UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

ARISTOTELES SANCHEZ MARTINEZ, *et al.*, Petitioners/Plaintiffs, v. MICHAEL DONAHUE, *et al.*, Respondents/Defendants.	**HEARING REQUESTED** Case No.:7:20-cv-00062-WLS-MSH

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND EMERGENCY WRIT OF HABEAS CORPUS

Petitioners file this Supplemental Memorandum of Law in Support of their Motion for

U.S. 236, 243 (1963)). Habeas corpus is, "above all, an adaptable remedy," *Boumediene*, 553 U.S. at 779, and federal courts retain "broad discretion in conditioning a judgment granting habeas relief . . . 'as law and justice require.'"

purpose and Supreme Court jurisprudence and "the weight of the reasoned precedent in the federal Courts of Appeal" relating to habeas and concluding "habeas corpus tests not only the fact but also the form of detention" (citation omitted)).

Federal courts of appeals are split on the question of whether conditions of confinement claims are cognizable in habeas, and the Eleventh Circuit has never issued a published decision weighing in. Thus, there is no binding authority precluding this Court from deciding that even run-of-the-mill challenges to conditions of confinement are cognizableo9.1(r)3(.l)-2(i(si)-3.8(on)]TJ E3

II. THIS COURT ALSO HAS INHERENT POWER TO ISSUE INJUNCTIVE RELIEF TO REMEDY CONSTITUTIONAL VIOLATIONS

As part of the implied constitutional cause of action that exists here, courts may rely on

Int'l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995); *accord Friedenberg v. Sch. Bd. of Palm Beach Cty.*, 911 F.3d 1084, 1090 (11th Cir. 2018). The injury must be "actual and imminent, not remote or speculative." *Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't of Transp.*, 715 F.3d 1268, 1288 (11th Cir. 2013).

That Petitioners have not yet suffered the harm that they fear—serious injury or death because of a COVID-19 infection—does not make their motion for TRO, or underlying claim, inappropriate for judicial review. Courts do not require plaintiffs to "await a tragic event" before they can ask this Court to redress governmental detention that unconstitutionally endangers them. *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *see also Castillo v. Barr*, 2020 U.S. Dist. LEXIS 54425 (C.D. Cal. Mar. 27, 2020) (applying *Helling* to release from immigration detention individuals at high risk of severe illness or death from COVID-19). Rather, the Supreme Court has held that a plaintiff can challenge the constitutionality of a condition of their confinement based on a substantial risk of future harm, including "exposure . . . to a serious, communicable disease," regardless of whether that harm is likely to occur "the next week or month or year." *Id.* Indeed, "[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Id.*

Petitioners face an imminent and substantial risk of serious, lasting illness or death if they remain in detention during the rapidly evolving COVID-19 pandemic. Petitioners are highly likely to contract COVID-19 due to the highly contagious nature of the disease; the even greater risk of

showing of imminent, irreparable harm in the absence of a TRO where petitioners faced "a risk of severe, irreparable harm if they contract COVID-19" because of their underlying medical conditions); *Basank v. Decker*, 2020 U.S. Dist. LEXIS 53191 (S.D.N.Y. Mar. 26, 2020) ("The risk that [p]etitioners will face a severe, and quite possibly fatal, infection if they remain in immigration detention constitutes irreparable harm."); *Malam*, 2020 WL 1672662 at *11 ("By the time a case

release." *Id.* In doing so, he explicitly directed that the review of individuals for release "include all at-risk inmates—not just those who were previously eligible for transfer." *Id.* at 2.

ICE cannot dramatically expand its infrastructure overnight to make space for social distancing. *Cf.* Op. Br.

Tel: (202) 355-4471
Fax: (404) 221-5857
melissa.crow@splcenter.org

twoodward@kilpatricktownsend.com
tcaldas@kilpatricktownsend.com
kisted@kilpatricktownsend.com
abrouillette@kilpatricktownsend.com

**pro hac vice motions forthcoming*