have provided guidelines for maximizing the safety of those inside. App'x at 31 (Amon Decl. ¶ 51). These guidelines cover a variety of ways to minimize the threat posed from COVID-19. For example, detainees and staff should practice meticulous, frequent hand-washing with soap and water (or alcohol-based sanitizer if soap is not available). App'x at 19, 27 (Amon Decl. ¶11, 29). Surfaces such as doorknobs and light switches that are frequently touched should be cleaned and disinfected with bleach frequently. App'x at 3 (Greifinger Decl. ¶11).

But the most important step for preventing or at least reducing COVID-19 transmission is social distancing. App'x at 31 (Amon Decl. ¶51) ("Social distancing is the primary way to mitigate risk of COVID-19 infection and spread. The CDC guidance for detention facilities states: Although social distancing is challenging to practice in correctional and detention environments, it is ***a cornerstone of reducing transmission*** [emphasis added] of respiratory diseases such as COVID-19.") (internal quotation marks omitted). The CDC's guidance related to social distancing instructs facilities to provide "ideally 6 feet between all individuals, regardless of the presence of symptoms" including: 1) increased space between individuals in holding cells, as well as in lines and waiting areas such as intake; stagger time in recreation

spaces; restrict recreation space usage to a single housing unit per space; stagger meals; rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table); provide meals inside housing units or cells; limit the size of group activities; reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. App'x at 27 (Amon Decl. ¶32).

Once a detention facility is suspected to have a case of COVID-19, the CDC recommends medical isolation – ideally confining the case to a single cell with solid walls and a solid door that closes, and personal bathroom space. App'x at 25 (Amon Decl. ¶25). When space is not available to this, the CDC recommends "cohorting" – where "laboratory-confirmed" COVID-19 cases are isolated together as a group and close contacts of a particular case are isolated as group. App'x at 25 (Amon Decl. ¶27). The CDC advises that the rooms in which cohorting takes places should be large and well-ventilated. App'x at 27 (Amon Decl. ¶30). Further, the CDC directs: "**Do not cohort confirmed cases with suspected cases or case contacts.**" App'x at 25 (Amon Decl. ¶27) (emphasis original).

## IV. Detention Centers In General And PDC In Particular Are Failing To Take Steps To Protect Petitioners From Severe Illness and Death

Courts and medical experts have recognized that detention centers generally do not have adequate resources or infrastructure to implement these guidelines and effectively protect detainees from COVID-19. *See, e.g.*, *Vazquez Barrera*, 2020 WL 1904497, at *4-6; *Coronel v. Decker*, No. 20 C 2472, 2020 WL 1487274, at *3 (S.D.N.Y. March 27, 2020). Immigration detention facilities are often overcrowded environments in which individuals cannot practice social distancing during any of their most basic activities, including eating, sleeping, and using the restrooms. App'x at 24 (Amon Decl. ¶22). "Many immigration detention facilities lack adequate medical care infrastructure to address the spread of infectious disease and treatment of

high-risk people in detention." App'x at 4 (Greifinger Decl. ¶21). Facilities also lack both the cleaning supplies and personnel to carry out required intensive cleaning, supplies of personal protective equipment are insufficient, and both personal and shared spaces are not properly ventilated. App'x at 2 (Greifinger Decl. ¶9). Moreover, detention facilities lack adequate testing materials to identify those who are positive for COVID-19, and although those infected and symptomatic should be isolated in airborne negative pressure rooms, such rooms rarely exist in jails and detention facilities." App'x at 4 (Greifinger Decl. ¶22).

PDC is no exception, and Respondents' failure to effectively implement the CDC's recommendations has made it impossible to reduce the risk of exposure to COVID-19 and has placed Petitioners at grave risk.

**a. *Detainees At PDC Cannot Practice Social Distancing.***

In PDC, detainees cannot practice social distancing. Petitioners who are not quarantined live in communal dorms that may have 60 or more detainees. App'x at 63 (Portillo Hernandez Decl. ¶7). The standard dormitory has bunkbeds, a phone area, and an eating area.[3] Each dormitory has a designated toilet and shower area that the detainees share. App'x at 59 (Espinoza Urbina Decl. ¶17) (6 toilet stalls and three showers for 24 people); App'x at 81 (Doe Decl. ¶8) (6 toilet stalls for 23 women); App'x at 63-64 (Portillo Hernandez Decl. ¶¶7-8) (9 toilets and 5 stalls for 61 people).

Those housed with the general population sleep in bunk beds that are about two to three feet apart, and if detainees sit on the beds and face one another, their knees almost touch. App'x at 94 (Umarbaev Decl ¶17); App'x at 59 (Espinoza Urbina Decl. ¶17); App'x at 85 (Hechavarria Fonteboa Decl. ¶10); App'x at 81-82 (Doe Decl. ¶7). Detainees must wait in lines standing one

[3] Prairieland Detention Center – Standard Dorm, 2:03-3:20, https://www.youtube.com/watch?v=__oMdN7Fy5Q.

foot away from one another to receive their meals, and they eat meals on their beds (just 2-3 feet from other detainees) or at tables next to the bed area with other detainees typically sitting right next to them. App'x at 94 (Umarbaev Decl. ¶17); App'x at 86 (Hechavarria Fonteboa Decl. ¶13).

Further, detainees cannot socially distance themselves from the staff – a problem that is worsened by the fact that not everyone on staff wears full personal protective equipment when they interact with detainees, and the staff interacts with both detainees in general population and quarantine. App'x at 30 (Amon Decl ¶48); App'x at 82 (Doe Decl. ¶13); App'x at 86 (Hechavarria Fonteboa Decl. ¶14); App'x at 68 (Golding Decl. ¶11). And, egregiously, PDC continues to accept new detainees into the facility, much like at the beginning of the pandemic when individuals either known to have COVID-19 or have been exposed to COVID-19 were introduced into the facility.[4] App'x at 67 (Golding Decl. ¶8); App'x at 56-59 (Espinoza Urbina Decl. ¶¶4-15); App'x at 93-94 (Umarbaev Decl. ¶¶10-15); App'x at 90 (Figueroa Ramos Decl. ¶18).

***b. Detainees Do Not Have Access to Properly Sanitized Areas, Cannot Maintain Proper Hygiene, And Do Not Have Adequate Personal Protective Equipment.***

Despite the frequent use of the communal bathrooms, the bathroom areas are typically cleaned only once a day. App'x at 59 (Espinoza Urbina Decl. ¶17); App'x at 82 (Doe ¶9); App'x at 64 (Portillo Hernandez ¶9). Cleaning supplies are not readily available for detainees to use, detainees do not have access to disinfecting wipes or sufficient access to hand sanitizer. App'x at 82 (Doe Decl. ¶¶9-10); App'x at 59 (Espinoza Urbina Decl. ¶17); App'x at 82 (Hechavarria

[4] Four Petitioners were transferred in groups from Pike County Correctional Facility to PDC, where, a few days prior to their transfer, a court ordered the immediate release of 22 detainees upon finding that there was clear evidence the protective measures the facility implemented were not working and the number of positive COVID-19 cases was expected to grow. *Hope v. Clair Doll et al.*, No. 20-cv-00562 (M.D. Pa., April 7, 2020), ECF No. 11 at 14.

Fonteboa Decl. ¶15); App'x at 64 (Portillo Hernandez Decl. ¶8). Detainees typically have to resort to "cleaning" surfaces with wet toilet paper. App'x at 82 (Doe Decl. ¶10); App'x at 86 (Hechavarria Fonteboa Decl. ¶15). Additionally, detainees in general population have been only given one mask to wear for weeks at a time, and they have received limited or no instruction on how to use the masks. App'x at 82 (Doe Decl. ¶11), App'x at 85 (Hechavarria Fonteboa Decl. ¶8); App'x at 68 (Golding Decl. ¶¶12-16); App'x at 64 (Portillo Hernandez Decl. ¶10).

***c. Detainees Do Not Have Access To Adequate Medical Care.***

Given the outbreak of COVID-19 at Prairieland, it is more important than ever that detainees with underlying conditions are properly cared for. Respondents are failing to adequately monitor the health of detainees with underlying conditions more generally. App'x at 64 (Portillo Hernandez Decl. ¶11); App'x at 81 (Doe Decl. ¶5); App'x at 100 (Haro Osuna Decl. ¶¶12-14); App'x at 72 (Esteban Ramon Decl. ¶¶9-12). For example, medical staff is failing to conduct regular bloodwork to determine whether medications needs to be recalibrated, ignoring or not timely responding to respiratory concerns, and failing to provide daily medication doses. App'x at 81 (Doe Decl. ¶5-6); App'x at 67 (Golding Decl. ¶6-7); App'x at 90 (Figueroa Ramos Decl. ¶16). Moreover, some Petitioners have been forced to independently manage their illnesses even when they are displaying classic COVID-19 symptoms – including cough, fever, shortness of breath, and body aches. App'x at 81 (Doe Decl. ¶6); App'x at 63 (Portillo Hernandez Decl. ¶11).

***d. Detainees Are Not Properly Quarantined.***

At times, detainees who are suspected of being ill are quarantined for only a week or ten days before being returned to the dorm, which Dr. Amon explains is not a sufficient amount of time to prevent transmission. App'x at 82 (Doe Decl. ¶15); App'x at Amon Decl. ¶26 (noting

that individuals suspected of having COVID-19 should be quarantined for 14 days). Contrary to the CDC's guidance, sometimes detainees have to share the isolation cell with another person. App'x at 95 (Umarbaev Decl ¶21); App'x at 67-68 (Golding Decl.¶¶9-10); App'x at 90 (Figueroa Ramos ¶14); *contra.* App'x at 25 (Amon Decl. ¶25, 27). To make matters worse, some of the quarantined Petitioners are unable to have any confidential communications with their lawyers, hindering their ability to obtain legal advice and prepare for hearings. App'x at 60 (Espinoza Urbina Decl. ¶21), App'x at 96 (Umarbaev Decl ¶26); App'x at 68 (Golding Decl. ¶18); App'x at 78 (Jalili Decl. ¶15). And in at least one instance, when a hearing date overlapped with time spent being quarantined, the detainee was forced to miss his hearing. App'x at 68 (Golding Decl. ¶17). Quarantine should not affect constitutional right to counsel.

***e. Respondents Have Knowingly Introduced COVID-19 Into PDC.***

In March 2020, Mr. Espinoza Urbina was detained at the Pike County Correctional facility in Pennsylvania. While there, one of his cellmates tested positive for COVID-19. A few days later, Mr. Espinoza Urbina began feeling ill, and he showed many of the symptoms most commonly associated with COVID-19: high fever, chills, body shakes, dry cough, and body aches. App'x at 57 (Espinoza Urbina Decl. ¶8). Less than one week after he became sick, Mr. Espinoza Urbina, along with Mr. Umbarbaev and Mr. Golding and dozens of others from Pike County Correctional facility were loaded into vans and taken on an hours-long bus ride before being put onto an airplane and flown to Dallas. App'x at 58 (Espinoza Urbina Decl. ¶¶11-15); App'x at 94 (Umarbaev Decl. ¶11-15). Mr. Espinoza Urbina, Mr. Umarbaev, and other detainees were obviously sick at the time, and multiple people at Pike County had already tested positive for COVID-19. App'x at 58 (Espinoza Urbina Decl. ¶¶11-15); App'x 93-94 (Umarbaev Decl. ¶¶11-15).

In the end, approximately 75-80 detainees were flown from the East Coast to Dallas, and many of them were sick. App'x at 58 (Espinoza Urbina Decl. ¶¶12-14); App'x at 94 (Umarbaev Decl.¶¶13-14). They could not move around on the plane because they were shackled for the entire flight. App'x at 67 (Golding Decl. ¶8). When the plane landed in Dallas, the detainees were bussed to Prairieland, and it appears that no one wore masks on those buses. *Id.*

They remained shackled on the buses. *Id.* After arriving at Prairieland, Mr. Espinoza Urbina and the others were placed in holding cells with ten to fifteen people while waiting for the intake process, and then the majority of the transferred individuals were placed in large dorms. App'x at 59 (Espinoza Urbina Decl. ¶16). Approximately four to five days passed before officials at Prairieland decided to test any of the transferees, and even then only select individuals were tested. App'x at 60 (Espinoza Urbina Decl. ¶19). Mr. Espinoza Urbina was among those 12, and he tested positive for COVID-19. App'x at 60 (Espinoza Urbina Decl. ¶19). Other detained persons requested testing, but were denied. *Id.*

## LEGAL STANDARD

Petitioners are civil detainees held in an immigration detention center. As civil detainees they are equivalent to a pretrial detainee and are thus afforded the same constitutional protections guaranteed under the Fifth Amendment Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001); *Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 1904497, at *5 (S.D. Tex. Apr. 17, 2020) (citing *Zadvydas*, 533 U.S. at 690); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000) ("We consider a person detained for deportation to be the equivalent of a pretrial detainee; a pretrial detainee's constitutional claims are considered under the due process clause instead of the Eighth Amendment."). The Due Process Clause extends to Petitioners specific rights – the right to be detained in a manner that does not amount to punishment, the right to

have access to adequate medical care during their detention, and the right to have access to counsel. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (establishing a due process right for detainees to be free from punished prior to the adjudication of guilt); *DeShaney v. Winnebago County Department of Soc. Serv.*, 489 U.S. 189, 200 (1989) (finding that under the Due Process Clause the Government owes a duty of care to detainees including providing adequate medical care); *Barthold v. U.S. Immigration & Naturalization Serv.*, 517 F.2d 689, 690 (5th Cir. 1975) (holding that the Fifth Amendment guarantees a statutory right to counsel in deportation proceedings).

Petitioners' current detention, however, has deprived them of these constitutional protections. As a result of being detained, Petitioners are being punished, they do not have access to level of medical care that would protect them from harm, and cannot have confidential communications with their counsel. The conditions at the detention center cannot be sufficiently changed to restore Petitioners' constitutional rights, and so Petitioners challenge the very fact of their detention. Under these circumstances, release is the only remedy and thus, Petitioners seek injunctive relief.

Immediate injunctive relief is an appropriate remedy to stop violations of constitutional rights. The decision to grant injunctive relief is within the discretion of the district court. *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985) To establish their right to a temporary restraining order or preliminary injunction, Petitioners must show: "(1) a substantial likelihood that Petitioner will prevail on the merits, (2) a substantial threat that Petitioner will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to Petitioner outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest." *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

## ARGUMENT

### I. Petitioners Have A Substantial Likelihood Of Prevailing On The Merits

#### *a. Petitioners Are Likely To Succeed On Their Claim That Their Continued Detention Violates The Fifth Amendment.*

Enshrined in the Fifth Amendment's Due Process Clause are protections that relate to the manner in which the Government can detain people – it prohibits the Government from holding detainees under conditions that constitute punishment prior to a finding of guilt, and it dictates a standard of care that must be met when the Government detains individuals. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)**;** *DeShaney v. Winnebago County Department of Soc. Serv*., 489 U.S. 189, 200 (1989). Here, Petitioners can show that their detention has resulted in violations of both these rights. The courts have found that when the Government holds detainees under conditions that are not reasonably related to a legitimate, non-punitive governmental purpose, the conditions constitute punishment in violation of the detainee's rights. *Vazquez Barrera*, 2020 WL 1904497, at *5. The conditions under which Petitioners fail to pass the reasonable relation test. Moreover, Respondents have further violated Petitioners rights by failing to provide adequate medical care. The Respondents know Petitioners are vulnerable individuals who have a high risk of severe illness and death if infected with COVID-19 and yet, they have failed to provide the care necessary to protect Petitioners from this serious and substantial harm. This failure to act amounts to deliberate indifference – the subjective standard courts use to identify this type of Fifth Amendment violation. *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir. 1996).

i. Petitioners' Continued Detention Constitutes Punishment In Violation Of The Due Process Clause.

Petitioners' detention at PDC places them at increased risk of severe illness and/or death should they contract COVID-19. This risk is not reasonably related to a legitimate, non-punitive governmental objective and constitutes punishment in violation of the Due Process Clause.

Under the Due Process Clause, "a detainee may not be punished prior to the adjudication of guilt in accordance with due process of law." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). "Where the government is holding the detainee in conditions that amount to punishment, and those conditions do not reasonably relate to a legitimate, non-punitive governmental objective, such conditions violate the detainee's due process rights." *Vazquez Barrera*, 2020 WL 1904497, at *5. (internal quotation marks omitted) (citing *Cadena v. El Paso Cty.*, 946 F.3d 717, 727 (5th Cir. 2020)). In order to evaluate whether the conditions of confinement amount to punishment, the court is instructed to determine if the condition is reasonably related to a legitimate governmental objective. *Bell*, 441 U.S. at 539. "If the condition of confinement is not reasonably related to a legitimate, non-punitive governmental objective, it is assumed that by the municipality's very promulgation and maintenance of the complained of condition, that it intended to cause the alleged constitutional violation." *Cadena*, 946 F.3d at 727 (internal quotation marks omitted) (citing *Scott v. Moore*, 114 F.3d 51, 53 (5th Cir.).

In *Vasquez Barrera* the court held that "[r]equiring medically vulnerable individuals to remain at a detention facility where they cannot properly protect themselves from transmission of a highly contagious virus with no known cure is not rationally related to a legitimate government objective." 2020 WL 1904497, at *6. *See also Thakker v. Doll*, No. 1:20-CV-480, 2020 WL 2025384, at *6 (M.D. Pa. Apr. 27, 2020) (finding that the risk incurred by holding high-risk detainees at a detention center in Pike County with tightly confined and unhygienic spaces was not aligned with a legitimate government interest). The same reasoning applies in Petitioners' case. As a consequence of their detention, Petitioners have no independent ability to protect themselves from infection and Respondents have shown that they cannot implement the CDC's life-saving recommendations. *See* Factual Background, Section IV. The inevitable result

of such failure will be transmission of COVID-19, which, for Petitioners. threatens severe health complications and/or death. App'x at 19, 36 (Amon Decl. ¶12, 60). Such a fate is not aligned with a legitimate government purpose and unconstitutionally punishes Petitioners.

ii. Petitioners' Continued Detention Constitutes Deliberate Indifference.

Respondents' failure to provide Petitioners with the medical care necessary to prevent them from being harmed during their confinement amounts to deliberate indifference.

"[A] pretrial detainee's due process rights are said to be at least as great as the Eighth Amendment protections available to a convicted prisoner." *Hare v. City of Corinth, Miss.*, 74 F.3d at 639 (citing *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983)).The Due Process Clause dictates that when the Government detains individuals pretrial, the. Constitution imposes a duty to provide for the detainees' basic needs. *See id.*

> When the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf.

*Id.* (quoting *DeShaney v. Winnebago County Department of Soc. Serv.*, 489 U.S. 189, 200 (1989)). To establish a Fifth Amendment violation for failing to meet a detainee's basic needs, a plaintiff must prove that a defendant acted with deliberate indifference, which means (1) that the defendant had subjective knowledge of a substantial and serious risk that the pretrial detainee may be seriously harmed and (2) the defendant, with this knowledge, still disregarded the risk. *See id.*; *see also Shepard v. Hansford Cty.*, 110 F. Supp. 3d 696, 708 (N.D. Tex. 2015). The court can conclude that the defendant had subjective knowledge of the substantial risk by showing actual knowledge or that "the

very fact of the risk was obvious." *Shepard*, 110 F.Supp. 3d. at 709 (citing *Herrin v. Treon*, 459 F.Supp. 2d 525, 538 (N.D. Tex. 2006). "Deliberate indifference does not require an actual intent to cause harm – it is satisfied by something less than acts of omissions for the very purpose of causing harm or with knowledge that harm will result." *Id*. (internal quotation marks omitted) (citing *Farmer v. Brennan*, 511 U.S. 825, 835 (1994)).

In *Shepard*, the court held that Dallas County acted with deliberate indifference when the jail system failed to provide medical care to inmates with chronic illnesses. 591 F.3d 445, 453 (5th Cir. 2009). The court noted that the jail's system for treating inmates with chronic illnesses was "grossly deficient" and caused Petitioner's injuries. *Id.* Here, Respondents have acted with similar deliberate indifference. Respondents have access to "the most current CDC and [Department of Homeland Security] guidance and assistance" as it relates to "reduc[ing] the risk of exposure and prevent[ing] the further spreading of COVID-19 during the course of ongoing daily operations."[5] The CDC has issued guidelines that provide information about which conditions make individuals vulnerable to severe and/or fatal reactions to COVID-19. App'x at 18 (Amon Decl. ¶8). Respondents also have complete access to Petitioners' medical history, conditions, and treatment plans.[6] Despite this knowledge, however, Respondents have disregarded the risk.

As described above, social distancing, which is the best way to prevent the spread of COVID-19, is impossible in PDC. *See* Factual Background, Sections III; IV.

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[5] *ICE Guidance on COVID-19--What is ICE doing to safeguard its employees/personnel during this crisis?*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/coronavirus.

[6] PDC's protocol requires an initial medical screening within (12) hours of a detainee arriving at the facility. The screening includes "recording the history of past and present illnesses (mental and physical . . . )." Article 6. Medical Services, Intergovernmental Service Agreement Between the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement and Removal Operations and the City of Alvarado, 10-11.

Additionally, Petitioners are deprived of essential protective equipment and accompanying instruction, access to frequently disinfected surfaces, and sufficient amounts of hand sanitizer and disinfectant. *Id*. The Respondents also accepted individuals who had known exposure to COVID-19 into PDC, which was particularly harmful given that detainees are at heighted risk for COVID-19 infection once the virus is introduced into the facility. *Id;* App'x at 32, 36 (Amon Decl. ¶¶53, 60).

In short, Respondents knew of the risk COVID-19 poses to Petitioners, and they knowingly failed to take the steps necessary to meet Petitioners' basic human need for medical care. Thus, Petitioners have a substantial likelihood of showing that Respondents have acted with deliberate indifference in violation of the Due Process Clause.

***b. Petitioners Are Likely To Succeed On Their Claim That Their Detention Violates Their Right To Counsel.***

Petitioners have all retained counsel to represent them, either in their removal proceedings, in this proceeding, or both. They are entitled to reasonable access to counsel under a number of different standards. First, individuals who are involved in immigration removal proceedings have a right to retain counsel under the Fifth Amendment. *See Zadvydas*, 533 U.S. at 693 (Due Process Clause applies to all persons within the United States); *see also Barthold v. U.S. Immigration & Naturalization Serv.*, 517 F.2d 689, 690 (5th Cir. 1975); *Nunez v. Boldin*, 537 F. Supp. 578, 582 (S.D. Tex.). Second, "[t]here is also a long-recognized First Amendment right to hire and consult an attorney." *Nat'l Fed'n of Indep. Bus. V. Perez*, 5:16-CV_00066-C, 2016 WL 3766121, at *31 (N.D. Tex. Jun. 27 2016). "[T]he scope of the First Amendment's right is determined by balancing the [plaintiff's] interests in communication with the government's interest in preventing communication." *Jacobs v. Schiffer*, 204 F.3d 259, 265 (D.C. Cir. 2000). "Restrictions on speech between attorneys and their clients directly undermine

the ability of attorneys to offer sound legal advice. As the common law has long recognized, the right to confer with counsel would be hollow if those consulting counsel could not speak freely about their legal problems." *Martin v. Lauer*, 686 F.2d 24, 32 (D.C. Cir. 1982). Finally, the Immigration Naturalization Act ("INA") states that, "[i]n any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose." 8 U.S.C. § 1362.

Immigration detention centers must give reasonable access to attorneys and refrain from placing obstacles in the way of communications between detainees and their attorneys. *Nunez v. Boldin*, 537 F.Supp. 578, 581 (S.D. Tex.) (citing to *Bounds v. Smith*, 430 U.S. 817 (1977)). "In deciding whether or not a prison is providing reasonable access to legal representatives, a court must strike a balance between the interests of the prison and the institution's interest of security and order." *Id.* at 582; *Turner v. Safley*, 482 U.S. 78, 89 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.") "Nevertheless, restrictions which are not reasonably related to orderly administration cannot stand." *Nunez*, 537 F.Supp. at 582. The Supreme Court has identified relevant factors that can be considered to determine whether a regulation is reasonable: (1) whether there is a valid rational connection between the regulation and a legitimate governmental interest; (2) whether there are alternative means of exercising the right that remain open to the detainee; (3) the impact the accommodation will have on the institution's staff, other detainees, and the allocation of the institution's resources; and (4) the absence of ready alternatives. *Turner*, 482 U.S. at 89-90. The restrictions placed on Petitioners Umarbaev,

Espinoza Urbina, Jalili, and Golding's ability to access their counsel are unreasonable and violate their constitutional and statutory right to counsel.

Petitioners Umarbaev, Espinoza Urbina, Jalili, and Golding have been isolated or placed in quarantine at PDC, either because they tested positive for COVID-19 or have been in contact with others who did. *See* Factual Background, Section IV(d). PDC has put in place a system that prevents Petitioners from having any confidential communications with their attorneys while they are isolated or quarantined, including by recording attorney/client calls. *See id.* The isolated/quarantined Petitioners' inability to have private conversation with their counsel handicaps their ability to raise a defense and meaningfully preparing for hearings. *Id.* Such an impediment effectively strips the isolated/quarantined Petitioners of the benefits of retained counsel. Although the government has a legitimate interest in preventing the further spread of COVID-19, there is a ready alternative to the current restriction. *Turner*, 482 U.S. at 90 ("[I]f an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard."). Instead of continuing to detainee Petitioners, Petitioners can be released and monitored via ICE's many methods of tracking out of custody detainees -- e.g. electronic monitoring, scheduled telephonic reporting, and travel restrictions.[7] If the isolated/quarantined Petitioners are released, they will be able to have contact with their attorneys while they recovered. Releasing the isolated/quarantined Petitioners under these conditions would alleviate the burden on PDC's medical staff, reduce the spread of infection among PDC staff and detainees, and would be far less costly than the

[7] American Immigration Council, "Seeking Release from Immigration Detention" 2 (Sept. 2019), https://www.americanimmigrationcouncil.org/sites/default/files/research/seeking_release_from_immigration_detention.pdf.

expenses incurred by their continued detention. Finally, immediate release is a ready alternative that Respondents can employ – the procedure for release and post-release monitoring are in place and the isolated/quarantined Petitioners have identified places to which they can be safely released without posing harm to the community. *See infra* Argument, Section III(a). In the case at bar, the *Turner* factors weigh strongly in the isolated/quarantined Petitioners' favor and warrant immediate release.

## II. Petitioners' Risk Of Severe Illness And Death Is An Irreparable Injury

Although no specific weight has been assigned to each of the factors the court must consider before issuing a temporary restraining order, arguably "the likelihood that Petitioner will suffer irreparable harm before trial on the merits is the most important prerequisite to be evaluated." *Wortham v. Dun & Bradstreet, Inc.*, 399 F. Supp. 633, 637 (S.D. Tex. 1975) (citation omitted)**.** To show irreparable injury the Petitioner must establish: (1) a significant threat of injury from the impending action; (2) that the injury is imminent; (3) and that money damages would not fully repair the harm. *Humana, Inc. v. Avram A. Jacobson, M.D., P.A.*, 804 F.2d 1390, 1394 (5th Cir. 1986) Petitioners' risk of severe illness and/or death satisfies each of these factors.

As discussed in detail above, COVID-19 is a global pandemic and national emergency that has led to the closing of schools, courts, businesses, and congregate settings. App'x at 17, 23 (Amon Decl. ¶¶5, 15). It is a serious disease with no known cure or vaccine and it can cause respiratory failure or death. App'x at 17 (Amon Decl. ¶6). The disease has already resulted in one death of an ICE detainee.[8] COVID-19 can prove fatal for anyone who contracts the virus, but

[8] *ICE reports 1st detainee death from COVID-19*, MSN News, May 7, 2020, https://www.msn.com/en-gb/news/world/ice-reports-1st-detainee-death-from-covid-19/ar-BB13IArc.

the risk of severe illness and death is heightened due to Petitioners' underlying medical conditions. *See* Factual Background, Section II. Those who suffer severe cases often require advance support in intensive care, and, if they survive, long-term rehabilitation. *Id.* COVID-19 is already in PDC and the risk of further spread is imminent due the lack of social distancing, sufficient sanitization of surfaces, lack of personal protective equipment, and Respondents inability to effectively screen detainees and staff for COVID-19. *See* Factual Background, Sections IV. In other words, Petitioners are imprisoned in a facility where, absent immediate intervention, they are likely to suffer the most irreparable harm—severe disease or death. *See Vazquez Barrera v. Wolf*, 2020 WL 1904497, at *7 (S. D. Tex. April 17, 2020) ("Petitioners face serious irreparable harm if they are infected [with COVID-19], in the form of severe illness, long-term health effects, and possibly death."). Furthermore, as argued above, Petitioners continued detention amounts to a violation of their constitutional rights. *See* Argument, Section I; *see also Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (noting that constitutional violations qualify as irreparable injuries that cannot be undone by monetary relief).

## III. Balancing The Equities And Service Of The Public Interest

### *a. The Balance Of The Equities And The Public Interest Lean Heavily In Favor Of Releasing Petitioners.*

When the government is the opposing party, as here, the third and fourth factors—balance of the equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *El Paso City v. Trump*, 407 F. Supp. 3d 655, 665 (W.D. Tex. 2019). When considering the balance of equities and the public interest in this case, there can be little doubt that the balance weighs heavily in favor of granting Petitioners' release.

As discussed in detail above, Petitioners face a substantial risk of serious harm or death if they are not released. In contrast, the Government has little if any interest in Petitioners' continued detention in these conditions. As an initial matter, the Government has no interest in violating Petitioner's constitutional rights; rather, the public interest is served by the fervent protection of those rights. *See Castillo v. Barr*, No. 20 C 00605, 2020 WL 1502864, at *6 (C.D. Cal. March 27, 2020) ("[T]here is no harm to the Government when a court prevents the Government from engaging in unlawful practices."); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action."); *see also Campaign for Southern Equality v. Mississippi Dep't of Human Services*, 175 F. Supp. 3d 691, 711 (S.D. Miss. 2016); *Cohen v. Coahoma Co.*, 805 F. Supp. 398, 409 (N.D. Miss. 1992);.Moreover, Petitioners' release is critical for protecting public health and safety, a factor which tips the scales heavily. *See Vazquez Barrera v. Wolf*, 2020 WL 1904497, at *7 (S. D. Tex. April 17, 2020) (noting that the public has an interest in preventing a COVID-19 outbreak at the detention facility); *Fraihat v. U.S. Immigration & Customs Enf't*, No. EDCV191546JGBSHKX, 2020 WL 1932570, at *28 (C.D. Cal. Apr. 20, 2020) (highlighting that releasing plaintiffs who were most vulnerable to COVID-19 was in the public's interests because failure to protect them could overwhelm local hospitals and diminish the community's resources); *Fofana v. Albence*, No. 20-10869, 2020 WL 1873307, at *11 (E.D. Mich. Apr. 15, 2020) (Acknowledging that release was proper because "the public has a strong interest in preventing the rapid spread of COVID 19 in immigration detention facilities so that sick detainees do not place further strain on an already taxed healthcare system."); *Thakker v. Doll*, No. 1:20-CV-480, 2020 WL 1671563, at *9 (M.D. Pa. Mar. 31, 2020) (finding that the public interest favored release as release was "one step further in a positive direction" towards stopping

the spread of COVID-19 and promoting public health.); *Bianco v. Globus Medical, Inc.*, 2:12-cv-00147-WCB, 2014 WL 1049067, at *11 (E.D. Tex. March 17, 2014 (collecting cases finding that any impact on public health weighs heavily when determining whether to grant injunctive relief); *Castillo v. Barr*, 2020 WL 1502864, at *6 ("The public has a critical interest in preventing the further spread of the coronavirus"); *Coronel v. Decker*, 2020 WL 1487274 (same). If the preliminary injunction is denied, COVID-19 will continue to spread rapidly through not only the detainee population at Prairieland, but also the officers, staff, and medical personnel. *See* App'x at 28, 30, 35 (Amon ¶¶37, 47-48, 57). When officers, staff, and medical personnel fall sick, staffing shortages may create further safety risks at the facility both to detainees and personnel. *Id*. Moreover, it is likely that detainees who become sick in detentions centers will need to be treated at local private hospitals outside the facility, putting a significant strain on community health care resources. *Id.*; *Vazquez Barrera*, 2020 WL 1904497, at *7 (commenting that an outbreak at the detention center would inevitably spread into the community and "put additional strain on hospitals and health care recourses in the community.").

Herein contrast against the risks presented by continuing to detain Petitioners, their release poses essentially no risk to the community. Petitioners are all established in the United States with ties to their communities, each has identified a safe place where they can isolate during the pandemic, and none of their criminal histories warrant continued detention:

- **Jane Doe** has lived in the United States for 26 years and her immediate and extended family live in the United States. Her daughter and sister are United States citizens and her parents are lawful permanent residents. She was convicted of a non-violent crime – conspiracy to commit to tax fraud, but is no longer in a relationship with the principal

perpetrator – her abusive ex-husband. Upon release, Ms. Doe will live with her daughter in Garland, Texas. App'x at 81, 83 (Doe Decl. ¶¶1-2, 17).

- **Alfredo Hechavarria Fonteboa** is a Cuban citizen who has applied for asylum. Mr. Hechavarria Fonteboa has a girlfriend who lives in Grand Prairie, Texas and has made arrangements to live with her upon release. App'x at 85-86 (Hechavarria Fonteboa Decl. ¶¶1, 17). He has not been convicted of any crimes.

- **Kanat Umarbaev** has lived in the United States for 20 years. He is married and the father of two children, both United States citizens. Mr. Umarbaev's wife has been granted a withholding of removal based on her conversion to Christianity and Mr. Umarbaev, a citizen of Kyrgyzstan, is also a recent Christian convert. Sixteen years ago, Mr. Umarbaev was twice convicted of driving under the influence, but he has not had any contact with the criminal justice system following those convictions. In fact, he stopped drinking alcohol after those incidents, and has been active in his church ever since. In the 16 years since, he has maintained employment, provided for his family, and recently submitted an asylum application. Mr. Umarbaev is supported by a strong family, friends, and church community. Upon release, Mr. Umarbaev will return home and will live with his family in Pennsylvania. He also has a place to quarantine alone prior to traveling home. App'x at 92, 96 (Umarbaev Decl. ¶¶1-6, 28).

- **Lee Espinoza Urbina** has lived in the United Stated practically all his life – he was brought to the United States when he was 18 months old. He is married to a United States citizen and has six children who are all United States citizens. Additionally, Mr. Espinoza Urbina's parents and siblings are United States citizens. Prior to his detention, Mr.

Espinoza Urbina was gainfully employed and ran a moving company. Upon release, Mr. Espinoza Urbina's mother has secured a studio apartment in which he can isolate, and then he can return to Pennsylvania to live with his family. App'x at 56, 60 (Espinoza Urbina Decl. ¶¶ 1, 22). Mr. Espinoza has a 1999 conviction for burglary and a 2007 conviction for assault.

- **Juan Portillo Hernandez** has lived in the United States for four years and has never left. He has a 10-month-old son, who is a United States citizen, a younger brother who is also a United States citizen, and an uncle who is a lawful permanent resident. In April 2017, Mr. Portillo Hernandez received an approval notice for a special immigrant juvenile status visa. Mr. Portillo Hernandez has no previous contact with the criminal justice system. Upon release, Mr. Portillo Hernandez would live with his girlfriend and infant son in Irving, Texas. App'x at 63-64 (Portillo Hernandez Decl. ¶¶1, 3, 15).

- **Kirk Golding** has lived in the United States for 14 years – he was brought to the United States when he was 13-years-old. He is married to a United States citizen and has three children, all of whom are United States citizens. Mr. Golding also has a brother who is a lawful permanent resident. Prior to being detained, Mr. Golding filed an immigration petition on his behalf and received temporary travel documents and a one-year work permit. Mr. Golding was also working in construction and paying taxes. Six years ago, Mr. Golding was convicted of possession of less than one gram of marijuana. In 2020, Mr. Golding was accused of drug trafficking, but is in the process of fighting the case. Mr. Golding's wife is unable to work due to a medical problem, and Mr. Golding is the only person who can provide for his family. Upon release, he would return to his family's home in Philadelphia. App'x at 67, 69 (Golding Decl. ¶¶1, 3-5, 22-23).

- **Patricia Esteban Ramon** is a 46-year-old woman who has lived in the United States for 13 years. She has a partner who is a United States citizen. Prior to her detention, she resided with her partner and daughter in Dallas, Texas. Ms. Esteban Ramon also has a number of family members who live in the Dallas area. Ms. Esteban Ramon was gainfully employed before her detention and worked cleaning houses. Ms. Esteban experienced domestic abuse with her last two partners, but has since developed the tools she needs to be successful in her current relationship due to her year-long work with her therapist. She was also recently convicted of disorderly conduct but her actions were non-violent and stemmed from an attempt to alert authorities about her partner's medical condition. Upon release, Ms. Esteban Ramon would live with her partner and daughter, and could self-isolate in her home. App'x at 71, 74 (Esteban Ramon Decl. ¶¶1-3, 23-25).

- **Enmanuel Figueroa Ramos** is a 21-year-old man who is a lawful permanent resident of the United States. He has lived in this country since he was three years old. Mr. Figueroa Ramos' father and sister are lawful permanent residents, and his extended family is made up of both lawful permanent residents and United States citizens. In 2018, Mr. Figueroa Ramos was convicted of carrying a weapon without a license (a misdemeanor), but prior to this case he had no previous contact with the criminal justice system. In January 2019, Mr. Figueroa was placed in deportation proceedings but in June 2019, a judge granted his application for cancellation of removal for a lawful permanent resident. An appeal of that decision is currently pending. Upon release, Mr. Figueroa Ramos would return home to live with his father in Hazelton, Pennsylvania. App'x at 89-90 (Figueroa Ramos Decl. ¶¶1-2, 5-7, 19).

- **Edgar Haro Osuna** is a 47-year-old man who has lived in the United States for over 30 years. His wife is a lawful permanent resident and they have to adult children who are both United States citizens. When Mr. Haro Osuna came to the United States as a tourist in 1989, he was a minor (17-years-old). During his trip, an adult woman, who more than twice his age, established a sexually abusive relationship with him, introduced him to drugs, and instructed him to sell drugs for her. In order to accomplish her goals, she provided Mr. Haro Osuna with a stolen name and security number. Twenty-four years later, in 2013, the Government discovered Mr. Haro Osuna was still living under the identity his abuser gave him. He was convicted of stolen identity and now has an application pending for a T-visa as a victim of human trafficking. He is also appealing the denial of his daughter's immigration petition. Mr. Haro Osuna had two driving under the influence convictions and a domestic violence conviction that were expunged from his record. He has a third driving under the influence with possession of cocaine for personal use conviction that was not expunged. App'x at 99 (Haro Osuna Decl. ¶¶1, 3-7). The convictions for driving under the influence are over 20 years old. Mr. Haro Osuna has also been sober for 11 years and maintains his sobriety, in part, by participating in Alcoholics Anonymous ("AA"). He contributes to his community by volunteering monthly at a program for addicts who are currently working through the AA program. Upon release, Mr. Haro Osuna would live with his family in Lomita, California. App'x at 101 (Haro Osuna Decl. ¶21).

- **Behzad Jalili** entered the United States as a refugee in 2001. He feared persecution due to his conversion to Christianity. He became a lawful permanent resident in 2002. In Buffalo, NY, he has established friendships and ties in his church and local

community. He was initially detained at the Batavia Correctional Facility and was detained there when COVID-19 was introduced into the facility. On April 11, Mr. Jalili was transferred to the Prairieland Detention Center. Prior to his detention, Mr. Jalili worked as a heating and cooling technician. In the almost two decades he has been in the United States, he has never been convicted of a crime. Mr. Jalili was referred to removal proceedings in 2018 because the Government accused Mr. Jalili of applying for refugee status under a false name. Mr. Jalili never committed this offense, and his appeal of the denial of his asylum application is pending. Upon release, Mr. Jalili can stay at a friend's home in Buffalo, NY. App'x at 77-79 (Jalili Decl. ¶¶1-4, 7-10, 20).

- **Osita Nwolisa** is a 51-year-old man who has lived in the United States since 2017. His wife is a United States citizen and resides in Dallas, Texas. Prior to being detained, Mr. Nwolisa's wife submitted a petition on his behalf. Mr. Nwolisa has not had any previous contact with the criminal justice system. Upon release, he would live with his wife. App'x at 104 (Nwolisa Decl. ¶¶1-2, 6).

The court should also consider that "ICE has a number of alternative tools available to it to ensure enforcement, which it is free to use with Petitioner if they are released from detention. For example, ICE's conditional supervision program uses a combination of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting requirements to supervise individuals released from detention." *Vazquez Barrera*, 2020 WL 1904497, at *7. And initial assessment of ICE's alternatives to detention has found them to be effective, with 99 percent of supervised immigrants with a scheduled court

hearing appearing in court as required. U.S. Gov't Accountability Office, GAO-15-26, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Asses Program Effectiveness* 30 (2014).

In sum, releasing Petitioners' will reduce the spread of COVID-19 to other detainees, staff, and the community at large, and will limit the strain PDC places on the community's medical resources, as well as reduce the Government's medical and other costs related to detaining individuals at PDC. Petitioners' release will not only keep them from suffering terrible injury or death, but it will actually benefit the Government. The balance of interest therefore weighs heavily in favor of Petitioners' release.

***b. Release Is The Only Appropriate Remedy.***

Petitioner's challenge the very fact of their detention as unconstitutional. Respondents' decision to place Petitioners in a position where they face unreasonable risk of severe disease, suffering, and death is punitive at best, and can be remedied only by releasing Petitioners to isolate. *See* 28 U.S.C. §§ 2241, 2243; Fed. R. Civ. P. 65; *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) (once a constitutional violation has been found, the court's equitable powers to fashion a remedy are broad and flexible); *Karcher v. Daggett et al*, 466 U.S. 910, 910 (1984) (Steven, J. concurring) (same); *Gates v. Collier*, 501 F.2d 1291, 1320 (5th Cir. 1974) (same). Across the country, federal courts have already ordered the immediate release of detainees and prisoners based on concerns that their continued confinement in the face of the COVID-19 is unconstitutional or unlawful. *See Xochihua-Jaimes v. Barr*, 798 F. App'x 52 (9th Cir. 2020); *Vazquez Barrera*, 2020 WL 1904497, at *8; *Basank v. Decker*, No. 20 CIV. 2518 (AT), 2020 WL 1481503, at *7 (S.D.N.Y. Mar. 26, 2020); *Castillo v. Barr*, No. 20 C 00605, 2020 WL 1502864 (C.D. Cal. March 27, 2020); *Coronel v. Decker*, No. 20 C 2472, 2020 WL

1487274 (S.D.N.Y. March 27, 2020); *Kaur v. United States Dep't of Homeland Sec.*, No. 2:20 C 03172-ODW, 2020 WL 1939386, at *3 (C.D. Cal. Apr. 22, 2020); *Thakker v. Doll*, No. 1:20 C 480; 2020 WL 1671563, at *9 (M.D. Pa. March 31. 2020). Accordingly, Petitioners respectfully ask this Court to reach the same result as other courts across the country by granting the only remedy that can protect Petitioners from likely imminent harm—release.[9]

When ordering Petitioner's release, the Court should exercise its discretion to require no security under Rule65(c) of the Federal Rules of Civil Procedure. Under Rule 65(c) "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The Fifth Circuit has held that district courts have discretion to require no security at all before issuing an injunction. *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996); *see also DSI Ventures, Inc. v. Sundin*, No. 6:17-CV-498-RWS, 2019 WL 6699734, at *1 (E.D. Tex. Mar. 27, 2019); *Beverly Myers, Inc. v. Sanderson Farms, Inc.*, No. 3:12CV284-DPJ-FKB, 2012 WL 12874577, at *1 (S.D. Miss. Aug. 31, 2012) (exercising discretion to require no security because the Petitioners lack financial means to provide any security and "requiring security would defeat the purpose of the preliminary injunction"); *Perrier Party Rentals, Inc. v. Event Rental, LLC*, No. CIV.A. 07-3244, 2007 WL 2284579, at *1 (E.D. La. Aug. 7, 2007) ("As the amount of security to be posted, if any, is at the discretion of the Court, this Court finds that the Petitioner is not required to post security in any amount.").

[9] ICE has also agreed to release of two detainees at the IAH Secure Adult Detention Facility in Livingston, Texas who were deemed vulnerable due to their HIV status. (*available at* https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/20200427_letter_do-custody-redetermination-letter.pdf).

The fact remains that ordering Petitioners' release will likely save the Government costs associated with detaining Petitioners and providing them necessary medical care, and save lives. Further, Petitioners have a high likelihood of success on the merits, *see supra* Arguments, Section I, and any delay while Petitioners gather a potential court-ordered security increases the risk that Petitioners will contract COVID-19. The Court should therefor decline to require security in these life-and-death circumstances.

## CONCLUSION

For the reasons discussed above, the Court should order the immediate release of the Petitioners.

Dated: May 15, 2020

Respectfully submitted by

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**Certificate of Service**

On May 15, 2020, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic filing system of the court. I hereby certify that I have served all parties electronically or by another means authorized by the Federal Rule of Civil Procedure 5(b)(2).

/s/ Fatma Marouf
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Attorney for Petitioners