

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

FRANCOIS TOURE; SISIRA KUMARA
KUMARAGAMAGE DON; RONALDO
LOPEZ CRISTALES; VENACIO
ESCOBAR ANDASOL; FRANKLIN
(RECHELLE) ALBERTO HERNANDEZ;
MIGUEL ANGEL CHAVEZ RAMOS;
MELVIN CASTRO; UMMY MOHAMED;
and FAUSTINO ROMERO AGUILON,

Petitioners-Plaintiffs,

v.

RUSSELL HOTT, *in his official capacity as
Washington Field Office Director, of
Immigration and Customs Enforcement;*
JEFFERY CRAWFORD, *in his official
capacity as Warden, Farmville Detention
Center, Immigration Centers of America,
Farmville;* COLONEL PAUL PERRY, *in his
official capacity as Superintendent, Caroline
Detention Facility;* MATTHEW T.
ALBENCE, *in his official capacity as Deputy
Director and Senior Official Performing the
Duties of the Director of the U.S.
Immigration and Customs Enforcement;* and
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT.

Respondents-Defendants.

**PETITION FOR A WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

Civil Action No. 1:20-cv-395

Adina Appelbaum, Virginia Bar No. 88974
adina@caircoalition.org
**CAPITAL AREA IMMIGRANTS'
RIGHTS COALITION**
1612 K Street NW Suite 204
Washington, DC 20006
(202) 899-1412

Sirine Shebaya*
sirine@nipnlg.org
Amber Qureshi*
amber@nipnlg.org
**NATIONAL IMMIGRATION
PROJECT OF THE NATIONAL
LAWYERS GUILD**
2201 Wisconsin Ave NW, Suite 200
Washington, DC 20007
(202) 656-4788

Kristin Donovan, Va. Bar No. 92207
kristin@justice4all.org
Granville Warner, Va. Bar. No. 24957
cwarner@justice4all.org
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike, Suite 520
Falls Church, VA 22041
(703) 778-3450

Attorneys for Petitioners-Plaintiffs

* *pro hac vice* applications forthcoming

**PETITION FOR A WRIT OF HABEAS CORPUS AND COMPLAINT FOR
INJUNCTIVE RELIEF**

INTRODUCTION

1. This case presents a request for immediate relief on behalf of nine Petitioners-Plaintiffs (“Plaintiffs”), who are highly vulnerable to serious injury and death if they contract COVID-19, a lethal disease that is sweeping the globe. Respondent-Defendants (“Defendants”) are holding Plaintiffs in civil immigration detention in detention facilities in Virginia. The coronavirus feeds on precisely the unsafe, congregate conditions in which Plaintiffs are being held, putting Plaintiffs at imminent risk of contracting the lethal COVID-19 disease.

2. The COVID-19 global pandemic, caused by the novel coronavirus, has been characterized as the worst the world has seen since 1918. States and countries around the world—including the State of Virginia—have declared a State of Emergency and have shut down nonessential businesses, restricted public gatherings, and have imposed “stay-at-home” orders in an attempt to control the spread of the disease. To date, over 1.3 million people worldwide have been diagnosed with COVID-19, with over 360,000 of them inside the United States.¹ Many more are likely infected, especially in the United States where testing for the virus has been extremely limited. Nearly 80,000 individuals worldwide have died as a result of COVID-19, including more than 10,000 in the United States.²

¹ Coronavirus disease 2019 (COVID-19) Situation Report – 79, 1, 6, 9, World Health Organization (Apr. 8, 2020), *available at* https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200408-sitrep-79-covid-19.pdf?sfvrsn=4796b143_6.

² *Id.*

3. Virginia has seen a significant COVID-19 outbreak. The Governor has declared a State of Emergency, issued a stay-at-home order, and put in place widespread social distancing measures, including shutting down nonessential businesses and all public gatherings.³ As of the filing date of this case, there are over 3,600 confirmed cases and 75 deaths in the state, and the numbers are rising exponentially.⁴

4. Public health experts, including the Centers for Disease Control and Prevention (“CDC”), have instructed that the only effective way to reduce the risk of severe illness or death for vulnerable individuals is social distancing and improved hygiene. Such distancing and hygiene measures are impossible to achieve in crowded detention centers. For this reason, more than 3,000 medical health professionals have urgently requested that Immigration and Customs Enforcement (“ICE”) immediately release those detained in their custody, and two doctors who are medical experts for the Department of Homeland Security (“DHS”) sent a warning to the agency in February that keeping people detained poses “an imminent risk to the health and safety of immigration detainees” and to the general public.⁵

³ Commonwealth of Virginia Office of the Governor, Executive Order No. Fifty-Five (2020), Temporary Stay At Home Order Due to Novel Coronavirus (COVID-19) (Mar. 30, 2020), *available at* [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf).

⁴ Virginia Department of Health, COVID-19 Cases in Virginia (accessed Apr. 8, 2020), *available at* <http://www.vdh.virginia.gov/coronavirus/>.

⁵ Letter from Dr. Scott Allen and Dr. Josiah Rich, Medical Experts for DHS, to House Comm. on Homeland Sec. (Mar. 19, 2020), *available at* <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238>; Catherine E. Shoichet, *Doctors Warn of 'Tinderbox Scenario' if Coronavirus Spreads in ICE Detention*, CNN (Mar. 20, 2020), *available at* <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

5. Confirmed cases have begun to appear in several detention centers across the country,⁶ and it is likely that many more detention centers have unconfirmed COVID-19 cases.⁷ It is impossible for people confined in prisons, jails, and detention centers to engage in the necessary social distancing and hygiene because people eat, sleep, and engage in activities in close proximity to each other, and basic supplies such as soap and hand sanitizer are often in short supply or completely unavailable at those facilities.⁸ Even with the measures ICE has purported to take to prevent the spread of COVID-19 in its facilities, immigration detention centers are a hotbed for spread of the virus.

6. Both Farmville Detention Facility and Caroline Detention Facility remain woefully unprepared and incapable of taking necessary precautions to protect people in their custody against this life-threatening illness. Yet, despite widespread warnings from public health experts, on any given day Defendants continue to hold in detention nearly a thousand individuals in Virginia and tens of thousands of individuals nationwide, including those at severe risk of serious illness or death if they were to contract COVID-19, despite the ready availability of community-based alternatives to detention such as release on conditions or on bond.

⁶ U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19 (accessed Apr. 8, 2020), <https://www.ice.gov/coronavirus>.

⁷ *Coreas v. Bounds*, 8:20-cv-00780-TDC, Dkt. No. 56 (D. Md. Apr. 3, 2020) (noting that both Maryland ICE Detention Facilities had not tested anyone for COVID-19 and did not have any test kits despite detaining individuals who had exhibited symptoms).

⁸ Keri Blakinger and Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, the Marshall Project (Mar. 6, 2020), [available at https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus](https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus).

7. Plaintiffs fear for their lives because they are especially vulnerable to serious illness or death if infected by COVID-19 due to their medical conditions or their age. And for good reason: they are trapped in facilities which can only be described as breeding grounds for disease. Despite warnings and pleas for release from public health experts and advocates, Defendants have chosen to continue to confine Plaintiffs in close proximity, without sufficient soap and/or hand sanitizer; to refuse to administer adequate levels of COVID-19 testing or screening; to refuse to implement cleaning and protection procedures adequate to combat COVID-19; and to resist releasing even the most medically vulnerable individuals. The conditions and treatment at these facilities have created a dangerous situation that threatens their lives, as well as the well-being of staff, others in the surrounding community, and the general public.

8. Under these circumstances, release is the only meaningful way to mitigate the spread of the virus among those who are detained. For individuals who are at high risk for serious illness or death from COVID-19, protection from the virus could prove to be a matter of life or death. Recognizing the urgency of this situation, federal courts across the country have ordered releases of detained and incarcerated individuals, including those detained in ICE detention facilities. *See* paragraphs 141-42, *infra*, collecting recent decisions.

9. As set forth below, the danger posed by Plaintiffs' detention during the COVID-19 pandemic is "so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk" and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993). Their continued detention also violates Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*,

because Defendants are failing to provide appropriate accommodations for Plaintiffs' disabilities.

10. Without this Court's intervention, Plaintiffs continue to be at imminent risk of severe illness or death.

JURISDICTION AND VENUE

11. This action arises under the Due Process Clauses of the Fifth Amendment to the United States Constitution and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*

12. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 1346 (original jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. § 2241(d) and pursuant to 28 U.S.C. § 1391(b) and (e).

PARTIES

14. Petitioner-Plaintiff Francois Toure ("Mr. Toure") is a native of Guinea, who is currently detained by ICE at the Farmville Detention Center, controlled and operated by the company Immigration Center of America in Farmville, Virginia ("ICA-Farmville"). He suffers from asthma, borderline diabetes, and major depressive disorder. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside at his brother's apartment in Columbus, Ohio, where he can socially isolate with his U.S. citizen fiancée Martha and two U.S. citizen children. Mr. Toure's fiancée Martha will pick him up and drive him to his brother's apartment in Ohio.

15. Petitioner-Plaintiff Sisira Kumara Kumaragamage Don (“Mr. Kumaragamage Don”) is a 64-year-old citizen of Australia who is current detained at Farmville Detention Center. Mr. Kumaragamage Don suffers from diabetes and hypertension. He has a weak immune system and gets sick easily, often with serious symptoms. Mr. Kumaragamage Don is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his medical conditions and age. If released, he will reside with his wife Prabha Ranjane Kumaramage at their home in Washington, D.C., where he can socially isolate.

16. Petitioner-Plaintiff Venacio Escobar Andasol (“Mr. Escobar Andasol”) is a 65-year-old citizen of El Salvador who is currently detained at the Caroline Detention Facility. Due to his age, he is at high risk of severe illness or death if he contracts COVID-19. If released, he will reside at his home in Reston, Virginia, where he has lived with his longtime friend Victor Lopez for over 20 years and he can socially isolate.

17. Petitioner-Plaintiff Franklin (“Rechelle”) Alberto Hernandez is a transgender woman from Honduras who is currently detained at the Caroline Detention Facility. Rechelle suffers from asthma, and takes five prescription medications daily, including Albuterol (an inhalation solution to treat asthma), Hydroxyzine Pamoate (an antihistamine to assist with sleep), Estradiol (an estrogen derivative hormone), Spironolactone (a diuretic to treat hypertension and edema), and Aspirin (to reduce pain and inflammation). Rechelle has suffered from asthma her entire life. Rechelle is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of her asthma. If released, she will reside with her partner Alvaro Ramos Marquez at their home in Herndon, Virginia, where she can socially isolate.

18. Petitioner-Plaintiff Ronaldo Lopez Cristales (“Mr. Lopez Cristales”) is a native of Guatemala who is currently detained by ICE at the Caroline Detention Facility in Bowling Green, Virginia. He suffers from severe Type II diabetes and high blood pressure. He is therefore at high risk of severe illness or death if he contracts COVID-19. If released, he will reside with his wife and family members in Winchester, Virginia. If released, he will return to live with his wife and cousins at their home in Winchester, Virginia, where he can socially isolate.

19. Petitioner-Plaintiff Miguel Angel Chavez Ramos (“Mr. Chavez Ramos”) is a citizen of El Salvador who is currently detained at the Caroline Detention Facility. He suffers from severe Type II diabetes, for which he had to be hospitalized in November 2019. Mr. Chavez Ramos receives daily insulin injections and pills, and still often feels ill. Mr. Chavez Ramos is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his diabetes. If released, he would return to live with his wife and three children at their home in Washington, D.C., where he can socially isolate.

20. Petitioner-Plaintiff Melvin Castro (“Mr. Castro”) is a citizen of El Salvador who is currently detained at the Caroline Detention Facility. He suffers from asthma, Post-Traumatic Stress Disorder (PTSD), and depression. Mr. Castro uses an inhaler regularly for his asthma and often feels very short of breath. Mr. Chavez Ramos is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his asthma and mental health conditions. If released, he would return to live with his partner and two stepchildren at their home in Washington, D.C., where he can socially isolate.

21. Petitioner-Plaintiff Umyy Ismail Mohamed (“Ms. Mohamed”) is a citizen of Tanzania who is currently detained at the Caroline Detention Facility. She suffers from

asthma, PTSD, severe depression disorder, and moderate anxiety disorder. Her asthma has worsened in detention; she now has difficulty breathing on a daily basis. She has been experiencing flu-like symptoms every day for the past two weeks including feeling feverish all the time, body sweats, and exhaustion. Ms. Mohamed is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of her asthma. If released, she would return to live at with her close family friend in Washington, D.C., where she can socially isolate.

22. Petitioner-Plaintiff Faustino Romero Aguilon (“Mr. Aguilon”) is a citizen of Guatemala who is currently detained at the Caroline Detention Facility. He suffers from Type II diabetes and hypertension. Mr. Aguilon is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his medical conditions. If released, he would return to the apartment where he has lived with his brother for many years in Arlington, VA, where he can socially isolate.

23. Respondent-Defendant Jeffery Crawford is the Warden of the Farmville Detention Center, which is owned and operated by ICA-Farmville. As Warden, he is responsible for overseeing the administration and management of the Farmville Detention Center, where Plaintiffs Mr. Toure and Mr. Kumaragamage Don are detained. Defendant Crawford is a legal custodian of Plaintiffs. He is sued in his official capacity.

24. Respondent-Defendant Colonel Paul Perry is the Superintendent of the Caroline Detention Facility. As Superintendent, he is responsible for overseeing the administration and management of the Caroline Detention Facility, where Plaintiffs Mr. Lopez Cristales, Mr. Escobar Andasol, Ms. Rechelle Alberto Hernandez, Mr. Chavez

Ramos, Mr. Castro, Mr. Aguilon, and Ms. Mohamed are detained. Defendant Perry is a legal custodian of Plaintiffs. He is sued in his official capacity.

25. Respondent-Defendant Russell Hott is the ICE Washington Field Office Director. The Washington Field Office is responsible for carrying out ICE's immigration detention operations at all Virginia detention centers that house immigration detainees, including Farmville Detention Center and Caroline Detention Facility. Defendant Hott is a legal custodian of plaintiffs. He is sued in his official capacity.

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

27. Respondent-Defendant ICE is a federal law enforcement agency within DHS. ICE is responsible for the criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. Enforcement and Removal Operations ("ERO"), a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiffs.

FACTS

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

28. COVID-19 is a coronavirus that has reached pandemic status. As of April 8, 2020, over 1.3 million individuals worldwide have confirmed diagnoses, including more

than 360,000, in the United States.⁹ Nearly 80,000 individuals worldwide have died as a result of COVID-19, including at least 10,000 in the United States.¹⁰ Those numbers are growing exponentially, with more than 73,000 new cases worldwide in the past day alone.¹¹

29. Nationally, CDC projections indicate that over 200 million individuals in the United States could be infected with COVID-19 over the course of the epidemic without effective public health intervention, with as many as 1.7 million deaths in the worst projections.¹²

30. COVID-19 is a highly contagious disease that is easily transmitted through respiratory droplets, especially when one is within six feet of an infected individual, and in some cases when one is within 27 feet.¹³ Its symptoms include fever, cough, and shortness of breath.¹⁴

31. People can also spread COVID-19 but be asymptomatic,¹⁵ making testing or seclusion of only those who are exhibiting symptoms an ineffective solution.

⁹ Coronavirus disease 2019 (COVID-19) Situation Report – 79, 1, 6, 9, World Health Organization (Apr. 8, 2020), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200408-sitrep-79-covid-19.pdf?sfvrsn=4796b143_6.

¹⁰ *Id.*

¹¹ *Id.*

¹² James Glanz, et al., *Coronavirus Could Overwhelm U.S. without Urgent Action, Estimates Say*, New York Times (Mar. 20, 2020), available at <https://www.nytimes.com/interactive/2020/03/20/us/coronavirus-model-us-outbreak.html>; Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. Times, Mar. 13, 2020, available at <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>.

¹³ Bourouiba, Lydia, *Journal of the American Medical Association, Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19* (Mar. 26, 2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2763852?appId=scweb>

¹⁴ Centers for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)*, available at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

¹⁵ A study in Iceland, where COVID-19 testing is widespread, found that about half those who tested positive have no symptoms. Jason Gale, *Coronavirus Cases Without Symptoms Spur Call for Wider Tests*,

32. COVID-19 can result in respiratory failure, kidney failure, and death. Infected individuals who do not die from the disease can face serious damage to the lungs, heart, liver, or other organs, resulting in prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity.

33. COVID-19 can also severely damage lung tissue, affect cardiac functions, and cause widespread damage to other organs. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.

34. Older individuals and those with certain medical conditions face greater chances of serious illness or death from COVID-19. Certain underlying medical conditions increase the risk of serious COVID-19 disease for individuals of any age, including lung disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems, blood disorders, inherited metabolic disorders, stroke, and pregnancy.

35. Even some younger and healthier individuals who contract COVID-19 may require supportive care. 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, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. This level of support is especially difficult to provide to detained individuals.

Bloomberg (Mar. 22, 2020), *available at* <https://www.bloomberg.com/news/articles/2020-03-22/one-third-of-coronavirus-cases-may-show-no-symptom-scmp-reports>.

36. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from influenza. According to recent estimates, the fatality of people infected with the coronavirus is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems.

37. Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation.

38. There is no vaccine against COVID-19, nor is there any known medication to prevent or cure infection from the virus.

39. The only known effective measure to reduce the risk of severe illness or death to vulnerable individuals is to prevent them from being infected with the coronavirus. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures to prevent infection.

40. These practices are not possible in detention facilities, where large numbers of people are housed in close quarters in congregate settings, with minimal access to sinks, showers, toilets, water, personal hygiene and facility cleaning supplies.

B. Plaintiffs Are Particularly Vulnerable to Serious Illness or Death If Infected by COVID-19 Due to Their Underlying Health Conditions.

41. Older individuals and those with certain medical conditions face dramatically higher chances of serious illness or death from COVID-19. Individuals detained in immigration detention centers, like Plaintiffs, are also more susceptible to experiencing complications from infectious diseases than the population at large. This is especially true for individuals with underlying conditions such as pregnancy, diabetes, lung disease, kidney disease, or other illness.

42. Infectious disease outbreaks such as COVID-19 can also exacerbate existing mental health conditions and can contribute to the development of new mental health conditions.

43. Plaintiffs in this case are individuals who are particularly vulnerable to serious illness or death if infected by COVID-19 and who are currently detained at the two Virginia facilities as they await adjudication of their immigration cases.

44. **Francois Toure.** Mr. Toure is a citizen of Guinea who is currently detained at the Farmville Detention Center. Mr. Toure suffers from asthma, which requires the use of an inhaler; is pre-diabetic; and has a history of hepatitis A. Mr. Toure also has major depressive disorder and has attempted suicide three times in the last three months.

45. As of March 27, 2020, Mr. Toure was feeling sick with symptoms including a cough, headaches, and fatigue. Doctors at the Farmville Detention Center said he was suffering from some kind of virus but did not confirm which virus. His blood test also revealed that his liver was functioning poorly, and doctors are concerned he may have liver disease. He is not aware of having been tested for COVID-19.

46. Mr. Toure is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his physical and mental health conditions.

47. Mr. Toure's health conditions qualify as a disability under the Rehabilitation Act.

48. **Sisira Kumara Kumaragamage Don.** Mr. Kumaragamage Don is a 64-year-old citizen of Australia who is current detained at Farmville Detention Center. Mr. Kumaragamage Don suffers from diabetes, high blood pressure, and high cholesterol. He has a weak immune system and gets sick easily, often with serious symptoms.

49. Mr. Kumaragamage Don is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his medical conditions and age.

50. Mr. Kumaragamage Don's health conditions qualify as a disability under the Rehabilitation Act.

51. **Ronaldo Lopez Cristales.** Mr. Lopez Cristales is a citizen of Guatemala who is currently detained at the Caroline Detention Facility. He suffers from severe Type II diabetes and high blood pressure. He goes to the clinic at the facility twice a day to receive his prescription medications to treat those conditions.

52. Mr. Lopez Cristales is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his diabetes and high blood pressure.

53. Mr. Lopez Cristales's diabetes and high blood pressure qualify as disabilities under the Rehabilitation Act.

54. **Venacio Escobar Andasol.** Mr. Escobar Andasol is a 65-year-old citizen of El Salvador who is currently detained at the Caroline Detention Facility. Due to his age, he is at high risk of severe illness or death if he contracts COVID-19.

55. **Franklin (Rechelle) Alberto Hernandez.** Rechelle is a transgender woman from Honduras who is currently detained at the Caroline Detention Facility. Rechelle suffers from asthma, and takes five prescription medications daily, including Albuterol (an inhalation solution to treat asthma), Hydroxyzine Pamoate (an antihistamine to assist with sleep), Estradiol (an estrogen derivative hormone), Spironolactone (a diuretic to treat hypertension and edema), and Aspirin (to reduce pain and inflammation). Rechelle has suffered from asthma her entire life.

56. Rechelle is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of her asthma.

57. Rechelle's medical conditions qualify as disabilities under the Rehabilitation Act.

58. **Miguel Angel Chavez Ramos.** Mr. Chavez Ramos is a citizen of El Salvador who is currently detained at the Caroline Detention Facility. He suffers from severe Type II diabetes, for which he had to be hospitalized in November 2019. Mr. Chavez Ramos receives daily insulin injections and pills, and still often feels ill.

59. Mr. Chavez Ramos is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his diabetes.

60. Mr. Chavez Ramos's diabetes qualifies as a disability under the Rehabilitation Act.

61. **Melvin Castro.** Mr. Castro is a citizen of El Salvador who is currently detained at the Caroline Detention Facility. He suffers from asthma, childhood trauma, Posttraumatic Stress Disorder (PTSD), depression, and past drug addiction. Mr. Castro uses an inhaler regularly for his asthma and often feels very short of breath.

62. Mr. Castro is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his asthma and mental health conditions.

63. Mr. Castro's health conditions qualify as a disability under the Rehabilitation Act.

64. **Ummy Ismail Mohamed.** Mr. Castro is a citizen of Tanzania who is currently detained at the Caroline Detention Facility. She suffers from asthma.

65. Ms. Mohamed is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of her asthma.

66. Ms. Mohamed's health condition qualifies as a disability under the Rehabilitation Act.

67. **Faustino Romero Aguilon.** Mr. Aguilon is a citizen of Guatemala who is currently detained at the Caroline Detention Facility. He suffers from Type II diabetes, high blood pressure, high cholesterol, gastroesophageal reflux disease (GERD), and an abnormality of red blood cells. He takes the following prescribed medications: Metformin (to treat Type 2 diabetes), Glipizide (to treat Type 2 diabetes), Hydrochlorothiazide (to treat high blood pressure), Aspirin (for blood abnormality) Atorvastatin Calcium (to treat high cholesterol), Aluminum-Magnesium-Simethicone (to treat heartburn), and Omeprazole (to treat GERD).

68. Mr. Aguilon is critically vulnerable to the coronavirus and to serious illness or death from COVID-19 because of his medical conditions.

69. Mr. Aguilon's health conditions qualify as disabilities under the Rehabilitation Act.

C. Detained Immigrants in Virginia Facilities Face an Elevated Risk of Contracting COVID-19.

70. The Farmville Detention Center and Caroline Detention Facility are located in Virginia, which is experiencing a coronavirus outbreak and has put in place a "stay-at-home" order, prohibiting individuals from leaving their home unless the reason for doing so falls under certain exceptions, such as getting food or medical attention.¹⁶

¹⁶ Commonwealth of Virginia Office of the Governor, Executive Order No. Fifty-Five (2020), Temporary Stay At Home Order Due to Novel Coronavirus (COVID-19) (Mar. 30, 2020), *available at*

71. As of April 8, 2020, there were over 3,600 COVID-19 cases in Virginia.¹⁷ The number of infected people is rising exponentially. At least 75 people in Virginia have so far died from the disease.¹⁸ There is an immediate and impending threat that the coronavirus will spread uncontrollably in the Farmville Detention Center and Caroline Detention Facility.

72. Outbreaks of infectious diseases are extremely common in confined detention centers. Individuals who are imprisoned or detained cannot protect themselves by social distancing as they could in the community. Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person to person, especially those that—like COVID-19—are transmitted by droplets through coughing and sneezing.

73. COVID-19 is spreading quickly in other prisons, jails and immigrant detention centers in the United States. Rikers Island in New York City has seen the number of cases spike from one to nearly 200 in twelve days.¹⁹ A federal prison in Oakdale, Louisiana has experienced such a rapid spread of the disease within its walls that it has stopped testing people and are now presuming that anyone showing symptoms inside the

[https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf).

¹⁷ Virginia Department of Health, COVID-19 Cases in Virginia (accessed Apr. 8, 2020), *available at* <http://www.vdh.virginia.gov/coronavirus/>.

¹⁸ *Id.*

¹⁹ Miranda Bryant, *Coronavirus Spread at Rikers is A 'Public Health Disaster', Says Jail's Top Doctor*, *The Guardian* (Apr. 1, 2020), *available at* <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>.

prison is positive of COVID-19.²⁰ The disease has also reached at least two prisons in Virginia.²¹

74. Although ICE has not reported any confirmed COVID-19 cases in either Virginia facility, both facilities have individuals who are currently showing symptoms of COVID-19. A coronavirus brought into a detention facility can quickly spread among the dense detainee cohort, including individuals, like Plaintiffs, who are at high risk of severe illness or death from COVID-19.

75. Given the shortage of COVID-19 tests in the United States, generally, these detention facilities cannot currently conduct aggressive, widespread testing to identify and track all COVID-19 cases. In at least two Maryland ICE detention facilities, ICE admitted that it did not have any test kits and had not tested anyone in those facilities, despite detaining individuals who had exhibited symptoms of COVID-19.²²

76. It is equally impossible for detention facilities to consistently and adequately screen detained individuals and staff for new, asymptomatic infection.

77. In at least sixteen ICE detention facilities outside Virginia, detained individuals or facility employees have contracted COVID-19.²³ In the absence of widespread testing, there is no way to be certain that COVID-19 is not already widespread

²⁰ Greg LaRose, *Oakdale Federal Prison Stops Testing Inmates With COVID-19 Symptoms*, WSDU News (Mar. 31, 2020) available at <https://www.wdsu.com/article/oakdale-federal-prison-stops-testing-inmates-with-covid-19-symptoms/31989498> (due to rapid spread of COVID-19 inside Oakdale Federal Correctional Center, officials are presuming anyone who shows symptoms is positive of COVID-19).

²¹ Kerri O'Brien, *Another Inmate At Another State Prison Positive for COVID-19*, ABC8 (WRIC TV) News, (Apr. 1, 2020), available at <https://www.wric.com/news/virginia-news/new-fears-in-virginia-as-covid-19-is-now-behind-bars/>.

²² *Coreas v. Bounds*, 8:20-cv-00780-TDC, Dkt. No. 56 (D. Md. Apr. 3, 2020).

²³ U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19 (accessed Apr. 8, 2020), <https://www.ice.gov/coronavirus>.

in these facilities. Given the rapid spread of COVID-19 throughout the state of Virginia, daily entry of staff and guards from the community, and the continued influx and transfer of new people into detention facilities, it is only a short matter of time before the disease becomes widespread among people detained in Farmville Detention Center and Caroline Detention Facility.

78. According to Dr. Robert B. Greifinger, a physician and an expert in prisons, jails, and detention and other correctional health issues, “ICE has failed to adequately comprehend and respond to the COVID-19 pandemic for those detained in the Farmville Detention Center and Caroline Detention Facility.”

79. The conditions in Farmville Detention Center and Caroline Detention Facility remain woefully inadequate to protect detained people against a life-threatening illness.

i. Farmville Detention Center

80. Conditions in Farmville Detention Center make rapid spread of COVID-19 very likely. Persons detained are housed together in groups, typically 40 to 85 people in each dorm. Because the dormitories house many individuals in close quarters with people sharing bunk beds, maintaining the CDC recommended distance of six feet apart from others is impossible.



Dorm Room at Farmville Detention Center²⁴

81. There are communal living spaces in the middle of each housing unit, which have essential spaces like areas to use phones and showers.



Communal Telephone Area at Farmville Detention Center²⁵

²⁴ Defense Visual Information Distribution Service, *ICE Farmville Detention Center [Image 4 of 12]* (Jun. 24, 2010), available at <https://www.dvidshub.net/image/526258/ice-farmville-detention-center>.

²⁵ Defense Visual Information Distribution Service, *ICE Farmville Detention Center [Image 11 of 12]* (Jun. 24, 2010), available at <https://www.dvidshub.net/image/526268/ice-farmville-detention-center>.

82. There are also several shared spaces in Farmville Detention Center, including sitting areas for meals, hallways, the law library, visitation areas, and medical units.



Sitting Area at Farmville Detention Center²⁶



Library and Reading Area at Farmville Detention Center²⁷

²⁶ Defense Visual Information Distribution Service, *ICE Farmville Detention Center [Image 12 of 12]* (Jun. 24, 2010), available at <https://www.dvidshub.net/image/526269/ice-farmville-detention-center>.

²⁷ Defense Visual Information Distribution Service, *ICE Farmville Detention Center [Image 10 of 12]* (Jun. 24, 2010), available at <https://www.dvidshub.net/image/526267/ice-farmville-detention-center>.

83. The hallways are tight, and people in the hallways are constantly in very close proximity to each other. Bathrooms are used by large numbers of people and are not sanitized or disinfected regularly.

84. It is nearly impossible to eliminate all shared spaces in the facility and to ensure that individuals are maintaining adequate social distancing from one another.

85. There is a lack of access to cleaning supplies and protective gear at Farmville Detention Center. Guards are selectively wearing masks at the facility. Detained people are not allowed to wear masks unless they are working. The facility claims that it does not have enough masks to distribute to the detained population. The only thing provided to detained people in the facility is hand sanitizer.

86. Staff arrive and leave on a shift basis, and even asymptomatic staff could carry the infection into the facility. New transfers continue to arrive into the facility and are not adequately screened to ensure that they are not carrying an asymptomatic infection.

87. Farmville Detention Center is also ill-equipped to manage an infectious disease outbreak. It has very limited on-site medical facilities, which include a small number of medical and disciplinary isolation units, which are shared spaces.

88. Last year, Farmville Detention Center had an outbreak of mumps in its facility with at least 24 people infected.²⁸ The facility mismanaged the handling of that outbreak in several respects. Despite mumps being an illness for which there is a vaccine, detained individuals were refused vaccines when they were requested. The entire detention

²⁸ Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (Jun. 14, 2019), available at https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox.

center was eventually placed under quarantine even though the outbreak was limited to a few dorms.

89. Guards at Farmville Detention Center have stated that there have been five potential cases of COVID-19 in the facility, but they have not received confirmation of test results and it is unclear whether there have been any tests done at all.

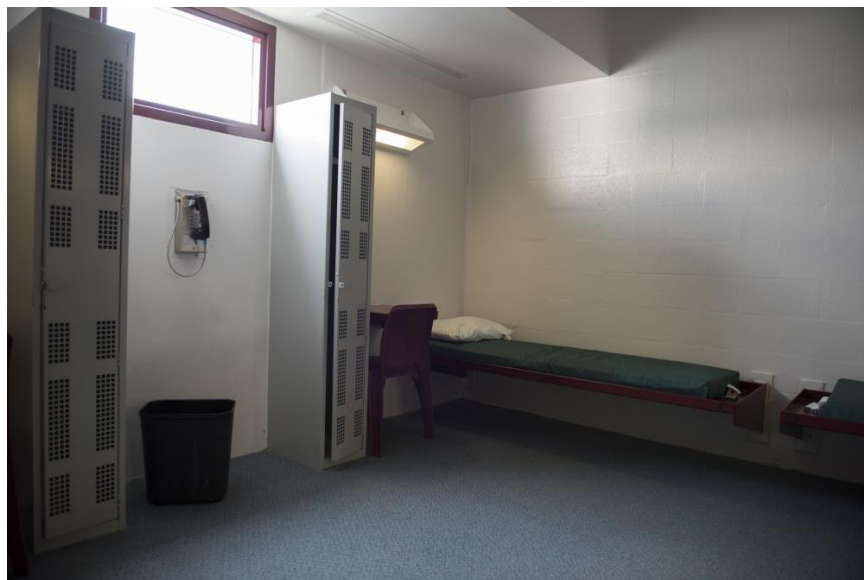
90. At least one dorm in the facility is under quarantine.²⁹ Individuals who appear to be symptomatic are not being housed separately from those who are asymptomatic or at risk but who do not have confirmed cases.

91. Plaintiff Mr. Toure has been feeling sick, with symptoms including a cough, headaches, and fatigue. Doctors told him that he had a virus but did not confirm what kind.

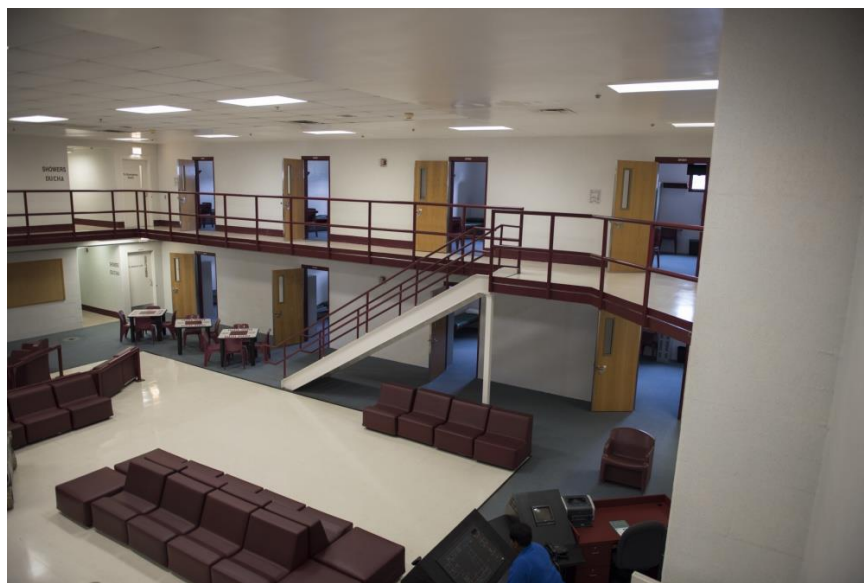
ii. Caroline Detention Facility

92. Conditions in the Caroline Detention Facility make rapid spread of COVID-19 very likely. Those detained are housed together in groups, with typically four individuals in each cell and many cells in each dormitory. Because the dormitories house many individuals in close quarters, maintaining the CDC recommended distance of six feet apart from others is impossible.

²⁹ Marissa J. Lang, 'It's a Time Bomb': ICE Detainees Seek Release Amid Growing Coronavirus Fears, *Washington Post* (Apr. 8, 2020), available at https://www.washingtonpost.com/local/ice-coronavirus-detention-centers-release/2020/04/08/f4dcaef8-74ee-11ea-87da-77a8136c1a6d_story.html.



Cell Housing Four People at Caroline Detention Facility³⁰



Dormitory at Caroline Detention Facility³¹

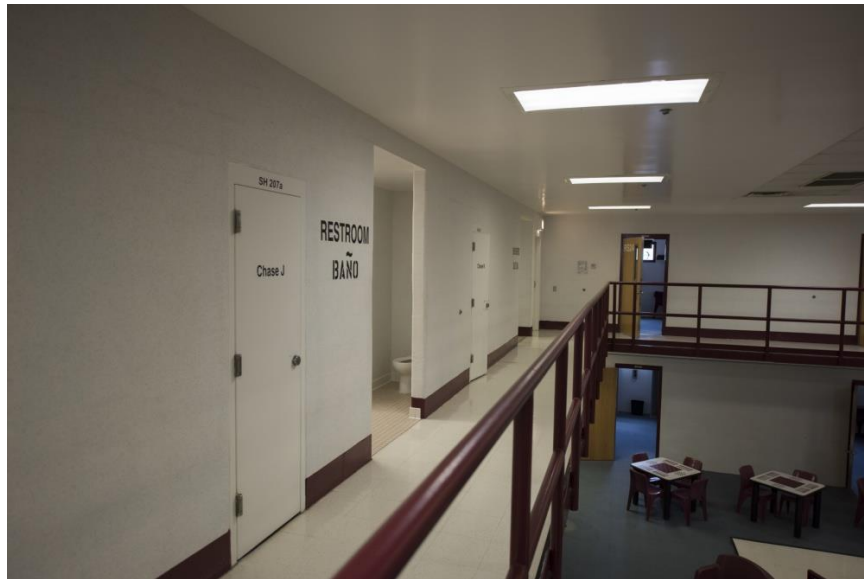
³⁰ Defense Visual Information Distribution Service, *Caroline Detention Facility [Image 2 of 18]* (Aug. 27, 2018), available at <https://www.dvidshub.net/image/4695721/caroline-detention-facility>.

³¹ Defense Visual Information Distribution Service, *Caroline Detention Facility [Image 4 of 18]* (Aug. 27, 2018), available at <https://www.dvidshub.net/image/4695726/caroline-detention-facility>.

93. There are also several shared spaces in Caroline Detention Facility, including hallways, the law library, visitation areas, and medical units. Common areas including eating and shower facilities are communal.



Shared Area at Caroline Detention Facility³²



Shared Bathroom at Caroline Detention Facility³³

³² Defense Visual Information Distribution Service, *Caroline Detention Facility [Image 16 of 18]* (Aug. 28, 2018), available at <https://www.dvidshub.net/image/4695757/caroline-detention-facility>.

³³ Defense Visual Information Distribution Service, *Caroline Detention Facility [Image 5 of 18]* (Aug. 27, 2018), available at <https://www.dvidshub.net/image/4695727/caroline-detention-facility>.

94. Bathrooms are used by about 70 people and are not sanitized or disinfected regularly or thoroughly. The dorms are not being disinfected or cleaned any differently by the facility.

95. Unless a dorm is placed under quarantine, each dorm goes to the dining area together and eats together during their meal schedule. When a dorm is under quarantine pending COVID-19 test results, detained individuals from other dorms who are working in the kitchen bring the food to the detained people in the quarantined dorm.

96. The medical clinic is accessible to detained individuals from different dorms, so there is frequent contact between individuals from different dorms. Medical facilities are limited to a small number of medical and disciplinary isolation units, which are shared spaces.

97. Given the layout of Caroline Detention Facility, it is impossible to eliminate all shared spaces and nearly impossible to ensure that individuals are maintaining adequate social distancing from one another.

98. There is a lack of access to cleaning supplies and protective gear at Caroline Detention Facility. Detained individuals are not provided hand sanitizer or protective gear. Facility staff and personnel, including kitchen staff, medical staff, and guards, are not wearing protective equipment, such as gloves or masks.

99. Staff arrive and leave on a shift basis, and even asymptomatic staff could carry the infection into the facility. New transfers continue to arrive into the facility and are not adequately screened and tested to ensure that they are not carrying an asymptomatic infection.

100. An individual at Caroline Detention Facility was sent to the hospital to be tested for COVID-19. He was also placed in isolation. The dorm was placed on quarantine. People in that dorm were told to remain at least six feet apart, which was impossible to do, and were not provided with any cleaning supplies besides soap. They were not provided with any protective gear such as gloves or masks.

101. Putting infected individuals in solitary confinement is an ineffective way to prevent transmission of the disease because such spaces are not negative pressure rooms. Air continues to flow outwards from those rooms to the rest of the facility. This makes containing the illness and caring for those who have become infected virtually impossible.

102. Several people in the dorm reported having headaches, and had their temperatures taken, but no one besides the person sent to the hospital has been tested for COVID-19. Individuals who appear to be symptomatic are not being housed separately from those who are asymptomatic or at risk but who do not have confirmed cases.

103. The facility has not provided any information to those detained or the public about how many people have been tested and what the results of those tests are. The facility is also not providing any information about COVID-19 to those who are detained there.

104. On March 26, 2020, detained individuals at Caroline Detention Center reported that in at least one dorm, the facility was out of soap and shampoo, and had not provided more to people in that dorm. As mentioned above, people are also not being provided hand sanitizer.

105. Plaintiff Ms. Mohamed has been experiencing flu-like symptoms every day for the past two weeks including feeling feverish all the time, body sweats, and exhaustion.

D. ICE's Response to COVID-19 Is Insufficient to Prevent the Spread of This Life-Threatening Disease.

106. COVID-19 is almost certain to reach the Farmville Detention Center and Caroline Detention Facility imminently if it has not already. Individuals like Plaintiffs face inherent challenges to protect themselves from COVID-19 infection because they live, sleep, and use the bathroom in close proximity with others, and because “[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible.”³⁴

107. Similarly, it will be impossible for people, including Plaintiffs, to take steps to protect themselves from infection, such as washing or sanitizing their hands regularly or distancing themselves from other individuals.

108. Given the general lack of available testing, it is equally impossible for detention facilities to consistently and adequately screen detainees and staff for new, asymptomatic infection. The Virginia detention centers also do not have negative pressure isolation units, meaning that they do not have any capacity to truly isolate spread of the disease through airborne respiratory droplets.

109. ICE’s official guidance on COVID-19 does not state specifically under what conditions individuals detained would be tested or how many people ICE has tested so far.³⁵

110. The only measure ICE has committed to taking to mitigate any spread in its facilities is to segregate those who meet CDC criteria for epidemiologic risk of exposure

³⁴ Keri Blakinger and Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, the Marshall Project (Mar. 6, 2020), available at <https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus> (describing, for example, limited access to hand sanitizer and other precautionary measures).

³⁵ U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19 (accessed Apr. 3, 2020), <https://www.ice.gov/coronavirus>.

to the coronavirus.³⁶ Even assuming adequate space, isolation of people who are ill is generally an ineffective way to prevent transmission of COVID-19 because air continues to flow outward from rooms to the rest of the facility.

111. ICE's official guidance also does not offer an effective way to determine who even has the virus. Since some COVID-19 carriers can be asymptomatic or not show symptoms for weeks after exposure, "screening people based on observable symptoms is just a game of catch up." *In re. Extradition of Alejandro Toledo Manrique*, No. 19-mj-71055, 2020 WL 1307109 (N.D. Cal. March 19, 2020) (ordering release on bond in part because government's management plan did not "say anything about testing" for COVID-19).

112. Although ICE has temporarily suspended social visitation in all detention facilities, staff, contractors, and vendors continue to arrive and leave the detention centers. In addition, people are frequently transported to, from, and between facilities.

113. Neither ICE nor the Virginia facilities have the resources necessary to engage in aggressive screening and testing of all detainees, staff, officials and other care and service providers who enter the facility, especially considering the shortage in available tests.

114. Immigration detention facilities have faced outbreaks of other infectious diseases in recent years due to overcrowding, poor hygiene measures, medical negligence, and poor access to resources and medical care. As recently as last year, ICE mishandled and failed to take adequate measures to protect detainees in Farmville Detention Center

³⁶ *Id.*

against an outbreak of mumps.³⁷ And ICE has a long history of mishandling infectious and communicable diseases, struggling to contain them, and failing to follow nationally accepted standards. The Office of the Inspector General (“OIG”) of DHS even concluded in a 2019 report that ICE “does not adequately hold detention facility contractors accountable for not meeting performance standards,” “issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards,” and “does not adequately share information about ICE detention contracts with key officials.”³⁸

115. Moreover, ICE has routinely failed to remedy inhumane conditions because, according to the OIG, “ICE does not adequately follow up on identified deficiencies or consistently hold facilities accountable for correcting them, which further diminishes the usefulness of inspections.”³⁹

116. ICE has even publicly acknowledged the need to limit the spread of the virus and the number of people in its detention centers, announcing that it will delay enforcement actions to arrest fewer immigrants and will use alternatives to detention as a response to the COVID-19 outbreak for new people they arrest in the field.⁴⁰ But the agency

³⁷ Emma Ockerman, *Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox*, Vice News (Jun. 14, 2019), available at https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox.

³⁸ See Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, 1 (Jan. 29, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

³⁹ See *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, Office of the Inspector General, 1 (June 26, 2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/20//18-06/OIG-18-67-Jun18.pdf>.

⁴⁰ See Maria Sacchetti and Arelis R. Hernández, *ICE to stop most immigration enforcement inside the U.S., will focus on criminals during coronavirus outbreak*, The Washington Post (Mar. 18, 2020), available at https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab_story.html.

still has not issued any guidance or plan to release vulnerable individuals who are currently in custody.⁴¹

117. Given the rapid spread of COVID-19, the likelihood of spread before a person infected with the virus is symptomatic, highly limited availability of testing, ICE's repeated failure to meet adequate standards for controlling infectious disease outbreaks in its facilities, and current conditions at the Virginia detention centers, Defendants cannot prevent the spread of COVID-19 in those facilities.

E. Individuals Most Vulnerable to COVID-19 Should Immediately Be Released.

118. The only viable public health strategy currently available in the United States is risk mitigation. For this reason, public health experts with experience in immigration detention and correctional settings have recommended the release of vulnerable detainees from custody, especially those with medical conditions that make them more vulnerable to serious illness or death if they contract COVID-19.⁴²

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

⁴¹ Noah Lanard, *ICE Is Ignoring Recommendations to Release Immigrant Detainees to Slow the Spread of Coronavirus*, Mother Jones (Mar. 20, 2020), available at <https://www.motherjones.com/politics/2020/03/ice-is-ignoring-recommendations-to-release-immigrant-detainees-to-slow-the-spread-of-coronavirus/>.

⁴² CDC data shows that of persons whose chronic illness was known, 94% of those who have died had an underlying condition and 78% of those who have required admission to an intensive care unit have had an underlying condition. Joel Achenbach and William Wan, *New CDC Data Shows Danger of Coronavirus for Those With Diabetes, Heart or Lung Disease, Other Chronic Conditions*, Washington Post (Mar. 31, 2020), available at https://www.washingtonpost.com/health/new-cdc-data-on-underlying-healthconditions-in-coronavirus-patients-who-need-hospitalization-intensivecare/2020/03/31/0217f8d2-7375-11ea-85cb-8670579b863d_story.html.

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 of only those detained, but also detention staff and their families, and the community-at-large.”

120. ICE has the authority to release individuals from custody on medical grounds and has routinely exercised its authority to release particularly vulnerable detainees like Plaintiffs. Yet, ICE refuses to do so, putting more lives at risk.

121. Dr. Greifinger has concluded that “the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.

122. Releasing the most vulnerable people, such as Plaintiffs, would also reduce the burden on regional hospitals and health centers. In case of an outbreak at a detention center, those institutions would bear the brunt of having to treat infected individuals from detention centers and have fewer medical resources available for the general population.

123. Indeed, governments in the United States and worldwide have recognized the threat posed by COVID-19 spread among detained and incarcerated populations and have released detainees for that reason. For example, Iran temporarily released more than 80,000 detained people to curb the spread of the virus.⁴³ In the United States, several jurisdictions have also released detained individuals for the same reasons.⁴⁴

⁴³ Parisa Hafezi, *Iran Temporarily Frees 85,000 From Jail Including Political Prisoners*, Reuters (Mar. 17, 2020), available at <https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-from-jail-including-political-prisoners-amid-coronavirus-idUSKBN21410M>.

⁴⁴ See Catherine Kim, *Why People Are Being Released From Jails and Prisons During the Pandemic*, Vox (Apr. 3, 2020), available at <https://www.vox.com/2020/4/3/21200832/jail-prison-early-release-coronavirus-covid-19-incarcerated> (“California announced that it would let out 3,500 nonviolent inmates in

LEGAL FRAMEWORK

A. Plaintiffs Have a Right to be Free from Punitive Conditions of Confinement in Civil Detention.

124. The government has a duty to provide conditions of reasonable health and safety to individuals in their custody. As the Supreme Court has explained, “when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As a result, the government must provide those in its custody with “food, clothing, shelter, medical care, and reasonable safety.” *Id.* at 200.

125. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment’s prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“It 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.”).

126. The Supreme Court has explicitly recognized that the risk of contracting a communicable disease may constitute such an “unsafe, life-threatening condition” that threatens “reasonable safety” even under the higher standard imposed by the Eighth Amendment. *Id.*

127. Because persons in immigration detention are civilly confined, their constitutional protections are derived from the Fifth Amendment, which provides greater protections than the Eighth Amendment. Under the Fifth Amendment, persons who, like

the next 60 days — the most drastic measure taken by states so far. New York City Mayor Bill de Blasio also announced the city had released 900 people as of March 31.”).

Plaintiffs, are held in civil detention are entitled to “more considerate treatment and conditions of confinement” than persons who are incarcerated because of a criminal conviction. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982). Due process rights of those in civil immigration detention “are *at least as great* as the Eighth Amendment protections” available to those convicted of a crime. *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983) (emphasis added); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (classifying immigration detention as civil detention).

128. The Eighth Amendment, which applies to persons convicted of criminal offenses, allows punishment as long as it is not cruel and unusual, but the Fifth Amendment’s due process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”); *Nelson v. Collins*, 659 F.2d 420, 425 (4th Cir. 1981).

129. In order to establish that a particular condition of detention constitutes impermissible punishment, a plaintiff must show either an expressed intent to punish, or a lack of a reasonable relationship to a legitimate governmental purpose, from which an intent to punish may be inferred. *See Wolfish*, 441 U.S. at 538; *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988). Absent an explicit intention to punish a detained person, a court “must evaluate the evidence and ascertain the relationship between the actions taken against the detainee and the custodian’s supporting rationale.” *Williamson v. Stirling*, 912 F.3d 154, 178 (4th Cir. 2018). “That inquiry turns on whether the actions taken may validly be attributed to an alternative, nonpunitive rationale, and whether they appear ‘excessive in relation to the alternative purpose assigned.’” *Id.* (citations omitted).

B. Defendants May Not Act with Deliberate Indifference to a Substantial Risk of Harm Faced by Plaintiffs.

130. The Fourth Circuit has held that a person held in pretrial detention necessarily “makes out a due process violation if he shows ‘deliberate indifference to serious medical needs’. . . because no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need for such treatment is apparent.” *Martin v. Gentile*, 849 F.2d 863, 871 (4th Cir. 1988) (citation omitted).

131. In order to show that defendants acted with deliberate indifference, a plaintiff must show that (1) the plaintiff was exposed to a substantial risk of serious harm, and (2) the defendants knew of or disregarded that substantial risk to the plaintiff’s health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834, 837–38 (1994); *Thompson v. Virginia*, 878 F.3d 89, 97-98 (4th Cir. 2017).

132. A plaintiff “must establish a serious deprivation of his rights in the form of a serious or significant physical or emotional injury” or *substantial risk* of either injury. *Danser v. Stansberry*, 772 F.3d 340, 346-47 (4th Cir. 2014). Such a claim “may be based on a defendant’s conduct in exposing an inmate to an unreasonable risk of future harm.” *Smith v. Carpenter*, 316 F.3d 178, 188 (2d Cir. 2003).

133. A plaintiff must also show that the prison or detention official involved had “a sufficiently culpable state of mind” amounting to “deliberate indifference to inmate health or safety.” *Farmer*, 511 U.S. at 834. Evidence establishing a culpable state of mind requires actual knowledge of an excessive risk to the detainee’s safety, or evidence that detention officials were aware of facts from which an inference could be drawn that a substantial risk of serious harm exists and that the inference was drawn. *Id.* at 837. A plaintiff may “prove an official’s actual knowledge of a substantial risk ‘in the usual ways,

including inference from circumstantial evidence” so that “a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.”

Raynor v. Pugh, 817 F.3d 123, 128 (4th Cir. 2016).

C. Plaintiffs Have a Right to Reasonable Accommodations Under the Rehabilitation Act.

134. Section 504 of the Rehabilitation Act requires executive agencies to provide “reasonable accommodations” to individuals with disabilities so they can fully participate in benefits administered by these agencies. 29 U.S.C. § 794(a).

135. DHS regulations implementing the Rehabilitation Act mandate that “[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.” 6 C.F.R. § 15.30.

136. To state a claim under the Rehabilitation Act, a plaintiff must establish “(1) that he has a disability; (2) that he is otherwise qualified for the benefit in question; and (3) that he was excluded from the benefit due to discrimination solely on the basis of the disability.” *Baird v. Rose*, 192 F.3d 462, 467 (4th Cir. 1999).

137. To the extent possible, the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act should be construed to impose similar requirements; therefore, they require a plaintiff to demonstrate the same elements to establish liability. *Halpern v. Wake Forest Univ. Health Scis.*, 699 F.3d 454 (4th Cir. 2012).

138. A qualifying disability is any physical or mental impairment that “substantially limits one or more major life activities.” 42 U.S.C. § 12102; *see also* 29 U.S.C. § 705; 6 C.F.R. § 15.3(d). A “major life activity” includes “caring for oneself,

performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working” as well as “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” 42 U.S.C. § 12102(A)-(B).

139. The ADA mandates that “[t]he definition of disability . . . be construed in favor of broad coverage of individuals . . . to the maximum extent permitted by the terms of [the statute].” 42 U.S.C. § 12102(4)(A).

140. The Fourth Circuit has determined that a temporary impairment may qualify as a disability under the ADA if it is “sufficiently severe” to substantially limit a major life activity. *Summers v. Altarum Inst.*, 740 F.3d 325 (4th Cir. 2014).

D. This Court Has the Authority to Order Plaintiffs’ Release to Protect Their Constitutional and Statutory Rights.

141. “A district court enjoys wide discretionary authority in formulating remedies for constitutional violations.” *Smith v. Bounds*, 813 F.2d 1299, 1301 (4th Cir. 1987). Moreover, “[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).

142. Although the Fourth Circuit has not had occasion to address this issue, courts in other circuits have exercised the authority to order release as a remedy for constitutional violations. *See, e.g., Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

143. In light of the severe threats posed by COVID-19, a growing number of courts have also ordered the release of persons detained in immigration detention. *See e.g.*, *Xochihua-James v. Barr*, No. 18-71460 (9th Cir. Mar. 23, 2020) (unpublished) (sua sponte releasing detainee from immigration detention “in light of the rapidly escalating public health crisis”); *Hope v. Doll*, 1:20-cv-00562-JEJ, No. 1:20-cv-562, Dkt. No. 11 (M.D. Pa. Apr. 7, 2020) (granting TRO releasing high-risk individuals in immigration detention due to the dangers of COVID-19); *Hernandez v. Wolf*, 5:20-cv-00617-TJH-KS, Dkt. No. 17 (C.D. Cal. Apr. 1, 2020); *Castillo v. Barr*, 20-cv-00605-TJH, Dkt. No. 32 (C.D. Cal. Mar. 27, 2020) (same); *Coronel v. Decker*, 20-cv-2472-AJN, Dkt. No. 26 (S.D.N.Y. Mar. 27, 2020) (same); *Basank v. Decker*, 20-cv-2518-AT, Dkt. No. 11 (S.D.N.Y. Mar. 26, 2020) (same); *Frailhat v. Wolf*, 20-cv-00590-TJH-KSx (C.D. Cal. Mar. 31, 2020) (same); *Thakker v. Doll*, 1:20-cv-00480-JEJ, Dkt No. 47 (M.D. Pa. Mar. 31, 2020) (ordering releases from two facilities in Pennsylvania lacking confirmed cases); *see also Ronal Umana Jovel v. Decker*, 12-cv-308-GBD, Dkt. No. 27 (S.D.N.Y. Mar. 26, 2020) (ordering release under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001)); *Jimenez v. Wolf*, 18-10225-MLW (D. Mass. Mar. 26, 2020) (same).

144. Courts have similarly released numerous individuals held or incarcerated under the federal criminal system. *See e.g.*, *United States v. Meekins*, Case No. 1:18-cr-222-APM, Dkt. No. 75 (D.D.C. Mar. 31, 2020) (post-plea, pre-sentence release order releasing defendant with three pending assault charges due to extraordinary danger COVID-19 poses to people in detention); *United States v. Davis*, No. 1:20-cr-9-ELH, Dkt. No. 21 (D. Md. Mar. 30, 2020) (releasing defendant due to the “urgent priority” of decarcerating, to protect both the defendant and the community, and to preserve Sixth

Amendment rights in this perilous time); *United States v. Muniz*, Case No. 4:09-cr-199, Dkt. No. 578 (S.D. Tex. Mar. 30, 2020) (releasing defendant serving 188-month sentence for drug conspiracy in light of vulnerability to COVID-19: “[W]hile the Court is aware of the measures taken by the Federal Bureau of Prisons, news reports of the virus’s spread in detention centers within the United States and beyond our borders in China and Iran demonstrate that individuals housed within our prison systems nonetheless remain particularly vulnerable to infection.”); *United States v. Hector*, Case No. 2:18-cr-3-002, Dkt. No. 748 (W.D. Va. Mar. 27, 2020) (granting release pending sentencing after Fourth Circuit remanded detention decision requiring court to specifically consider extraordinary danger posed by COVID-19 to folks in prison); *United States v. Grobman*, No. 18-cr-20989, Dkt. No. 397 (S.D. Fla. Mar. 29, 2020) (releasing defendant convicted after trial of fraud scheme in light of “extraordinary situation of a medically-compromised detainee being housed at a detention center where it is difficult, if not impossible, for [the defendant] and others to practice the social distancing measures which government, public health and medical officials all advocate”); *United States v. Mclean*, No. 19-cr-380, Dkt. No. (D.D.C. Mar. 28, 2020) (“As counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to the community have not changed - with one exception. That one exception - COVID-19 - however, not only rebuts the statutory presumption of dangerousness, see 18 U.S.C. § 3142(e), but tilts the balance in favor of release.”); *United States v. Harris*, No. 19-cr-356 (D.D.C. Mar. 26, 2020) (“The Court is convinced that incarcerating Defendant while the current COVID-19 crisis continues to expand poses a far greater risk to community safety than the risk posed by Defendant's release to home confinement on . . . strict conditions.”);

In re Request to Commute or Suspend County Jail Sentences, Docket No. 084230 (N.J. Mar. 22, 2020) (releasing large class of defendants serving time in county jail “in light of the Public Health Emergency” caused by COVID-19).

145. The unprecedented coronavirus pandemic unquestionably calls for individuals’ release, as multiple health experts have opined, and numerous courts have recognized, that no other measures would be sufficient or appropriate, especially for individuals with special vulnerability to severe illness or death from COVID-19.

146. The Rehabilitation Act provides for “reasonable accommodations” to ensure that individuals are not deprived of access to federally-administered benefits because of their disability. Because there is no reasonable accommodation available to protect vulnerable individuals from contracting COVID-19, and thereby being denied access to removal proceedings due to serious illness or even death, release is the only sufficient accommodation available.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS (UNLAWFUL PUNISHMENT)

147. The Fifth Amendment to the U.S. Constitution guarantees civil detainees, including immigration detainees, the right to be free from punitive conditions of confinement. The government violates this guarantee when conditions of confinement lack a reasonable relationship to any legitimate governmental purpose, *i.e.* when a custodian’s actions are excessive in relation to their purpose.

148. Defendants have subjected Plaintiffs to conditions of confinement that increase their risk of contracting COVID-19, for which there is no known vaccine, treatment, or cure. Plaintiffs’ underlying conditions—of which Defendants are or should

be aware—render them especially vulnerable to severe illness or even death if they contract COVID-19. Defendants are therefore subjecting Plaintiffs to an unreasonable risk of serious harm and punitive conditions, in violation of their rights under the Due Process Clause.

149. Defendants’ continued detention of Plaintiffs fails to adequately protect Plaintiffs from the risks of contracting COVID-19.

150. Plaintiffs’ ongoing confinement lacks a reasonable relationship to any legitimate governmental purpose or is excessive in relation to its purpose.

151. Defendants continued detention of Plaintiffs is punitive and therefore violates the Due Process Clause.

**SECOND CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT
RIGHT TO SUBSTANTIVE DUE PROCESS (DELIBERATE INDIFFERENCE)**

152. The Fifth Amendment to the U.S. Constitution guarantees civil detainees, including immigration detainees, the right to be free from punitive conditions of confinement. The government violates this guarantee when it acts with deliberate indifference when failing to safeguard the health and safety of those in its custody.

153. The government acts with deliberate indifference when it exposes detainees to a substantial risk of serious harm, and when it knows of or disregards that substantial risk to the detainee’s health or safety.

154. Defendants have subjected Plaintiffs to conditions of confinement that increase their risk of contracting COVID-19, for which there is no known vaccine, treatment, or cure. Plaintiffs’ underlying conditions render them especially vulnerable to severe illness or death if they were to contract COVID-19. Defendants are therefore subjecting Plaintiffs to a substantial risk of serious harm.

155. Defendants have known of or disregarded the substantial risk of harm to Plaintiffs' health and safety.

156. Defendants have acted with deliberate indifference to Plaintiffs' health and safety, in violation of the Due Process Clause.

**THIRD CLAIM FOR RELIEF: VIOLATION OF THE REHABILITATION ACT
(FAILURE TO PROVIDE REASONABLE ACCOMMODATION TO PERSONS
WITH DISABILITIES)**

157. Section 504 of the Rehabilitation Act requires federal agencies to provide "reasonable accommodations" to individuals with disabilities so they can fully participate in benefits administered by these agencies. 29 U.S.C. § 794(a).

158. DHS regulations implementing the Rehabilitation Act mandate that "[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department." 6 C.F.R. § 15.30; *see also* 29 U.S.C. § 794(a). The regulations implementing Section 504 prohibit entities receiving federal financial assistance from utilizing "criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons." 34 C.F.R. § 104.4(b)(4).

159. The removal process, which includes adjudications of applications for relief from removal in immigration court, is a benefit administered by DHS and Plaintiffs are entitled to participate in the removal process. The services, programs, and activities within

the detention centers where DHS detains Plaintiffs receive substantial federal financial assistance.

160. Plaintiffs' underlying medical conditions qualify as disabilities for purposes of the Rehabilitation Act. 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.

161. By exposing them to a heightened risk of contracting COVID-19 and thereby serious illness and/or death, Defendants are preventing Plaintiffs from participating in the removal process and the services, programs, and activities within the detention centers by reason of their disability.

162. By failing to take account of their special vulnerability to severe illness or death if they were to contract COVID-19, Defendants are preventing Plaintiffs from participating in the removal process and the services, programs, and activities within the detention centers by reason of their disability.

163. By failing to provide Plaintiffs adequate protection from COVID-19 through the only effective means to reduce the risk of severe illness or death, Defendants have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of removal proceedings and the services, programs, and activities within the detention centers with respect to Plaintiffs.

164. The only available "reasonable accommodation" that would mitigate Plaintiffs' disability is release from detention. Defendants have failed to implement this reasonable accommodation, which would not be unduly burdensome nor require a fundamental alteration in the removal process or the services, programs, and activities of the detention center.

165. Defendants' ongoing detention of Plaintiffs constitutes discrimination because it is either disparate treatment of, or at the very least has a disparate impact on, people with qualifying disabilities who are at severe risk of serious illness or death if they were to contract COVID-19.

166. For these reasons, Defendants' ongoing detention of Plaintiffs violates the Rehabilitation Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

a. Issue a writ of habeas corpus and order Plaintiffs' immediate release or placement in community-based alternatives to detention such as conditional release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause and/or the Rehabilitation Act;

b. In the alternative, issue injunctive relief ordering Defendants to immediately release Plaintiffs or place them in community-based alternatives to detention such as conditional release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause and/or the Rehabilitation Act;

c. Declare that Defendants' continued civil detention of individuals at increased risk for severe illness, including all people over the age of 50 and persons of any age with underlying medical conditions that increase the risk of serious illness or death upon contracting COVID-19 violates the Due Process Clause and/or the Rehabilitation Act;

d. Award Plaintiffs all costs incurred in maintaining this action, including reasonable attorneys' fees under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and

e. Grant Plaintiffs any other and further relief this Court deems just and proper.

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Washington, D.C.

Respectfully submitted,

/s/ Adina Appelbaum

Adina Appelbaum, Virginia Bar No. 88974
adina@caircoalition.org
**CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR)
COALITION**
1612 K Street NW Suite 204
Washington, DC 20006
(202) 899-1412

Sirine Shebaya*
sirine@nipnlg.org
Amber Qureshi*
amber@nipnlg.org
**NATIONAL IMMIGRATION PROJECT OF THE
NATIONAL LAWYERS GUILD**
2201 Wisconsin Ave NW, Suite 200
Washington, DC 20007
(202) 656-4788

Kristin Donovan, Va. Bar No. 92207
kristin@justice4all.org
Granville Warner, Va. Bar. No. 24957
cwarner@justice4all.org
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike, Suite 520
Falls Church, VA 22041
(703) 778-3450

Attorneys for Petitioners-Plaintiffs

* *pro hac vice* applications forthcoming