

serious injury, and death to Petitioners posed by the virus.

Social distancing, which is critical to reducing the risk of contracting COVID-19, is impossible in EPPC barracks where Petitioners are detained day and night. Petitioners are forced to remain in close proximity in a confined space with dozens of other detainees. They eat and sleep within feet of each other. They use common toilets, sinks, and showers as a group with no ability to adequately disinfect these and other shared items between uses. Respondents refuse to provide Petitioners with masks and gloves to protect against the spread of COVID-19. Respondents fail to provide Petitioners with adequate soap, hand sanitizer, and other cleaning agents, all of which are necessary to prevent the spread of COVID-19.

Public health authorities worldwide, including the U.S. Centers for Disease Control and Prevention (“CDC”), recognize that exposure to COVID-19 in congregate settings like EPPC poses elevated risks of transmission of the virus and harm from infection. This risk is even greater for people like Petitioners, who are especially vulnerable both to infection and severe complications from COVID-19 due to their advanced age, compromised immune systems, and underlying health conditions.

The Due Process Clause of the Fifth Amendment does not permit ICE to punish civil immigration detainees by exposing them to an unreasonably high risk of infection by a deadly disease with no known cure. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Courts around the country have granted habeas petitions ordering Respondents to release medically vulnerable detainees because COVID-19 poses an intolerable risk.¹ Petitioners seek similar orders directing

¹ See, e.g., *Vazquez Barrera v. Wolf*, 4:20-CV-1241, 2020 WL 1904497, at *6 (S.D. Tex. Apr. 17, 2020) (“[T]he threat of mass [COVID-19] outbreak is one that portends a high likelihood of serious illness or death and is one that [the detention center] cannot take sufficient steps to prevent.”); *Basank v. Decker*, --- F.Supp.3d ---, 2020 WL 1481503, at *4 (S.D.N.Y. Mar. 26, 2020) (“The risk that Petitioners will face a severe, and quite possibly fatal, infection if they remain in immigration detention constitutes irreparable harm warranting a TRO.”); *Thakker v. Doll*, --- F.Supp.3d ---, 2020 WL 1671563, at *5–6 (M.D. Pa. Mar. 31, 2020); *Malam v. Aducci*, --- F.Supp.3d ---, 2020 WL 1672662, at *13 (E.D. Mich. Apr. 5, 2020) (“Release from custody represents the only adequate remedy . . . and it is in the Court’s

Respondents to immediately release them from detention.

JURISDICTION AND VENUE

1. This case arises under the United States Constitution.
2. The Court has jurisdiction over this habeas petition and complaint pursuant to 28 U.S.C. § 2241 (habeas corpus statute), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201–2202 (declaratory judgments) and Article 1, Section 9, clause 2 of the United States Constitution.
3. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015).
4. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. § 1391(b) and (e). Petitioners are currently detained in this District and a substantial part of the events and omissions giving rise to Petitioners' claims occurred in this District.

PARTIES

5. [REDACTED] is a 43-year-old woman who is detained at EPPC in El Paso County, Texas.
6. [REDACTED] is a 26-year-old woman who is detained at EPPC in El Paso County, Texas.
7. [REDACTED] is a 31-year-old woman who is detained at EPPC in El Paso County, Texas.

broad equitable power to grant it.”); *Castillo v. Barr*, --- F.Supp.3d ---, 2020 WL 1502864, at *5 (C.D. Cal. Mar. 27, 2020) (“Civil detainees must be protected by the Government. Petitioners have not been protected. They are not kept at least 6 feet apart from others at all times.”).

8. [REDACTED] is a 45-year-old woman who is detained at EPPC in El Paso County, Texas.

9. [REDACTED] is a 60-year-old woman who is detained at EPPC in El Paso County, Texas.

10. [REDACTED] is 25-year-old woman who is detained at EPPC in El Paso County, Texas.

11. Jose A. Renteria is sued in his official capacity as Officer in Charge of EPPC. As the Officer in Charge of EPPC, he oversees, directs, and controls the operation of the detention center and supervises all staff. He is the immediate physical custodian of Petitioners.

12. Corey Price is sued in his official capacity as the Field Office Director for the El Paso ICE Field Office. He oversees all ICE Enforcement and Removal (“ERO”) functions and detained individuals in the El Paso area, including individuals detained at EPPC. He has legal custody over Petitioners and is authorized to release them.

13. Matthew T. Albence is sued in his official capacity as the Acting Director of ICE. In that capacity, he exercises authority over all ICE policies, procedures, and practices relating to ICE enforcement operations and detention facilities. He is responsible for ensuring that all people held in ICE custody are detained in accordance with law. He has legal custody over Petitioners and is authorized to release them.

14. Chad Wolf is sued in his official capacity as the Acting Secretary of DHS. He is responsible for enforcing federal laws concerning border control and immigration. He has direct authority over ICE, which is responsible for the civil detention of noncitizens in the United States. He has legal custody over Petitioners and is authorized to release them.

STATEMENT OF FACTS

I. COVID-19 Poses Grave Risks for Vulnerable People Like Petitioners.

15. COVID-19 is a highly infectious disease caused by a novel coronavirus, officially known as SARS-CoV-2. COVID-19 is easily transmitted by respiratory droplets produced when someone speaks, coughs, or sneezes, and through aerosolized fecal contact, as well as through the touching of shared surfaces. The virus may remain viable from hours to days on a variety of surfaces.

16. COVID-19 has spread rapidly across the United States. There are now more than 820,000 confirmed COVID-19 cases in the United States.² At the time of filing, the total number of confirmed cases of COVID-19 in the United States had doubled in just 14 days.³ As of the date of filing, there were more than 21,000 confirmed COVID-19 cases in Texas, 587 of which were in El Paso County, Texas.⁴ Testing for COVID-19 is not widely available across the United States making it difficult to accurately estimate the total number of cases in a given location. As of approximately April 22, 2020, 1,300 people had been tested in El Paso County.⁵

17. As of the date of filing, ICE has announced 5 confirmed COVID-19 cases among individuals detained at EPPC.⁶

18. COVID-19 is deadly. The fatality rate is estimated to be about ten times higher than the rate associated with a severe seasonal influenza. Age and underlying health condition are the best

² Max Roser, Hannah Ritchie, and Esteban Ortiz-Ospina, “Coronavirus Disease (COVID-19) – Statistics and Research,” updated Apr. 22, 2020, available at: <https://ourworldindata.org/coronavirus> (accessed Apr. 23, 2020).

³ *Id.*

⁴ Texas Dep’t of State Health Servs., “Texas Case Counts, COVID-19, Coronavirus Disease 2019,” available at: <https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83> (accessed Apr. 23, 2020).

⁵ City of El Paso, “City/County of El Paso COVID-19 Results,” available at: <http://epstrong.org/results.php> (accessed Apr. 23, 2020).

⁶ “ICE Guidance on COVID-19,” Confirmed Cases, updated Apr. 22, 2020, available at: <https://www.ice.gov/coronavirus> (accessed Apr. 23, 2020).

predictors of mortality. For people in the highest-risk populations, the fatality rate of COVID-19 is estimated to be as much as one in seven.

19. COVID-19 has killed over 45,000 people in the United States, including over 500 Texans.⁷

20. When it does not kill, COVID-19 can cause severe and lasting injury. It can severely damage lung tissue, which may require an extensive period of hospitalization and rehabilitation, and in some cases, can cause long-term loss of respiratory capacity. COVID-19 may also damage the heart, causing cardiac injury such as myocarditis, or inflammation of the heart muscle, an inability to pump blood and long-term heart failure. COVID-19 may also cause long-term kidney and neurological injury.

21. According to the CDC, people of advanced age, people with compromised immune systems, and people with certain underlying health conditions—including asthma, diabetes, heart conditions, and conditions affecting the respiratory system—are particularly vulnerable to becoming infected with COVID-19.⁸ They are also most likely to experience the most severe symptoms and have the greatest risk of lasting injury and death.

22. Individuals can show the first symptoms of COVID-19 infection in as little as two days after exposure and require hospitalization soon afterward. Older individuals infected by COVID-19 are more likely to be hospitalized, and the majority of people hospitalized with COVID-19 also have a chronic underlying health condition.⁹

23. People in high-risk categories who contract COVID-19 are more likely to need advanced medical support. This level of supportive care requires highly specialized equipment that is in

⁷ See *supra* notes 2 and 4.

⁸ CDC, “People Who Are at Higher Risk for Severe Illness,” Apr. 15, 2020, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (accessed Apr. 22, 2020).

⁹ Shikha Garg, MD, *et al.*, “Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus, Disease 2019,” Apr. 8, 2020, *available at*: <https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm#suggestedcitation> (accessed Apr. 23, 2020).

limited supply, such as ventilators, and an entire team of care providers, including 1:1 or 1:2 nurse-to-patient ratios, respiratory therapists, and intensive care physicians.

24. The extensive medical support needed by COVID-19 patients can quickly exceed local healthcare resources, requiring doctors and public health authorities to allocate scarce resources and decide who receives care. El Paso's healthcare systems have limited capacity to provide intensive care to COVID-19 patients. As of the date of filing, there are approximately 75 ICU hospital beds in El Paso County and 307 ventilators.¹⁰ Approximately 18 COVID-19 patients are currently hospitalized in ICU beds in El Paso and 8 COVID-19 patients are on ventilators.¹¹

25. For those patients who receive ventilator care, recent studies suggest that nearly 90% do not survive COVID-19.¹²

26. There is no vaccine or treatment to prevent or cure COVID-19. The only measures known to reduce the risk of illness, injury, or death from COVID-19 are to prevent individuals from being infected in the first place. This is accomplished through "social distancing," remaining a safe distance (six feet) away from others, regardless of their symptoms, as described by CDC.¹³

27. Because transmission of COVID-19 occurs from people who are asymptomatic or pre-symptomatic, social distancing regardless of the presence of symptoms is necessary to avoid contracting the virus.

28. Government officials across the country are taking unprecedented steps to promote social distancing to prevent the spread of COVID-19. On March 24, 2020, El Paso County Judge, Ricardo A. Samaniego, ordered all individuals living in El Paso County to stay at their place of residence

¹⁰ See *supra* note 5.

¹¹ *Id.*

¹² Safiyah Richardson, MD, MPH, "Presenting Characteristics, Comorbidities, and Outcomes Among 5,700 Patients Hospitalized with COVID-19 in the New York City Area," Apr. 22, 2020, *available at*: <https://jamanetwork.com/journals/jama/fullarticle/2765184> (accessed Apr. 23, 2020).

¹³ CDC, "Social Distancing, Quarantine, and Isolation," Apr. 4, 2020, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (Apr. 23, 2020).

and “to the greatest extent feasible, maintain social distancing of at least six feet from any other person.”¹⁴ On March 31, 2020, Governor Greg Abbott ordered all Texas residents to follow the social distancing guidelines issued by the CDC during the limited times when people are permitted to leave their homes to obtain essential services.¹⁵

II. Respondents Expose Petitioners to COVID-19 Infection, Serious Illness, and Possible Death by Continuing to Detain Them at EPPC.

29. EPPC is an immigration detention center. It is a dedicated ICE facility, meaning EPPC holds only civil immigration detainees. Currently, EPPC detains approximately 300 individuals. People held at EPPC are detained pending the completion of ongoing civil immigration proceedings.

30. EPPC is comprised of a number of buildings, including at least twelve living quarters or “barracks,” each holding multiple dozens of detained individuals. Each barrack contains rows of bunk beds where detained individuals sleep, a common area where detained individuals may sit and watch television, and a shared bathroom with a small number of showers, sinks, and toilets. Other buildings on the EPPC campus include: a kitchen, a cafeteria, a medical wing, administrative segregation units, and immigration courtrooms. Like other immigration detention centers, EPPC is a 24-7 lockdown facility that Petitioners and other detained individuals are not allowed to leave.

A. No Social Distancing, No Masks or Gloves, and Virtually No Prevention Strategies Were in Use Prior to the First Confirmed Case of COVID-19 at EPPC.

31. The CDC recommends that detention centers like EPPC “implement social distancing strategies” in common areas, during recreation time, and during meals, and “explore strategies to

¹⁴ “Order No. 7 By the County Judge of El Paso County, Texas” Mar. 24, 2020, *available at*: <https://www.epcounty.com/documents/Order%20No.%207%20County%20Judge%20Stay%20Home%20Work%20Safe%20Order.pdf> (accessed Apr. 23, 2020).

¹⁵ Executive Order GA 14, Relating to statewide continuity of essential services and activities during the COVID-19 disaster,” Mar. 31, 2020, *available at*: https://gov.texas.gov/uploads/files/press/EO-GA-14_Statewide_Essential_Service_and_Activity_COVID-19_IMAGE_03-31-2020.pdf (accessed Apr. 23, 2020).

prevent over-crowding of correctional and detention facilities during a community outbreak” of COVID-19.¹⁶ Respondents failed to follow this guidance prior to the first confirmed case of COVID-19 at EPPC. Virtually no precautions were taken to make sure that Petitioners or other detained individuals at EPPC could maintain a safe distance from one another.

32. In the weeks immediately preceding April 16, 2020, Petitioners [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were each held in Barrack 4 with approximately 50 other detainees.

33. Petitioners and other women in Barrack 4 were not able to practice adequate social distancing. They slept on bunk beds (top and bottom) always separated by less than six feet. They spent long portions of their days in close proximity in a relatively small day room containing three common tables and a television. Barrack 4 has two bathrooms—one with eight showers and one with toilets. The bathroom with toilets were shared with the approximately 50 women in Barrack 4. The bathroom with showers was shared by over 100 women from both Barrack 4 and Barrack 3. Petitioners and dozens of women were required to gather to use these common showers, sinks, and toilets. Multiple detainees would use the Barrack’s common showers at the same time. Barrack 4 contained a small room with approximately eight telephones. People detained in Barrack 4, including Petitioners, were forced to huddle into this area to make paid telephone calls to family, friends, and attorneys outside of the detention center. The telephone area occasionally would get so busy that detained women including Petitioners skipped phone calls with their loved ones because there was not enough space or room to talk on the telephone.

34. In the weeks immediately prior to April 16, 2020, Petitioners [REDACTED] and [REDACTED] [REDACTED] were detained in Barrack 8A at EPPC. There were approximately 45 detained women in

¹⁶ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” at 6, 11, Mar. 23, 2020, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (accessed Apr. 23, 2020).

Barrack 8A. Petitioners were prohibited from practicing social distancing in Barrack 8A. Petitioners and other detainees slept on bunk beds (top and bottom) that were less than six feet apart and spent much of their days inside of the Barrack in close proximity with one another with limited opportunities to participate in recreation outside or leave Barrack 8A to eat meals or visit the facility medical wing. Inside of Barrack 8A there is a small room containing pay phones where Petitioners and other detainees would gather to make phone calls. Barrack 8A also contains common bathrooms where Petitioners and dozens of other detainees would shower and use the common sinks and toilets in close proximity.

35. In the weeks leading up to April 16, 2020, hundreds of detained women from different Barracks at EPPC ate meals together in close proximity with one another at tightly arranged tables in the cafeteria located on the EPPC property.

36. The CDC recommends that in addition to social distancing, detention centers provide ample soap and sanitizer at no cost to detained individuals to encourage frequent handwashing and that detention centers practice “intensified cleaning and disinfecting procedures” including disinfecting commonly used surfaces and objects “several times per day.”¹⁷ Respondents did not follow this guidance in the weeks leading up to the first confirmed COVID-19 case at EPPC.

37. Prior to April 16, 2020, the Barracks were cleaned infrequently by EPPC staff. The pay phones, tablets for sending electronic messages, tables, and other common items and surfaces were rarely cleaned or disinfected. Petitioners and other detainees in Barracks 4 and 8A were provided with limited amounts of soap and shampoo and no hand sanitizer. Respondents provided inadequate cleaning solvents for disinfecting common surfaces to Petitioners or other detainees in Barrack 4 or Barack 8A.

¹⁷ *Id.*, at 9.

38. Because COVID-19 can spread between people interacting in close proximity even when they are not exhibiting symptoms, the CDC recommends that people wear cloth face masks “where other social distancing measures are difficult to maintain.”¹⁸ Respondents are not providing Petitioners or other detainees at EPPC with face masks or coverings, gloves, or any other Personal Protective Equipment (“PPE”).

39. Respondents’ inability to take necessary precautions to prevent the spread of a deadly disease with no known cure has resulted in multiple confirmed cases of COVID-19 at EPPC within the last 7 days. Petitioners now face a grave risk of infection, serious injury, and possible death.

B. Without Adequate Preventative Measures, Respondents Have Been Unable to Contain the Spread of COVID-19 at EPPC.

40. On or about April 16, 2020, medical staff at EPPC wearing plastic hazmat suits, head coverings, and clear face guards entered the Barracks at EPPC to inform the detained individuals that one of the detained women held in Barrack 8A who was recently ill had tested positive for COVID-19. Petitioners and other detained individuals at EPPC were already well aware of the dangers associated with the virus and had feared that their inability to remain a safe distance from others made them vulnerable to infection. Many of the detainees screamed or began to cry with nervousness upon learning that their fears had come to fruition. Some of the detainees with chronic health conditions begged to be separated from others but medical staff refused to take these additional precautions.

¹⁸ CDC, “Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission,” Apr. 3, 2020, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> (accessed Apr. 22, 2020).

41. In the following days, Respondents confirmed additional COVID-19 cases at EPPC. On April 20, 2020, ICE announced on its website a total of 4 confirmed cases at the facility. The following day, ICE updated this total to 5 confirmed cases.

42. ICE's announcement of multiple confirmed cases of COVID-19 over the course of days likely underestimates the risk at EPPC. ICE does not post to its website any statistics regarding the number of confirmed COVID-19 cases or COVID-19 deaths among the contractors that work at ICE detention centers including EPPC.¹⁹

43. Multiple individuals detained at EPPC who were held in Barrack 8A are experiencing symptoms associated with COVID-19 but have not been tested.

C. The Precautions Respondents Implemented at EPPC After the First Confirmed Case of COVID-19 Are Inadequate to Protect Petitioners.

44. Beginning on April 16, 2020, Respondents placed Petitioners and all other detained women at EPPC under a fourteen-day quarantine during which time they are not permitted to leave their Barracks except to obtain necessary medical services at the medical wing at EPPC.

45. The detained individuals who were held in Barrack 8A prior to April 16, 2020 along with the individual who tested positive for COVID-19 have been divided into two cohorts. About 12 individuals, including Petitioner [REDACTED], who have symptoms consistent with COVID-19, continued to be held in Barrack 8A. About 32 individuals, including Petitioner [REDACTED], whom EPPC medical staff determined were not displaying symptoms consistent with COVID-19, were moved to Barrack 8B.

46. In the days following the announcement of the first COVID-19 case at EPPC, facility staff separated the bunk beds in the Barracks where Petitioners are detained by an additional few feet

¹⁹ See Monique O. Madan, "ICE Refuses to Say If Its Contractors Have COVID-19. A Federal Judge Just Ordered It To," Miami Herald, Apr. 15, 2020, <https://www.miamiherald.com/news/local/immigration/article242022731.html> (accessed Apr. 22, 2020).

in some Barracks. In other Barracks, like Barrack 8D, bunk beds are still far less than six feet apart. Regardless of whether the beds are separated, detainees including Petitioners still sleep on both the top and bottom bunks of the same bunk bed.

47. ICE admits that its strategy for mitigating against the spread of COVID-19 within its detention centers is “depend[ent] on available space.”²⁰ In the confined barracks at EPPC, it is impossible to implement adequate social distancing.

48. Petitioners and dozens of other detained individuals now are required to spend their entire days in their Barrack where it is impossible to avoid close contact with others. Meals are now served inside of the Barracks. Petitioners and other detained individuals try to maintain a safe distance from each other but there is insufficient seating during meal times to avoid coming into close contact with others. Instead, Petitioners are told to eat in their beds. Petitioners are still required to stand in line, with far less than six feet of space between one another, to receive meals delivered to their Barracks.

49. Petitioners and other detained individuals still share common bathrooms and frequently are required to be in close proximity with others to use the only showers, sinks, and toilets available to them in their Barracks. Petitioners and other detainees still are forced to be in close contact with others if they want to use the pay phones located inside of the Barracks.

50. No additional soap or shampoo has been provided to permit frequent hand washing, as recommended by the CDC. The detainees have not been provided adequate cleaning solvent or wipes so that they may disinfect the many common surfaces within the barracks.

51. Because COVID-19 can spread between people interacting in close proximity even when they are not exhibiting symptoms, the CDC recommends that people wear cloth face masks “where

²⁰ See *supra* note 6.

other social distancing measures are difficult to maintain.”²¹ Guards and other staff wear PPE when they visit the Barracks but Petitioners and other detained individuals at EPPC—the people whom Respondents force to remain in close quarters with others—have rarely been provided face masks or coverings, gloves, or any other PPE for use in their Barracks.

52. The medical personnel at EPPC have not conducted comprehensive testing of all detained individuals, ICE employees, and contractors who work at the detention center. EPPC does not have sufficient medical personnel, equipment, or infrastructure to ensure adequate COVID-19 testing, medical evaluation, or medical care for all of the individuals detained there who might develop serious COVID-19 illness.

53. Individuals detained at EPPC who require intensive medical care are typically transferred to the University Medical Center of El Paso, a public hospital that serves the community.

54. EPPC is not isolated from the surrounding community. ICE Deportation Officers, guards, staff, contractors, and visitors pass between the community and the detention center and can bring COVID-19 into EPPC or from EPPC into the community.

55. Under the current conditions at EPPC, it will be impossible to stop the spread of the COVID-19 within the facility now that the virus has been introduced.

III. ICE’s Agency-Wide Response to COVID-19 Is Also Inadequate to Protect Petitioners.

56. As early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts for DHS, shared concerns about the specific risks to individuals held in immigration detention facilities as a result of COVID-19 with the agency. These experts warned of the danger of rapid spread of COVID-19 in immigration detention facilities. In a whistleblower letter to Congress, Dr.

²¹ CDC, “Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission,” Apr. 3, 2020, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> (accessed Apr. 22, 2020).

Allen and Dr Rich recommended that “[m]inimally DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases.” They concluded that “acting immediately will save lives not only of those detained, but also detention staff and their facilities, and the community-at-large.”²²

57. On or about April 13, 2020, thirty-three days after the World Health Organization declared COVID-19 to be a global pandemic, ICE issued a policy document called the “[ICE] [ERO] COVID-19 Pandemic Response Requirements” (“ERO PRR”).²³ This document purports to articulate standards that all ICE detention centers must adhere to, but even these standards are deficient to protect Petitioners now that COVID-19 is spreading rapidly at EPPC.

58. The ERO PRR conflicts with CDC recommendations regarding staff who have contact with a known or suspected case of COVID-19. ICE requires them to “self-monitor for symptoms.”²⁴ The CDC recommends that employers take employees’ temperatures and assess symptoms before they begin work and, ideally, prior to even entering the workplace.²⁵

59. The ERO PRR only requires detention centers to quarantine individuals who have contact with a known COVID-19 case for 14 days and monitor their symptoms twice per day.²⁶ The CDC recommends that detention centers “make every possible effort to quarantine close contacts of COVID-19 cases individually” and notes that “[c]ohorting multiple quarantined close contacts of

²² Letter from Dr. Scott Allen & Dr. Josiah Rich to the Senate and House Committees on Homeland Security and Oversight and Reform, at 5–6, Mar. 19, 2020, *available at*: <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html> (accessed Apr. 23, 2020).

²³ ICE Enforcement and Removal Operations, “COVID-19 Pandemic Response Requirements,” *available at*: <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf> (accessed Apr. 22, 2020).

²⁴ *Id.* at 8.

²⁵ CDC, “Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed Covid-19.” Apr. 20, 2020, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html> (accessed Apr. 23, 2020).

²⁶ *Supra* note 26, at 12.

a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected.”²⁷ The CDC also recommends that quarantined close contacts of a COVID-19 case be provided basic PPE, which is not required by the ERO PRR and is not occurring at EPPC.²⁸

60. Crucially for Petitioners, the ERO PRR does not specify any additional protections for detainees who are particularly vulnerable to infection by COVID-19, serious illness, and death, other than simply communicating with higher-ranking officials to inquire whether they may be released.²⁹ The CDC strongly encourages detention centers to allocate more space to high-risk individuals to avoid transmission of COVID-19.³⁰

61. Respondents have the statutory and regulatory authority to release Petitioners in accordance with the ERO PRR standards or humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5), but they have not done so.

62. Many standards articulated in the ERO PRR are not being implemented at EPPC. The ERO PRR requires ICE to follow the CDC’s recommendations for preventing the spread of COVID-19 in detention centers which, as explained above, did not happen at EPPC prior to April 16, 2020, and is not happening now. The ERO PRR says that “cloth face coverings should be worn by detainees.”³¹ Respondents have failed to provide face coverings to Petitioners and other detainees at EPPC. Regardless, these standards are deficient for protecting Petitioners from an intolerably high risk of infection, serious illness, and possible death.

IV. Each of the Individual Petitioners Is Uniquely Vulnerable to COVID-19.

a. [REDACTED]

²⁷ *Supra* note 17, at 19.

²⁸ *Supra* note 17, at 20.

²⁹ *Supra* note 26, at 6–7.

³⁰ *Supra* note 17, at 16.

³¹ *Supra* note 26, at 9.

63. Petitioner [REDACTED] is a 43-year-old woman from [REDACTED]. She fled her home country and has applied for asylum in the United States. She has been detained at EPPC since October 2019. Her asylum case is pending before an immigration court.

64. Ms. [REDACTED] has moderate to severe asthma. She has struggled with this condition for more than eighteen years. In [REDACTED], about two years before she fled for the United States, Ms. [REDACTED] was hospitalized for weeks with a severe asthma attack. She uses an inhaler and takes medication issued to her by medical staff at EPPC to treat and manage her condition. She is also recovering from a broken ankle which required surgery in late 2019.

65. Ms. [REDACTED] informed ICE of her serious underlying health condition on about April 6, 2020, and requested that ICE release her from detention in light of the pandemic. She also informed ICE of her sponsor in [REDACTED] who offers lodging, support, and transportation to Ms. [REDACTED] if she is released. ICE denied her request.

66. Ms. [REDACTED] does not pose a risk of flight or danger to the community if released.

b. [REDACTED]

67. Petitioner [REDACTED] is a 26-year-old woman from [REDACTED]. She was persecuted in her home country as recently as January 2019. She presented herself at a port of entry at the U.S.-Mexico border and was forced to return to Mexico as part of the government's new Migrant Protection Protocols ("MPP") program, commonly known as the "Remain-in-Mexico" program. On or about December 13, 2019, Ms. [REDACTED] was taken out of the MPP program based on the severe harm she faced while in Mexico awaiting adjudication of her immigration case. Ms. [REDACTED] has been detained at EPPC for about four months. Her case is pending in immigration court.

68. Ms. [REDACTED] has diabetes and has suffered from extreme anemia for much of her adult life. Ms. [REDACTED] recently has become very ill and her immune system is compromised. On or about April 15, 2020, she began vomiting and coughing up blood and is unable to consume food. Since that time Ms. [REDACTED] has been detained in the medical wing of EPPC with another detained woman who is displaying symptoms of COVID-19.

69. Ms. [REDACTED] discovered that there was a confirmed case of COVID-19 among the women detained in EPPC while watching the local news on the television. She immediately became extremely fearful because of her vulnerable medical condition. She does not believe she has been tested for COVID-19 and she has not received any instructions on what she must do to protect herself since she has been detained in the medical wing of EPPC.

70. Respondents detain Ms. [REDACTED] unnecessarily. Her aunt has legal status and lives in [REDACTED] and her partner's aunt also has legal status and lives in [REDACTED]. If released she intends to reside with one of these individuals until her immigration case is fully adjudicated. On or about March 12, 2020, Ms. [REDACTED] requested that ICE parole her from detention. She provided identity documents, multiple letters of support, and evidence of income from members of her family in the United States. ICE denied her request.

71. Ms. [REDACTED] does not pose a risk of flight or danger to the community if released.

c. [REDACTED]

72. [REDACTED] is a 31-year-old woman from [REDACTED]. She was threatened with extortion by local criminal organizations in approximately December of 2019 and later sexually assaulted. She was apprehended on approximately February 26, 2020 after entering the United States between ports of entry. Ms. [REDACTED] was originally detained at the [REDACTED]

Detention Facility in [REDACTED] and then transferred to EPPC on or about March 4, 2020. Her immigration case is pending before an immigration court.

73. Ms. [REDACTED] has tachycardia, a heart condition that affects her ability to breathe and causes severe chest pain and lightheadedness. This condition is exacerbated during periods of intense stress and anxiety. Ms. [REDACTED] informed medical staff at EPPC about her heart condition and that she received injections of Vitamin B before she was detained. Medical staff refused to provide her these requested injections. Ms. [REDACTED] has also struggled and been treated for chronic gastritis while detained.

74. If released, Ms. [REDACTED] intends to live with her husband and two children in [REDACTED]. She does not pose a flight risk or danger to the community.

d. [REDACTED]

75. [REDACTED] is a 45-year-old citizen of [REDACTED] who has lived in the United States since she was about 5 years old. She is the mother of two adult U.S. citizens and one U.S. citizen child who is 14 years old and for whom she has been the primary caretaker and a single mother. Her children reside in [REDACTED], [REDACTED]. Ms. [REDACTED] left the United States and returned to [REDACTED] in approximately August of 2019 to complete consular processing associated with a visa application filed on her behalf by her father. As the COVID-19 pandemic began to take hold around the United States she became fearful for the health and safety of her children and attempted to re-enter the United States at a port of entry in El Paso, Texas. She was transferred to EPPC on approximately March 17, 2020.

76. Ms. [REDACTED] has severe allergies that affect her breathing and takes asthma medication to treat and manage the condition.

77. If she is released, Ms. [REDACTED] will live with her children at their home in [REDACTED]

[REDACTED] She poses no flight risk or danger to the community.

e. [REDACTED]

78. [REDACTED] is a 60-year-old woman who is originally from [REDACTED]. She was apprehended in February of 2019 and has been detained at EPPC since that time. Ms. [REDACTED] was subject to expedited removal and received a final order of removal. She has filed a motion to rescind the final removal order and reopen her expedited removal proceedings and is awaiting a decision. She has not been issued an I-213 form or a Notice to Appear.

79. Ms. [REDACTED] is especially susceptible to infection with COVID-19 and serious illness or death because of her advanced age and her underlying health conditions. In addition to being 60 years old, she has high cholesterol, a thyroid disorder, and circulation issues that require constant monitoring and treatment. She is taking medication for these conditions in EPPC.

80. If she is released, Ms. [REDACTED] intends to reside with her fiancé and stepchildren in [REDACTED]

[REDACTED] She poses no flight risk or danger to the community.

f. [REDACTED]

81. Ms. [REDACTED] is a 25-year-old woman from [REDACTED]. She is of indigenous background, and she was studying law in [REDACTED] until her life was upended by persecution and torture she suffered in her home country. She has applied for asylum in the United States and her next hearing in immigration court is on May 13, 2020. She has been detained for more than one year.

82. Ms. [REDACTED] was detained in Barrack 8A in EPPC at the time that another woman in that Barracks tested positive for COVID-19. Ms. [REDACTED] has recently become very ill and has a compromised immune system. She has persistent headaches, nausea, diarrhea, and

experiences frequent nose bleeds and pain in her throat. On April 20, 2020, Ms. [REDACTED] began coughing up blood and demanded to be tested for COVID-19. EPPC medical staff eventually brought her to the medical wing and put her on an IV. Medical staff administered a test for COVID-19. On or about April 24, 2020, Ms. [REDACTED] test returned positive.

83. On or about April 7, 2020, Ms. [REDACTED] requested humanitarian parole based on her health and the risk she now faces in light of the COVID-19 pandemic. ICE denied the request. If she is released, Mr. [REDACTED] will live with her close family friend who has legal status and resides in [REDACTED]

84. There is no obligation for Petitioners to exhaust their administrative remedies prior to filing this habeas petition and complaint. Petitioners have no administrative remedies to exhaust. Even if meaningful administrative remedies were available, Petitioners, as noncitizens challenging the lawfulness of their ongoing immigration detention, are not required to exhaust them.

CLAIM FOR RELIEF

Fifth Amendment to the U.S. Constitution (Substantive Due Process)

85. Petitioners repeat and incorporate by reference all allegations of fact made above.

86. The Constitution's Fifth Amendment prohibits punishment of noncitizens who are held in civil detention. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

87. At all relevant times, Respondents and their agents and employees have continuously detained Petitioners pursuant to civil immigration detention statutes.

88. Respondents punish Petitioners by detaining them under the circumstances described herein, without the ability to implement strict social distancing and frequent and vigorous hand-washing and disinfection of surfaces, and to use masks, gloves, and PPE. Respondents' actions and omissions cause Petitioners to experience actual fear of death, and expose them to unjustifiable

risk of death, lasting injury, or serious illness from COVID-19, and are thus patently excessive in relation to any legitimate government objective.

89. The federal government violates due process when it: (a) fails to satisfy its affirmative duty to provide conditions of reasonable health and safety to the people it holds in its custody, (b) fails to provide for basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety for those in custody, and (c) when, acting with deliberate indifference, it subjects civil detainees to objectively unreasonable risks to their health and safety, to cruel treatment, or to conditions of confinement that amount to punishment.

90. By continuing to detain Petitioners at EPPC, Respondents are subjecting Petitioners to an unreasonable risk of contracting COVID-19, for which there is no vaccine and no cure, and which can be lethal. Petitioners are particularly vulnerable to serious medical complications from COVID-19 infection and are at unreasonable risk of illness and death while in detention.

91. By subjecting Petitioners to this risk, Respondents are maintaining detention conditions that amount to punishment and are failing to ensure Petitioners' safety and health. Likewise, Respondents' continued detention of Petitioners at EPPC is deliberately indifferent to Petitioners' health and safety because releasing Petitioners from custody is the only way to adequately protect them from COVID-19. Respondents are aware of the serious risk posed by COVID-19 and are consciously disregarding that risk by continuing to detain Petitioners at EPPC.

92. By continuing to detain Petitioners at EPPC despite an obvious outbreak of COVID-19 Respondents subject Petitioners to a risk of harm "so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk." *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

93. Respondents hold Petitioners in custody in violation of the Fifth Amendment to the United States Constitution. A writ of habeas corpus, pursuant to 28 U.S.C. § 2241, is necessary to remedy the constitutional violations, to ensure Petitioners have access to necessary medical care, and to remove the unreasonable risk that Petitioners will contract COVID-19 and suffer death or serious physical injury and harm.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

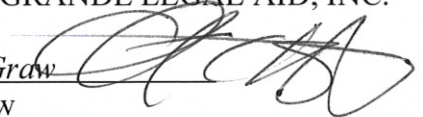
- A. Issue a Writ of Habeas Corpus on the ground that Petitioners' continued detention violates the Due Process Clause, and order Petitioners' immediate release, with appropriate precautionary public health measures;
- B. In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioners, with appropriate precautionary public health measures, on the grounds that their continued detention violates the Due Process Clause;
- C. Issue a declaration that Respondents' continued detention of Petitioners violates the Due Process Clause;
- D. Award Petitioners their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act ("EAJA"), 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 24, 2020

Respectfully submitted,

TEXAS RIOGRANDE LEGAL AID, INC.

/s/ Peter McGraw
Peter McGraw

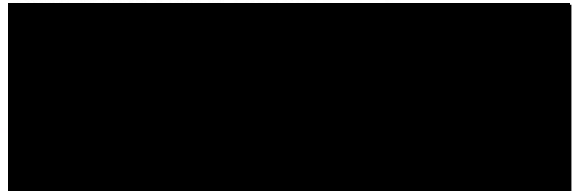


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Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submits this verification on behalf of the Petitioners. Undersigned counsel has discussed with Petitioners the events described in this Petition for Writ of Habeas Corpus and Complaint and, on the basis of those discussions, verifies that the statements in the Petition and Complaint are true and correct to the best of his knowledge.

Dated: April 24, 2020