

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA**

JENNER BENAVIDES
DAVID FERNANDEZ
GERARDO ARRIAGA
Folkston ICE Processing Center
P.O. Box 248
Folkston, GA 31537

Petitioners/Plaintiffs,

v.

PATRICK GARTLAND
Warden, Folkston ICE Processing Center
3026 Hwy 252 E
P.O. Box 98
Folkston, GA 31537;

and

THOMAS GILES
Field Office Director U.S. Immigration and Customs
Enforcement
Atlanta Field Office,
180 Ted Turner Drive, SW, Suite 522
Atlanta, GA 30303;

and

MATTHEW T. ALBENCE
Deputy Director and Senior Official Performing the Duties
of the Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536;

and

CHAD WOLF
Acting Secretary
Department of Homeland Security,
3801 Nebraska Avenue, NW
Washington, D.C. 20016;

and

Case No.:

HEARING REQUESTED

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
500 12th Street, SW
Washington, D.C. 20536;

Respondents/Defendants.

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

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I. INTRODUCTION

1. The COVID-19 pandemic is wreaking havoc throughout the world. The United States has now surpassed every other country in number of confirmed cases, and over 12,000 Americans have died. Experts estimate that the coronavirus will ultimately infect between 160 and 214 million people and taken the lives of up to 1.7 million people in the United States alone.

2. There is no vaccine against COVID-19 and no known cure. Currently, the only recognized strategies to reduce the risk of exposure to COVID-19 are social distancing and scrupulous hygiene, which have led to unprecedented public health measures around the world.

3. In light of the devastation COVID-19 has already caused and the extreme difficulty in

8. Petitioners bring this action to remedy ICE’s violations of their constitutional rights and to protect themselves—as well as others detained or employed at Folkston or living in the surrounding community—from the imminent harm that will result from their continued detention.

II. PARTIES

9. Petitioner Jenner Benavides² is a 27-year-old transgender woman and citizen of Mexico who has been detained by ICE at Folkston since May 2019. She entered the U.S. at the age of 10 and later became a DACA recipient. She applied for asylum based on continuous sexual assault and abuse she endured as a child in Mexico, and her gender and sexual identity. She is currently appealing the denial of this relief to the BIA and applying for a U-visa. In 2014 her mother died from stomach cancer, leaving Ms. Benavides as the sole caretaker and custodian of her four minor siblings in Nashville, Tennessee. Ms. Benavides is HIV positive and suffers from bipolar disorder and severe depression and anxiety. As a consequence of her health condition, she is at high risk for severe illness or death if she contracts COVID-19.

10. Petitioner David Fernandez is a 45-year-old citizen of Mexico who has been detained by at Folkston since December 2019. He has lived in the United States for nearly 18 years and has worked consistently in labor jobs, including farming, construction, and roofing. He is currently seeking asylum. Mr. Fernandez suffers from diabetes and has a history of tubercumm.0000.6(d7sua on86)-39(nd

11. Petitioner Gerardo Arriaga is a 24-year-old citizen of Peru. He is married to a U.S. citizen and was living in Atlanta, Georgia before ICE detained him. He is eligible for adjustment of status. Mr. Arriaga is currently detained at Folkston and has been in ICE custody since March 2020. He suffers from Lupus, an autoimmune disease that causes him to be immunocompromised and causes inflammation and damage to his joints, skin, kidneys, blood, heart, and lungs. As a consequence of his health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

12. Respondent-Defendant (“Respondent”) Patrick Gartland is the Warden of Folkston ICE Processing Center. Pursuant to a contract with ICE, Mr. Gartland is responsible for the operation of Folkston, where Petitioners are detained.

13. Respondent Thomas Giles is the Field Office Director for the ICE Atlanta Field Office. The ICE Atlanta Field Office has complete control over the admission and release of noncitizens detained at Folkston. Respondent Giles is a legal custodian of Petitioners. He is sued in his official capacity.

14. Respondent Matthew T. Albence is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Respondent Albence is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of immigrants. He is sued in his official capacity.

15. Respondent Chad Wolf is the Acting Secretary of the United States Department of Homeland Security (DHS). In this capacity, he is responsible for the implementation and enforcement of immigration laws and oversees ICE. He is sued in his official capacity.

16. Respondent ICE is a federal law enforcement agency within DHS. ICE is responsible for the criminal and civil enforcement of the immigration laws, including the detention and removal of immigrants.

III. JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2241 (habeas jurisdiction), 28 U.S.C. § 1651 (All Writs Act), Article I, Section 9, clause 2 of the U.S. Constitution (the Suspension Clause), and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

18. The district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

19. Venue is proper in the Southern District of Georgia pursuant to 28 U.S.C. § 1391(e) because Respondents are federal officers sued in their official capacity; Respondent Gartland resides in this District; Petitioners are currently detained in this District; and a substantial part of the events or omissions giving rise to this action occurred in this District. Venue is also proper under 28 U.S.C. § 2241 because Respondents exercise control over Petitioners.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

statute—[certain constitutional] need not be administratively exhausted.” *Warsame v. U.S. Attorney Gen.*, 796 Fed. Appx. 993, 1006 (11th Cir. 2020). *See also Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (11th Cir. 1989),

over 394,278 people in the United States. Over 81,858 people have died as a result of COVID-19 worldwide, including at least 12,717 in the United States.⁶

23. Nationally, projections by the Centers for Disease Control and Prevention (“CDC”) indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the pandemic without effective public health intervention, with as many as 1.7 million deaths in the most severe projections.⁷ On March 23, 2020, the WHO warned that the United States could become the next epicenter of the pandemic.⁸ And indeed on March 26, 2020, the United States surpassed every other country in the world in number of confirmed COVID-19 cases.⁹

24. In the state of Georgia, transmission of COVID-19 has also been rampant. On March 14, 2020, Governor Brian Kemp declared a public health state of emergency, describing the spread of COVID-19 as an “unprecedented public health threat.”¹⁰ At the time, there were 64 diagnosed COVID-19 cases spread across 15 counties.¹¹ As of April 7, 2020, less than a month

⁶ Worldometer: Coronavirus, <https://www.worldometers.info/coronavirus/#countries> (last accessed Apr. 7, 2020).

⁷ Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The New York Times (last updated Mar. 18, 2020), <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>

⁸ Sarah Boseley, *US may become next centre of coronavirus pandemic, says WHO*, The Guardian (Mar. 24, 2020), <https://www.theguardian.com/world/2020/mar/24/us-may-become-centre-of-coronavirus-pandemic-who-says>

⁹ *U.S. Now Leads the World in Confirmed Cases*, The New York Times (last updated Apr. 1, 2020), <https://www.nytimes.com/2020/03/26/world/coronavirus-news.html><https://www.nytimes.com/2020/03/26/world/coronavirus-news.html>

¹⁰ Governor Brian P. Kemp, *Kemp Declares Public Health State of Emergency*, Office of the Governor (Mar. 16, 2020), <https://gov.georgia.gov/press-releases/2020-03-16/kemp-declares-public-health-state-emergency>

¹¹ *Id.*

later, the number of reported cases had jumped to 8,818 with 155 counties now affected.¹² The number of reported deaths from COVID-19 is 329, making Georgia the state with the ninth highest number of COVID-19-related deaths in the United States.¹³ Governor Kemp issued a shelter in place order for the state of Georgia on April 3, 2020.¹⁴

25. The risk of serious illness or death from COVID-19 is greater in Georgia than in other parts of the United States because the population is overall much less healthy. Georgia has among the highest incidence of diabetes, hypertension, obesity and strokes in the country, particularly in areas with high poverty rates.¹⁵

26. Due to the lack of widespread testing available in most countries, including the United States, the number of confirmed cases is likely but a fraction of the true number of COVID-19 cases worldwide. As of April 6, 2020, approximately 1,917,095 tests have been administered in the entire United States; in Georgia, only 40,012.¹⁶ Because of the shortage of tests in the United States—admitted to be a “failing” by top infectious disease expert Dr. Anthony Fauci¹⁷—the CDC

¹² *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 7, 2020), <https://dph.georgia.gov/covid-19-daily-status-report>

¹³ Listing of United States Total Coronavirus Cases (last updated Apr. 7, 2020), <https://www.worldometers.info/coronavirus/country/us/>

¹⁴ Governor Brian P. Kemp, *Governor Kemp Issues Shelter in Place Order*, Office of the Governor (Apr. 2, 2020), <https://gov.georgia.gov/press-releases/2020-04-02/governor-kemp-issues-shelter-place-order>

currently recommends prioritizing testing for symptomatic healthcare providers and hospitalized patients¹⁸—which means that the number of diagnosed COVID-19 cases may be only the tip of a very large iceberg.¹⁹

i. Transmission of COVID-19

27. COVID-19 easily spreads through respiratory droplets that an infected person expels when they cough, sneeze, speak, or breathe. Transmission occurs if these virus-carrying droplets land directly on a nearby person’s nose or mouth. It can also occur when a person inhales these droplets or touches a contaminated surface and then touches their mouth, nose, or eyes.²⁰ The coronavirus can survive up to three hours in the air, four hours on copper, 24 hours on cardboard, and two to three days on plastic and stainless steel.²¹

28. Many people with COVID-19 remain completely asymptomatic and may never realize that they are infected, yet can still spread the disease. Likewise, infected people who may eventually develop symptoms are contagious even when they are pre-symptomatic and may account for 50% of transmissions. Interventions that isolate or quarantine only symptomatic individuals, therefore, cannot effectively contain transmission.

¹⁸ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19)* (last updated Mar. 24, 2020), <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>

¹⁹ George Citroner, *How Many People in the United States Actually Have COVID-19?*, Healthline (Mar. 18, 2020), <https://www.healthline.com/health-news/how-many-coronavirus-cases-are-there>

²⁰ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *How Coronavirus Spreads*

ii. Symptoms of COVID-19, Underlying Risks Factors, and Long-Term Effects

29. Even though it causes only mild symptoms or no symptoms at all for some, COVID-19 can, for others, result in more serious injury, including respiratory failure, kidney failure, and death.

30. Older individuals and those with certain medical conditions are at particularly high risk for serious illness or death from COVID-19.

31. Medical conditions that increase the risk of severe illness or death from COVID-19 for individuals of any age include blood disorders, chronic kidney or liver disease, compromised immune system, diabetes and other endocrine disorders, metabolic disorders, heart and lung disease, neurological and neurodevelopmental conditions, and current or recent pregnancy.

32. Infected individuals can face prolonged treatment and recovery periods, requiring intensive hospital care and ventilators that are in increasingly short supply. Those who do not die

iii. Prevention of COVID-19 Transmission

34. There is currently no vaccine against COVID-19. Nor are there any known prophylactic medications that will prevent or reduce the risk of a COVID-19 infection. Therefore, the only effective way to protect people against the risk of serious illness or death from COVID-19 is to limit their exposure to the virus through social distancing—*i.e.*, physical separation of at least six feet from all others—and vigilant hygiene, including frequent and thorough handwashing with soap and water.²³

35. The high incidence of asymptomatic transmission, alongside the nationwide dearth of diagnostic tests to identify and isolate infected individuals, necessitate strict social distancing measures to interrupt transmission.

36. Social distancing reduces the average number of contacts between people, which lowers every individual's risk both for acquiring COVID-19 and transmitting it to another person.

37. Strict social distancing measures have proven effective in reducing the transmission of COVID-19. On January 23, 2020, the Chinese government instituted a complete lockdown of Wuhan, China, where the COVID-19 outbreak began, to attempt to fight the spread of the virus. They shut down all schools, offices, and factories and banned private vehicles from city streets. This lockdown expanded to other cities in Hubei province in the next several days, extending to 60 million people in China.²⁴ Following the lockdown, Wuhan saw a sustained decrease in

²³ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *How to Protect Yourself* (last reviewed Apr. 1, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

²⁴ Amy Gunia, *China's Draconian Lockdown Is Getting Credit for Slowing Coronavirus. Would It Work Anywhere Else?*, Time Magazine (Mar. 13, 2020), <https://time.com/5796425/china-coronavirus-lockdown/>

transmission of COVID-19, and two months later, the daily number of reported cases dropped to zero.²⁵

38. Throughout the world, other countries have also implemented drastic social distancing measures in an effort to control the COVID-19 pandemic and protect people’s health and lives. France, for example, imposed a strict nationwide lockdown, prohibiting gatherings of any size and ordering all residents to stay at home.²⁶ Overall, countries encompassing an estimated one third of the world’s population have enacted similar restrictions.²⁷ Across the United States, cities and states are imposing increasingly stringent measures to effectuate social distancing. As of April 2, 2020, at least 38 states, 48 counties, and 14 cities, and had ordered their residents to “shelter in place” or stay at home.²⁸

B. COVID-19 Will Likely Ravage Jails, Prisons, and Detention Centers

39. Imprisoned populations, including those in ICE detention facilities, are at higher risk for infectious disease, as compared to the general population. Factors that heighten their risk include poor sanitation, high population density, and “a higher prevalence of infectious and chronic diseases and . . . poorer health than the general population, even at younger ages.”²⁹

²⁵ *Id.*

²⁶ Bryan Pietsch, *‘We are at war’: France’s president just announced a 15-day lockdown, banning public gatherings and walks outdoors*

40. Dr. Scott Allen and Dr. Josiah Rich, experts in the fields of detention health, infectious disease, and public health who advise DHS's Office of Civil Rights and Civil Liberties, have urged Congress to take immediate actions to slow the spread of COVID-19 in ICE detention centers, including releasing immigrants to facilitate social distancing—which, they say, is an “oxymoron” in congregate settings.³⁰

41. In March 2020, over 3,000 medical professionals across the United States also urged ICE to release individuals and families from detention “to prevent the spread of COVID-19 and mitigate the harm of an outbreak” to detained individuals, as well as to facility staff.³¹ They warned that social distancing measures recommended by the CDC are nearly impossible in immigration detention and that large-scale quarantines may be unfeasible at ICE facilities that are already at maximum capacity. They also expressed concern that “isolation may be misused and place individuals at higher risk of neglect and death.”

42. Like these and other experts,³² Drs. Allen and Rich also warned of the dire

a facility would result in the hospitalization of multiple detained people in a short period of time, which would then spread the virus to the surrounding community and create a demand for ventilators far exceeding the supply.

43. Once a disease is introduced into a jail, prison, or detention facility, it spreads faster than under most other circumstances due to overcrowding, poor sanitation and hygiene, and lack of access to adequate medical services. For these same reasons, the outbreak is harder to control.³³ The severe outbreaks of COVID-19 in congregate environments, such as cruise ships and nursing homes, illustrate just how rapidly and widely COVID-19 would rip through an ICE detention facility. On the Diamond Princess cruise ship, for example, approximately 700 passengers and crew on board were infected over the course of three weeks despite the initiation of quarantine protocols.

44. Good hygiene is also critical to reducing exposure to COVID-19, but the notoriously unsanitary conditions in detention centers and ICE's meager provision of hygiene and cleaning products rob detained individuals of the ability to practice good hygiene.

45. Despite the global pandemic and shelter-in-place orders across the country, ICE continues to bring new people into detention centers and to transfer previously detained people between facilities.³⁴ Some detained people have staged public protests, including initiating hunger

³³ Christina Potter, *Outbreaks in Migrant Detention Facilities*, Outbreak Observatory (Jul. 11, 2019), <https://www.outbreakobservatory.org/outbreakthursday-1/7/11/2019/outbreaks-in-migrant-detention-facilities>

³⁴ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (last reviewed/updated Apr. 2, 2020), <https://www.ice.gov/covid19> (“ . . . our law enforcement officers and agents continue daily enforcement operations to make criminal and civil arrests.”); see Richard Hall, *Coronavirus: ICE Crackdown Stokes Fears for Safety of Undocumented Immigrants During Pandemic*, Independent (Mar. 15, 2020) (noting that “[i]n New York, immigration advocates have noted a marked increase in ICE activity in

and CBP facilities have also been sites of other infectious outbreaks in recent years,³⁸ as have other prisons and jails.³⁹

48. COVID-19 has indeed already started to spread inside U.S. prisons and jails across the United States, including in Georgia⁴⁰ and New York City.⁴¹

49. ICE has publicly reported 13 cases of COVID-19 among its detained population as of April 6, 2020, and identified 56 additional cases among its personnel, including seven employees who work at an ICE detention facility.⁴² In addition, according to a leaked internal report, ICE has placed at least nine detainees in medical isolation and is monitoring 24 more in ten different detention facilities—all likely due to suspicion of COVID-19.⁴³

³⁸ Christina Potter, Outbreak Observatory *supra* n. 33, (describing outbreaks of acute respiratory illnesses like influenza, and other diseases like scabies and chickenpox).

³⁹ J. O’Grady, et al., *Tuberculosis in prisons: anatomy of global neglect*, European Respiratory Journal (2011), <https://erj.ersjournals.com/content/38/4/752.short> (stating that tuberculosis prevalence among prisoners worldwide can be up to 50 times higher than national averages).

⁴⁰ Joshua Sharpe and Christian Boone, *Ga. Inmate dies from COVID-19 as virus hits more prisons*, The Atlanta Journal-Constitution (Mar. 27, 2020), <https://www.ajc.com/news/local/breaking-inmate-dies-from-covid-outbreak-worsens-prison/TzQZL4uXfK4GzH9ebSFNQN/>

⁴¹ Emma Grey Ellis, *Covid-19 Poses a Heightened Threat in jails and Prisons*, wired.com (Mar. 24, 2020), <https://www.wired.com/story/coronavirus-covid-19-jails-prisons/>

⁴² *ICE Guidance on COVID-19*, *supra* n. 34

⁴³ Ken Klippenstein, *Exclusive: ICE Detainees Are Being Quarantined, A leaked document about the Department of Homeland Security’s Covid-19 response suggests that the crisis has made its way to border detention facilities*, The Nation (Mar. 24, 2020), <https://www.thenation.com/article/society/corona-covid-immigration-detention/>

C. Folkston Detention Center Is Primed for COVID-19 Exposure and Severe Outbreaks

i. Existing Conditions at Folkston Will Further Enable COVID-19 Transmission

52. The ICE Atlanta Field Office currently detains an estimated 1,000 noncitizens at Folkston.

53. Preventing the spread of COVID-19 inside Folkston is impossible. The design of immigration detention facilities generally, and Folkston in particular, requires detained individuals to remain in close contact with one another—the opposite of the social distancing recommended for stopping the spread of lethal coronavirus.

54. Folkston houses people in very close quarters, making social distancing and the recommended hygiene measures effectively impossible. Most people sleep in bunk rooms housing dozens of immigrants—where beds are feet apart from each other—and use shared toilets and showers. Folkston also has some smaller cells housing multiple people with shared bathrooms. People eat together in shared cafeterias and regularly congregate in common areas of their housing units.⁵⁰

55. The conditions at Folkston are also flagrantly unsanitary and dangerous to the health of detained individuals. Private contractors operate Folkston, and the DHS Office of Inspector General has repeatedly concluded that ICE fails to hold detention facility contractors

56. At Folkston, food preparation and service are communal with little opportunity for surface disinfection. Detained people, overseen by food service contractors, staff the kitchens. People detained in Folkston have for reported being served food that is undercooked or spoiled.

ii. Folkston Has a Dismal Medical Care Track Record and Are Currently Ignoring Reported Flu-like Symptoms Among the Detained Population

57. Respondents have consistently failed to provide even minimally adequate medical care to individuals detained at Folkston. They cannot possibly be trusted to protect those in their

iii. It Is Only a Matter of Time Before COVID-19 Reaches Folkston Detention Center

65. COVID-19 is bound to reach Folkston if it has not already. In Charlton County, where Folkston is located, there were three confirmed case of COVID-19 as of April 7, 2020⁵⁴— including a woman who lives in Folkston with two family members who work in the local public schools and came into contact with students.⁵⁵ Duval County, Florida, includes the city of Jacksonville, which is the closest metro area to Folkston—about 45 miles away. Duval County had 524 confirmed cases as of April 7, 2020.⁵⁶

66. There is great risk that people traveling in and out of Folkston will expose Petitioners to COVID-19.

67. Staff at Folkston arrive and leave on a shift basis, and there is limited ability to adequately screen incoming staff for new, asymptomatic infection.

68. Attorneys continue to visit their detained clients in Folkston because most immigration court hearings are still proceeding and many filing deadlines still apply. Since the pandemic began, ICE has permitted attorneys to enter Folkston without taking adequate precautions to limit exposure in the event that a visiting attorney is a COVID-19 carrier. At Folkston, attorneys were permitted to enter for legal visits in late March without wearing any

⁵⁴ *Georgia Department of Public Health COVID-19 Daily Status Report* (Apr. 7, 2020).

⁵⁵ Gordon Jackson, *Folkston coronavirus case confirmed*, *The Brunswick News* (Mar. 17, 2020), https://thebrunswicknews.com/news/local_news/folkston-coronavirus-case-confirmed/article_79dd9c5d-f2dc-554b-8993-1ae66bcd127f.html

⁵⁶ Florida Department of Health, Division of Disease Control and Health Protection, Florida's COVID-19 data and Surveillance Dashboard, (last updated April 7, 2020) <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

19 may require supportive care.⁵⁷ And those who develop serious complications will need advanced support, including highly specialized equipment that is in limited supply and an entire team of care providers. This level of support is especially difficult to provide to detained individuals because ICE detention facilities lack adequate medical care infrastructure.

75. Folkston is geographically isolated from appropriate levels of medical care to treat COVID-19. The disease requires an intensive care unit with appropriate medical equipment and staff. The closest hospitals to Folkston are either critical access hospitals without the necessary facilities or regional hospitals that serve many counties and are already overwhelmed or will quickly become overwhelmed if there are outbreaks within these detention centers.

76. Critical access hospitals are generally located in rural areas where the access to nearby hospitals is extremely limited. They have fewer than 25 beds and are designed to care for patients who will require fewer than 96 hours of care. Importantly, even if some have ICU-type beds, they do not have capacity for the type of long-term treatment required for COVID-19 patients. Critical access hospitals are not designed to care for critically ill patients; they are designed to stabilize and transfer them.

77. The nearest hospital to Folkston detention center with ICU capabilities is Southeast Georgia Health System in Camden with only 40 beds, including 5 ICU beds, approximately 26 miles away. Patients would likely require initial transport or transfer to Southeast Georgia Health System – Brunswick with 300 beds, including 24 ICU beds, which is about 45 miles away and serves five different counties in Southeast Georgia.

⁵⁷ Fei Zhou, MD, et al., *Clinical course and risk factors for mortality of adults in patients with COVID-19 in Wuhan, china: a retrospective cohort study*, *The Lancet*, vol. 395, issue 10229 (Mar. 11, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext)

78. With the increasing shortage of PPE, healthcare providers, hospital capacity, and ICU resources like ventilators, it is impossible to know when specific hospitals in Georgia will run out of any of these requisite resources. However, predictions suggest that Georgia currently has an ICU bed shortage of 755 beds and 1,075 ventilators and that all state hospital resources will be

exposure, people who pass ICE's screenings can expose detained individuals, as well as detention center staff.

86. The limited options available to ICE to mitigate the risk of COVID-19, like solitary confinement for all medically vulnerable people, are problematic and unsafe. Placing an individual with significant medical needs in solitary confinement not only exacerbates underlying medical conditions, including any mental health issues, but also creates significant, life-threatening risks. This is particularly true given the rapid and severe progression of COVID-19 and the need for responsive medical observation. Folkston does not have the space or staff to safely care for patients for this period of time.

87. Locking any detained person, with or without underlying medical conditions, in a jail cell for extended periods of time, is psychologically damaging and could lead to a spike in severe depression, suicides, and other medical emergencies. In the context of an infectious disease outbreak, where onsite medical staff are operating at or over capacity, these problems will only accelerate. Isolation also increases the amount of physical contact between detention center staff

F. Petitioners Are Particularly Vulnerable to Serious Illness or Death if Infected by COVID-19 and Should Be Released from Detention.

89. Petitioners in this case individuals who are currently detained at Folkston and are particularly vulnerable to serious illness or death if infected by COVID-19.

90. **Jenner Benavides.** Jenner Benavides is a 27-year-old transgender woman and citizen of Mexico who has been in ICE custody since May 2019. Ms. Benavides is living with HIV and bipolar disorder. She also suffers from depression, anxiety and suicidal ideation exacerbated by her conditions of confinement. At Folkston, she is constantly bullied and harassed by other immigrants detained there. She was recently sexually assaulted more than once by men in her pod unit. When she reported the assault, she was put on suicide watch, and then moved to protective custody, which further worsens her anxiety and depression. She has also experienced delays and inconsistencies in medical services at Folkston, and she is not provided enough soap or toiletries to keep herself clean and protected from illness.

91. Ms. Benavides is critically vulnerable to COVID-19 because of her autoimmune disease and other health problems. Her U.S. citizen friend is waiting to care for her in Nashville once she is released, where her two youngest siblings also eagerly await her return. An immigration attorney submitted a humanitarian parole request on her behalf on April 2, 2020. ICE denied the request on April 5, 2020.

92. **David Fernandez.** Mr. Fernandez is a 45-year-old citizen of Mexico who has been detained at Folkston since December 2019. Mr. Fernandez has diabetes and has suffered from tuberculosis in the past. A doctor has told him that if he does not manage his blood sugar levels, he is at risk of suffering a heart attack. Prior to his detention by ICE, he had his sugar levels under control, and he felt well. However, maintenance of his diabetes requires fourteen injections of insulin per week, and he has not consistently received all of these necessary injections. Some

weeks he receives as few as three. His health has deteriorated, and he sometimes cannot stand up from fatigue. Mr. Fernandez is now suffering flu-like symptoms in a facility where he cannot practice social distancing, he is not provided sufficient soap, testing for COVID-19 is unavailable, and staff are not taking precautions to protect him from infection.

93. Mr. Fernandez is critically vulnerable to COVID-19 because of his significant health problems. Upon his release, he plans to self-quarantine in South Carolina, where friends eagerly wait to welcome him home.

94. **Gerardo Arriaga.** Mr. Arriaga is a 24-year-old citizen of Peru who has Lupus, an autoimmune disease that causes him to be immunocompromised and causes inflammation and damage to his joints, skin, kidneys, blood, heart, and lungs. Because of his condition, he is predisposed to infections, and needs medications and topical creams to manage the symptoms. While he has been at Folkston, he has not received these necessary medications. He has also

(“ATD”) such as GPS monitoring and telephone check-ins. *See, e.g.*, 8 U.S.C. § 1182(d)(5)(a); 8 C.F.R. § 212.5(b)(1); 8 C.F.R. § 235.3(b)(1)(iii); 8 C.F.R. § 235.3(b)(4)(ii); 8 C.F.R. § 241.4.

VI. LEGAL FRAMEWORK

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

by the prison conditions. Second, it must ask whether the conditions are ‘reasonably related’ to that goal.” *Jacoby v. Baldwin County*, 835 F.3d 1338, 1345 (11th Cir. 2016). “[I]f conditions are so extreme that less harsh alternatives are easily available, those conditions constitute ‘punishment.’” *Telfair v. Gilberg*, 868 F. Supp. 1396, 1412 (S.D. Ga. 1994) (citing *Wolfish*, 441 U.S. at 538-39 n.20).

102. “[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago Cty. Dep’t. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). The government must provide detained individuals with basic necessities, such as adequate medical care, food, clothing, and shelter; the failure to provide these necessities violates due process. *Hamm*, 774 F.2d at 1573; *Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cty.*, 402 F.3d 1092, 1115 (11th Cir. 2005).

103. At a minimum, the Fifth Amendment Due Process Clause prohibits Respondents’ deliberate indifference to a substantial risk of serious harm that would rise to the level of an Eighth Amendment violation in the post-conviction criminal context. *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244, (1983) (“[T]he due process rights of a [detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner.”); *see also Hale v. Tallapoosa County*, 50 F. 3d 1579, 1582 n.4 (11th Cir. 1995).

104. In order to show that Respondents are acting with deliberate indifference, Petitioners must show exposure to a substantial risk of serious harm of which Respondents are aware and have disregarded. *Farmer v. Brennan*, 511 U.S. 825, 834, 837-38 (1994); *Marbury v. Warden*, 936 F.3d 1227, 1233 (11th Cir. 2019); *Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1582 (11th Cir. 1995).

105. The government may violate the Eighth Amendment when it “ignore[s] a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” including “exposure of inmates to a serious, communicable disease,” even when “the complaining inmate shows no serious current symptoms.” *Helling*, 509 U.S. at 33; *see also id.* at 34 (citing with approval *Gates v. Collier*, 501 F.2d 1291, 1300 (5th Cir. 1974), which held that prisoners were entitled to relief under the Eighth Amendment when they showed, *inter alia*, the mingling of “inmates with serious contagious diseases” with other prison inmates).

106. Thus, the harm that Petitioners fear—*i.e.*, that their confinement will result in a COVID-19 infection that will seriously injure and possibly kill them—need not become a reality to establish a violation of their constitutional rights. Courts do not require a plaintiff to “await a tragic event” before seeking relief from a condition of confinement that unconstitutionally endangers them. *See Helling*, 509 U.S. at 33 (holding prisoner’s Eighth Amendment claim could be based upon possible future harm to health, as well as present harm).

107. “Nor does it matter that some inmates may not be affected by the condition, and that the harm is thus, in a sense, only potential harm. The Court has found an Eighth Amendment violation ‘even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.’” *Tittle v. Jefferson Cty. Comm’n*, 10 F.3d 1535, 1543 (11th Cir. 1994) (quoting *Helling*, 509 U.S. at 33).

B. This Court Has Authority to Order Petitioners’ Release to Vindicate Their Fifth Amendment Rights, and Such Relief Is Necessary Here.

108. Courts have broad power to fashion equitable remedies to address constitutional violations in prisons, *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978), and “[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011); *see also Stone v. City & County*

of the United States”). “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

113. Habeas invests in federal courts broad, equitable authority to “dispose of the matter as law and justice require,” 28 U.S.C. § 2243, as the “very nature of the writ demands that it be administered with the initiative and flexibility.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969); see *Boumediene v. Bush*, 553 U.S. 723, 780 (2008) (“Habeas is not ‘a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose.’”) (quoting *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

114. Accordingly, the illegality of custody under the “Constitution or laws . . . of the United States” may stem from the fact of detention and the duration of detention—what is often referred to as the historical core of habeas—and for unlawful placement or conditions of detention. See *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971) (habeas challenging “living conditions and disciplinary measures” is “cognizable in federal habeas corpus”); *Johnson v. Avery*, 393 U.S. 483 (1969) (permitting federal habeas challenge to legality of prison regulation prohibiting provision of legal assistance to other prisoners). See also *Aamer v. Obama*, 742 F.3d 1023, 1031-38 (D.C. Cir. 2014) (surveying history, 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)).

115. A court is fully empowered to remediate the particular illegality here—an outbreak of lethal and unavoidable virus that threatens Petitioners and violates their constitutional rights to be free from arbitrary and punitive detention—by ordering their release. 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.’” *Hilton v.*

Braunskill, 481 U.S. 770, 775 (1987) (quoting 28 U.S.C. § 2243). That authority includes an order of release, *Boumediene*, 553 U.S. at 779, so as “to insure that miscarriages of justice within [the writ’s] reach are surfaced and corrected.” *Harris*, 395 U.S. at 291.

VII. CLAIM FOR RELIEF

A. Violation of Fifth Amendment Right to Substantive Due Process (Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement)

116. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

117. The Fifth Amendment to the U.S. Constitution guarantees individuals in

treatment, or cure. Respondents know or should be aware of the fact that Petitioners' underlying conditions render them especially vulnerable to severe illness or even death if they contract COVID-19. Respondents are therefore knowingly subjecting Petitioners to an unreasonable risk of serious harm, in violation of constitutional due process.

121. Respondents' continued detention of Petitioners fails to adequately protect Petitioners from the risks of contracting COVID-19.

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

123. Respondents have exposed Petitioners to a substantial risk of serious harm.

124. Respondents have known of or disregarded the substantial risk of harm to Petitioners' health and safety.

125. Respondents have acted with deliberate indifference to Petitioners' health and safety.

126. Respondents' continued detention of Petitioners violates the Due Process Clause of the Fifth Amendment.

VIII. PRAYER FOR RELIEF

WHEREFORE Petitioners request that the Court grant the following relief:

a. Issue a Writ of Habeas Corpus on the ground that Respondents' continued detention of Petitioners 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 continued detention violates Petitioners' constitutional due process rights;

c. Issue a declaration that Respondents' continued detention of individuals at increased risk for severe illness, including all people fifty-five and older and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, 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 8, 2020

Respectfully submitted,

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**pro hac vice motions forthcoming*