



including the State of Illinois. The Governor of Illinois has taken extreme measures to stop the spread of the illness. But the numbers of the infected continue to rise rapidly.

3. In spite of this unprecedented crisis, U.S. Immigration and Customs Enforcement (“ICE” or the “Government”) continues to hold immigrants in detention facilities despite the growing danger of infection as the virus continues to spread, and despite the special vulnerability of detainees living with existing health conditions, immune suppression, or who are elderly.<sup>1</sup>

4. COVID-19 has already started to spread inside U.S. prisons, jails, and ICE detention centers, and experts predict mass contagion within correctional facilities is only a matter of time.<sup>2</sup>

5. Despite these widespread warnings, ICE and Jerome Combs, where Mr. Favi is detained, remain woefully unprepared and incapable of taking necessary precautions to protect people in their custody against a life-threatening illness. ICE and Jerome Combs are not informing Mr. Favi or the other detainees of the pandemic and how to prevent transmission; they are not taking adequate measures to allow for social distancing (let alone the 6-foot distancing recommended by the Centers for Disease Control (CDC)); they are not requiring that all staff wear gloves and masks; they are not providing detainees with prophylactic equipment such as masks, gloves, hand sanitizer, or sufficient cleaning supplies; and they are not regularly sanitizing common

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<sup>1</sup> See Catherine Shoichet, *Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE detention*, CNN Health, (Mar. 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

<sup>2</sup> See, e.g., Rich Shapiro, *Coronavirus Could “Wreak Havoc” on U.S. Jails, Experts Warn*, NBC News (Mar. 12, 2020), <https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586> (“An outbreak of the deadly virus inside the walls of a U.S. prison or jail is now a question of when, not if, according to health experts.”); Dr. Anne C. Spaulding, MD MPH, *Coronavirus COVID-19 and the Correctional Facility: For the Correctional Healthcare Worker*, 17 (Mar. 9, 2020), [https://www.ncchc.org/filebin/news/COVID\\_for\\_CF\\_HCW\\_3.9.20.pdf](https://www.ncchc.org/filebin/news/COVID_for_CF_HCW_3.9.20.pdf) (“Prisons and jails are enclosed environments, where individuals dwell in close proximity. Incarcerated persons sleep in close quarters, eat together, recreate in small spaces. Staff are close by. Both those incarcerated and those who watch over them are at risk for airborne infections.”); *167 Cook County Jail Detainees Have Tested Positive for COVID-19, Officials Say*, NBC Chi. (Apr. 1, 2020), <https://www.nbcchicago.com/news/local/167-cook-county-jail-detainees-have-tested-positive-for-covid-19-officials-say/2248892/> (stating that the number of detainees diagnosed with COVID-19 in Cook County Jail had increased from 2 on March 23 to 167 on April 1).

areas and objects. ICE and the Facility are also not regularly screening detainees for symptoms and are not consistently quarantining individuals with symptoms.

6. Jerome Combs is located in Kankakee County, Illinois. As of April 7, 2020, Kankakee County recorded its fifth coronavirus-related death. County-wide, 107 people have tested positive for the virus.<sup>3</sup> That number likely under-represents total cases in the county, given that the virus can present asymptotically,<sup>4</sup> and the fact that the CDC recommends that those with mild symptoms not be tested.<sup>5</sup>

7. Once COVID-19 reaches Jerome Combs, if it hasn't already, it will be nearly impossible to contain because of the close proximity between people, limited medical staff and resources, and restrictions that prevent people from taking steps to protect themselves from infection, such as accessing hand sanitizer or personal protective equipment.

8. The failure of ICE and Jerome Combs to recognize this inevitability and take adequate precautions, including releasing people, demonstrates a total disregard for the constitutional rights, well-being, and humanity of immigrant detainees.

9. The law is clear – the Government cannot put a civil detainee into a dangerous situation, especially where that dangerous situation was created by the Government. A civil detainee's constitutional rights are violated if a condition of his confinement places him at substantial risk of suffering serious harm, such as the harm caused by a pandemic.

10. Petitioner Delome Ostian Johannes Favi is a person with underlying medical conditions, including a history of serious pneumonia, who is held in civil detention by ICE at Jerome Combs

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<sup>3</sup> *Coronavirus Disease 2019 (COVID-19) in Illinois Test Results*, Ill. Dep't of Pub. Health, <https://www.dph.illinois.gov/covid19> (last visited April 7, 2020).

<sup>4</sup> Sam Whitehead, *CDC Director On Models For The Months To Come: 'This Virus Is Going To Be With Us'*, NPR (Mar. 31, 2020), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us> (Interview with CDC Director Dr. Robert Redfield).

<sup>5</sup> *Testing for COVID-19*, CDC (Mar. 21, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html> (last visited April 6, 2020).

as he awaits the adjudication of his immigration case. Because of his underlying medical conditions, he faces the possibility of serious illness or death if infected by COVID-19. As detailed below, the danger posed by Mr. Favi's detention during the current COVID-19 pandemic is "so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk" and violates his constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

11. Despite its inability to protect Mr. Favi from serious debilitating complications or death in a jail environment, and a clear path to release him, ICE has disregarded the one course of action that will provide Mr. Favi with reasonable safety: to release him to his wife and three children, with whom he can safely shelter during this pandemic.

12. "[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the ... Due Process Clause." *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989). The Supreme Court's words apply with full force here. ICE prevents Mr. Favi from caring for himself through social distancing and adequate levels of cleanliness. It exposes him to a substantial risk of suffering serious harm – by increasing his exposure to or contracting COVID-19. It fails to provide for his basic human needs, including medical care and reasonable safety.

13. Thus, ICE creates objectively unreasonable conditions of confinement that violate the Due Process Clause of the Fifth Amendment.

## THE PARTIES

14. Mr. Favi is a 32-year-old undocumented man who has resided in the United States since 2013.<sup>6</sup> Mr. Favi is married to a U.S. citizen, with whom he has two young children: a one-and-a-half year-old daughter and a five-month-old son.<sup>7</sup> Mr. Favi and his wife are also the primary caretakers for his five-year-old daughter from a previous relationship, whose mother passed away in 2018.<sup>8</sup> [REDACTED]

15. Mr. Favi suffers from underlying medical conditions, including a history of respiratory issues.<sup>10</sup> He contracted a severe case of pneumonia in 2007, for which he received six months of inpatient treatment.<sup>11</sup> He also has a chronic sinus condition that affects his ability to breathe at night,<sup>12</sup> and was recently informed that he has high blood pressure.<sup>13</sup> Because of these medical conditions, Mr. Favi is likely at a higher risk for severe illness from COVID-19.<sup>14</sup>

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<sup>6</sup> Ex. A, Declaration of Delome Ostian Johannes Favi ¶ 5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* ¶ 28.

<sup>10</sup> *Id.* ¶ 8.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶ 10.

<sup>13</sup> *Id.* ¶ 11.

<sup>14</sup> See, e.g., Dean T. Eurich et al.: *Ten-Year Mortality after Community-acquired Pneumonia. A Prospective Cohort.*, 192 Am. J. Respiratory Critical Care Med. 597, 602-03 (2015) (explaining that young adults with community-acquired pneumonia had “a significant twofold absolute increase in morbidity and mortality relative to control subjects” and concluding that, “[k]nowing the potential for long-term adverse events, including an increased risk of recurrent pneumonia, perhaps survivors of pneumonia should be managed like other common high-risk ‘chronic’ conditions (e.g., COPD, diabetes, heart failure)”; Lee J. Quinton et al., *Integrative Physiology of Pneumonia*, 98 Physiological Rev. 1417, 1446 (2018) (stating that “most pneumonia patients today suffer, survive, and deteriorate” and emphasizing “the indirect consequences [of pneumonia], including the predisposition to or exacerbation of ongoing chronic diseases such as COPD, atherosclerosis, cognitive decline, and more. The mechanisms driving the sequelae of pneumonia are multifactorial, including systemic inflammation and infection plus localized and diffuse aberrations involving the immune, cardiovascular, microbiome, hematologic, and nervous systems.”). See also *Groups at Higher Risk for Severe Illness*, CDC (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited Apr. 6, 2020).

16. Mr. Favi has been detained at Jerome Combs Detention Center since June 7, 2019.<sup>15</sup> Mr. Favi and his wife submitted an I-130 application in August 2019, which, if approved, would permit Mr. Favi to remain in the United States with a Permanent Resident Card (also called a Green Card).<sup>16</sup> United States Citizenship and Immigration Services (“USCIS”) scheduled Mr. Favi’s I-130 interview for March 23, 2020, but informed him on March 20, 2020, that it was cancelled due to the COVID-19 pandemic.<sup>17</sup>

17. Respondent Chad Kolutwenzew (“Respondent”) is sued in his capacity as Chief of Corrections of the Jerome Combs Detention Center, where Mr. Favi is detained. He is the immediate custodian of Mr. Favi.

### **JURISDICTION AND VENUE**

18. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (the general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

19. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security (“DHS”). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-42 (2018) (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not deprive federal courts of jurisdiction for judicial review of detainee’s claims); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

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<sup>15</sup> Ex. A (Favi Decl.) ¶ 4.

<sup>16</sup> *Id.* ¶ 6.

<sup>17</sup> *Id.*

20. This Court has jurisdiction to grant declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); and FED. R. CIV. P. 57 and 65.

21. Venue is proper under 28 U.S.C. § 1391(e) because Mr. Favi is detained at the Jerome Combs Detention Center in Kankakee, Illinois, within the jurisdiction of this Court. *See* 28 U.S.C. § 2241(d). Venue is also proper because Respondent, Mr. Favi's immediate custodian, resides in the district. *See* 28 U.S.C. § 1391 (venue is proper in any district in which a defendant resides); *See also* Arthur R. Miller, 14D Fed. Prac. & Proc. Juris. § 3805 (4th ed. 2019) (explaining that "public officers and employees sued in their official capacity.... reside in the district in which they perform their official duties, even if they are not domiciled the state in which that district is located").

## STATEMENT OF FACTS

### A. COVID-19 is an Unprecedented Public Health Crisis.

22. COVID-19 has quickly become a public health crisis around the world. On March 11, 2020, the World Health Organization declared a world pandemic due to the spread of the novel coronavirus, COVID-19.<sup>18</sup>

23. The CDC reports 374,329 confirmed cases and 12,064 deaths across the United States as of April 7, 2020.<sup>19</sup> The number is quickly rising.

24. In Illinois, 13,549 individuals have tested positive for the virus. The Illinois Department of Public Health has also reported 380 deaths as of April 7, 2020.<sup>20</sup>

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<sup>18</sup> *WHO Director-General's opening remarks at the media briefing on COVID-19*, World Health Org. (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>19</sup> *Cases in U.S. – COVID-19: U.S. at a Glance*, CDC (April 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited April 7, 2020).

<sup>20</sup> *Coronavirus Disease 2019 (COVID-19) in Illinois Test Results*, Ill. Dep't of Pub. Health, <https://www.dph.illinois.gov/covid19> (last visited April 7, 2020).

25. As of April 7, 2020, there were 107 confirmed positive cases of COVID-19 and five associated deaths in Kankakee County, which is the county where Jerome Combs is located.<sup>21</sup>

26. Illinois governor JB Pritzker issued a disaster proclamation on March 9, 2020, regarding COVID-19.<sup>22</sup>

27. On March 13, 2020, the President of the United States declared a national state of emergency in response to the COVID-19 outbreak.

**B. COVID-19 Poses Grave Risk of Harm, Particularly for Those with Certain Medical Conditions.**

28. The risk of harm due to COVID-19 is particularly grave because of how the virus spreads and the severity of the resulting illness.

29. According to the CDC, infected individuals likely are capable of infecting others up to 48 hours before they show symptoms.<sup>23</sup>

30. Moreover, a significant number of individuals that are infected remain asymptomatic. As CDC Director Dr. Robert Redfield explained, “That’s important, because now you have individuals that may not have any symptoms that can contribute to transmission, and we have learned that in fact they do contribute to transmission.”<sup>24</sup>

31. In order to “slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others,” the CDC now advises uses of simple cloth face coverings.<sup>25</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Sam Whitehead, *CDC Director On Models For The Months To Come: 'This Virus Is Going To Be With Us'*, NPR (Mar. 31, 2020), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us> (Interview with CDC Director Dr. Robert Redfield).

<sup>24</sup> *Id.*

<sup>25</sup> *Use of Cloth Face Coverings to Help Slow the Spread of COVID-19*, CDC (Apr. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html> (last visited Apr. 5, 2020).



32. Studies indicate that individuals may also transmit the virus up to eight days after their symptoms resolve.<sup>26</sup> According to the CDC, the virus spreads most frequently between people who are in close contact with one another (typically within about six feet), through respiratory droplets produced when an infected person coughs, sneezes, or talks.<sup>27</sup> The virus is also spread from contact with contaminated surfaces or objects.<sup>28</sup>

33. In many people, COVID-19 causes fever, cough, and shortness of breath. In some people, however, it can result in serious illness or death.<sup>29</sup>

34. The latest evidence suggests that people of all ages can be infected with COVID-19 and face serious illness or death.<sup>30</sup>

35. But older adults and those with certain medical conditions face even greater chances of serious illness or death from COVID-19.<sup>31</sup>

36. Certain underlying medical conditions, including asthma, blood disorders, chronic kidney or liver disease, immunosuppression, endocrine disorders (including diabetes), metabolic disorders, heart and lung disease, neurological and neurologic and neurodevelopmental

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<sup>26</sup> De Chang, et al., *Time Kinetics of Viral Clearance and Resolution of Symptoms in Novel Coronavirus Infection*, Am. J. of Respiratory and Critical Care Med. (Mar. 5, 2020)

<https://www.atsjournals.org/doi/abs/10.1164/rccm.202003-0524LE>.

<sup>27</sup> *How COVID-19 Spreads*, CDC (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 5, 2020).

<sup>28</sup> *Id.*

<sup>29</sup> *Symptoms of Coronavirus*, CDC (Mar. 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Apr. 5, 2020).

<sup>30</sup> *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020*, CDC Morbidity and Mortality Weekly Rep. (Mar. 26, 2020),

<https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm> (“These preliminary data also demonstrate that severe illness leading to hospitalization, including ICU admission and death, can occur in adults of any age with COVID-19.”); Ex. B, Affidavit of Dr. Brie Williams ¶ 11 (noting infection rates in New York for people ages 18–44).

<sup>31</sup> *Basank v. Decker*, 2020 WL 1481503, at \*3 (S.D.N.Y. Mar. 26, 2020) (taking “judicial notice that, for people of advanced age, with underlying health problems, or both, COVID-19 causes severe medical conditions and has increased lethality”); Opinion & Order at 5, *Coronel v. Decker*, 2020 WL 1487274, at \*3 (S.D.N.Y. Mar. 27, 2020) (noting study in China that found that patients with one co-morbidity had a 79% greater chance of requiring intensive care and/or a respirator or of dying).

conditions, and current or recent pregnancy, increase the risk of serious COVID-19 disease for people of any age.<sup>32</sup>

37. Pneumonia appears to be the most frequent serious manifestation of infection.<sup>33</sup> Recent clinical evidence indicates that in persons who suffer severe symptoms, the virus may also cause damage to organs such as the heart, the liver, and the kidneys, as well as to organ systems such as the blood and the immune system. This damage is so extensive and severe that it may be enduring. Among other things, patients who suffer severe symptoms from COVID-19 end up having damage to the walls and air sacs of their lungs, leaving debris in the lungs and causing the walls of lung capillaries to thicken so that they are less able to transfer oxygen going forward. Indeed, studies of some recovered patients in China and Hong Kong indicate a declined lung function of 20% to 30% after recovery.<sup>34</sup>

38. The median incubation period is five days<sup>35</sup> and serious complications can manifest not long after the onset of symptoms, with some patients descending suddenly and rapidly into respiratory distress.<sup>36</sup>

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<sup>32</sup> Ex. B (Williams Decl.) ¶ 9; *see also* Harv. Health Pub., *Coronavirus Resource Center*, Harv. Med. Sch. (Apr. 5, 2020), <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>; *Groups at a Higher Risk for Severe Illness*, CDC (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited Apr. 5, 2020).

<sup>33</sup> Wei-jie Guan, et al., *Clinical Characteristics of Coronavirus Disease 2019 in China*, *New Eng. J. of Med.* (Feb. 28, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMoa2002032>.

<sup>34</sup> Tianbing Wang, et al., *Comorbidities and multi-organ injuries in the treatment of COVID-19*, 395 *Lancet* 10228 (2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30558-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30558-4/fulltext); *GW Hospital Uses Innovative VR Technology to Assess Its First COVID-19 Patient*, *Geo. Wash. Univ. Hosp.*, (Mar. 19, 2020), <https://www.gwhospital.com/resources/podcasts/covid19-vr-technology>.

<sup>35</sup> Stephen A. Lauer et al., *The Incubation Period of Coronavirus Disease 2019 (COVID-19) From Publicly Reported Confirmed Cases: Estimation and Application*. *Annals of Internal Med.* (March 10, 2020), <https://annals.org/aim/fullarticle/2762808/incubation-period-coronavirus-disease-2019-covid-19-from-publicly-reported>.

<sup>36</sup> Ex. B (Williams Decl.) ¶ 17.

39. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from influenza. Estimates of the fatality rate of people infected with COVID-19 can be as high as 3%,<sup>37</sup> in comparison with 0.1% for seasonal influenza.<sup>38</sup>

40. The mortality rate for individuals with underlying conditions is much higher. Preliminary mortality rate analyses from a February 29, 2020 WHO-China Joint Mission Report indicated a mortality rate for individuals with cardiovascular disease at 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.<sup>39</sup> Elder individuals also face a higher mortality rate, with estimates of 8% for those over 70 and 14.8% for those over 80.<sup>40</sup>

41. There is no vaccine against COVID-19, nor is there any no known medication to prevent or treat infection from COVID-19. The only known effective measures to reduce the risk for vulnerable people of injury or death from COVID-19 are to prevent them from being infected in the first place. 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 for protecting vulnerable people from COVID-19.<sup>41</sup>

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<sup>37</sup> Nick Wilson, et al. *Case-Fatality Risk Estimates for COVID-19 Calculated by Using a Lag Time for Fatality*. *Emerging Infectious Disease J.* (Mar. 13, 2020), <https://doi.org/10.3201/eid2606.200320>.

<sup>38</sup> *Coronavirus disease 2019 (COVID-19) Situation Report – 46*, World Health Org. (March 6, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf_2).

<sup>39</sup> *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Org., 12 (Feb. 29, 2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

<sup>40</sup> *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths* (Feb. 29, 2020), <https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/> (data analysis based on WHO-China Joint Mission Report).

<sup>41</sup> *How to Protect Yourself & Others*, CDC (Apr. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited April 5, 2020).

**D. The Conditions of Immigration Detention Facilities Pose a Heightened Public Health Risk for the Spread of COVID-19.**

42. Immigration detention facilities are “congregate environments,” or places where people live and sleep in close proximity. Infectious diseases communicated by air or touch are more likely to spread in these environments. This presents an increased danger for the spread of COVID-19 when introduced into a facility.<sup>42</sup>

43. The risk of infectious spread is exacerbated by overcrowding, the proportion of vulnerable people detained, and often scant medical care resources.<sup>43</sup> People live in close quarters and as a result, cannot achieve the social distancing needed to effectively prevent the spread of COVID-19.<sup>44</sup> They may be unable to maintain the recommended distance of six feet from others and typically share or touch objects used by others. Toilets, sinks, and showers are shared, without disinfection between each use.<sup>45</sup>

44. The risk of exposure is particularly acute in pretrial facilities where the inmate population shifts frequently. But in all correctional facilities, staff arrive and leave on a shift basis, and there is limited ability to adequately screen staff for new, asymptomatic infection.<sup>46</sup>

45. Flu outbreaks occur regularly in jails and detention facilities. For example, in 2013, an outbreak of the stomach flu required the quarantine of 700 people at Cook County Jail.<sup>47</sup>

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<sup>42</sup> *Basank*, 2020 WL 1481503, at \*\*8-9 (noting that “[a] number of courts in this district and elsewhere have recognized the threat that COVID-19 poses to individuals held in jails and other detention facilities”); *see, e.g.*, Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases* 1047, 1047 (Oct. 2007), <https://doi.org/10.1086/521910> (noting that in jails “[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise”); *see also* Claudia Lauer & Colleen Long, *US prisons, jails on alert for spread of coronavirus*, Associated Press (Mar. 6, 2020), <https://apnews.com/af98b0a38aaabedbc059092db356697>.

<sup>43</sup> Ex. B (Williams Decl.) ¶ 7, 17.

<sup>44</sup> *Id.* ¶ 7.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* ¶ 5–6.

<sup>47</sup> Claudia Lauer & Colleen Long, *US prisons, jails on alert for spread of coronavirus*, Associated Press (Mar. 6, 2020), <https://apnews.com/af98b0a38aaabedbc059092db356697>.

Likewise, during the H1N1 epidemic in 2009, many jails and prisons faced high numbers of cases.<sup>48</sup>

46. Jails and prisons are seeing outbreaks of COVID-19 grow at alarming rates. As of April 2, 2020, 223 staff members, 231 inmates, and 38 health care workers assigned to NYC jails had tested positive for the virus.<sup>49</sup> That same day, a 58-year old inmate became the first inmate to die in the New York state prison system.<sup>50</sup> He had tested positive a week earlier and did not appear to have any pre-existing health conditions, according to the Medical Examiner's autopsy.<sup>51</sup>

47. On March 22, 2020, a jail guard who worked in the residential treatment unit of the Illinois Cook County Jail tested positive for COVID-19.<sup>52</sup> Two Illinois Cook County Jail detainees also tested positive for COVID-19.<sup>53</sup> As of April 2, 2020, less than two weeks later, 167 inmates and 34 employees had tested positive, showing the rapidity of spread in a congregate setting.<sup>54</sup>

48. Meanwhile, a corrections officer at a northern New Jersey facility, which is used by ICE to detain immigrants, tested positive for the virus.<sup>55</sup> A medical staffer at the ICE detention

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<sup>48</sup> David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

<sup>49</sup> *N.Y.C. Death Toll Tops 1,500 as Cuomo Warns on Ventilators*, N.Y. Times (Apr. 2, 2020), <https://www.nytimes.com/2020/04/02/nyregion/coronavirus-new-york-update.html> (last updated Apr. 3, 2020).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Cook County Jail Reports Additional Positive Coronavirus Tests*, NBC Chi. (Mar. 24, 2020), <https://www.nbcchicago.com/news/local/cook-county-jail-reports-additional-positive-coronavirus-tests/2243977/>.

<sup>53</sup> Barbara Vitello, *Two Cook County jail inmates positive for COVID-19*, Daily Herald (Mar. 23, 2020), <https://www.dailyherald.com/news/20200323/two-cook-county-jail-inmates-positive-for-covid-19>.

<sup>54</sup> *167 Cook County Jail Detainees Have Tested Positive for COVID-19, Officials Say*, NBC Chi. (Apr. 1, 2020), <https://www.nbcchicago.com/news/local/167-cook-county-jail-detainees-have-tested-positive-for-covid-19-officials-say/2248892/> (stating that the number of detainees diagnosed with COVID-19 in Cook County Jail had increased from 2 on March 23 to 167 on April 1).

<sup>55</sup> Rodrigo Torrejon, *Corrections officer at NJ jail tests positive for COVID-19*, CorrectionsOne (Mar. 20, 2020), <https://www.correctionsone.com/coronavirus-covid-19/articles/corrections-officer-at-nj-jail-tests-positive-for-covid-19-rNwXCEVYCHvoTzy4/>.

facility in Elizabeth, New Jersey has also tested positive for COVID-19.<sup>56</sup> On March 24, the first ICE detainee tested positive, while being held at the same northern New Jersey facility where the corrections officer tested positive a week earlier.<sup>57</sup>

49. As of April 4, 2020, ICE reports 13 confirmed COVID-19 cases among detainees in custody and 7 confirmed cases among ICE employees and personnel working in ICE detention facilities.<sup>58</sup>

50. The Director of the Illinois Department of Public Health, Dr. Ngozi Ezike, has highlighted that when the infection enters correctional facilities, the congregate nature of these facilities, with staff coming and going from the community each day in large numbers, will “provide unique challenges in stopping the spread of the disease and protecting the health of individuals.” She noted further that “[t]hose that are incarcerated obviously live and work and eat and study and recreate, all within that same environment, heightening the ability for COVID-19 to spread very quickly.”<sup>59</sup>

51. It is highly likely, and perhaps inevitable, that COVID-19 will reach Jerome Combs.

52. Once the virus is inside the Facility, it is difficult to imagine that ICE will be able to stop its spread.

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<sup>56</sup> Craig McCarthy & Kenneth Garger, *ICE medical staffer at NJ detention center tests positive for coronavirus*, N.Y. Post (Mar. 20, 2020), <https://nypost.com/2020/03/20/ice-medical-staffer-at-nj-detention-center-tests-positive-for-coronavirus/>.

<sup>57</sup> Priscilla Alvarez & Catherine E. Shoichet, *First ICE detainee tests positive for coronavirus*, CNN (Mar. 24, 2020), <https://www.cnn.com/2020/03/24/us/ice-detainee-coronavirus/index.html>.

<sup>58</sup> *ICE Guidance on COVID-19: Confirmed Cases*, USCIS (last updated Apr. 4, 2020), <https://www.ice.gov/coronavirus> (last visited Apr. 6, 2020).

<sup>59</sup> Devin Trubey, *First Illinois Inmate Death Due to COVID-19*, ABC News Channel 20 (Mar. 30, 2020), <https://newschannel20.com/news/coronavirus/first-illinois-inmate-death-due-to-covid-19>.

**E. ICE and Jerome Combs are Woefully Unprepared to Protect Mr. Favi from COVID-19.**

53. The standards that ICE has issued for itself mandate that “[e]ach facility shall have written plans that address the management of infectious and communicable diseases, including screening, prevention, education, identification, monitoring and surveillance, immunization (when applicable), treatment, follow-up, isolation (when indicated), and reporting to local, state and federal agencies.” The standards also mandate that “[f]acilities *shall comply with current and future plans implemented by federal, state or local authorities addressing specific public health issues.*”<sup>60</sup>

54. ICE has failed to disclose the plans for each facility or detail how it is abiding by the plans it should have had in place. Jerome Combs has not disclosed how it is addressing COVID-19 and there is no evidence that Jerome Combs is taking *any* action to address COVID-19, including the most basic and essential: abiding by the social distancing advisories from the CDC and the Governor of Illinois.

55. The interim guidance sheet provided on March 6, 2020, by ICE Health Services Corps, which oversees medical care in ICE detention facilities, as a protocol for their clinical COVID-19 response,<sup>61</sup> as well as ICE’s guidance on its website,<sup>62</sup> is grossly deficient in multiple areas, including:<sup>63</sup>

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<sup>60</sup>*Performance-Based National Detention Standards: 4.3 Medical Care*, USCIS, 270 (Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf> (emphasis added).

<sup>61</sup> *Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19)*, ICE Health Serv. Corps (Mar. 6, 2020), <https://www.aila.org/infonet/ice-interim-reference-sheet-coronavirus> (version 6.0).

<sup>62</sup> *ICE Guidance on COVID-19*, USCIS, <https://www.ice.gov/coronavirus> (last updated Apr. 4, 2020).

<sup>63</sup> Declaration of Homer Venters at 10-12, *Fraihat v. U.S. Immigration & Customs Enf’t*, No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Mar. 24, 2020), ECF No. 81-11.

- a. The ICE protocol fails to include basic infection control measures that are present in CDC guidelines for long-term care facilities, and other congregate settings, including access to hand sanitizer and use of masks for anyone with a cough.
- b. The ICE protocol provides no guidance about identification of high-risk patients at the time of entry or any special precautions that will be enacted to protect them.

56. Moreover, many immigration detention facilities lack adequate medical infrastructure to address the spread of infectious disease and treatment of people most vulnerable to illness in detention.<sup>64</sup>

57. Testing kits are also not currently available in the volume necessary to screen all detainees. Furthermore, because certain individuals do not become symptomatic, or may spread the infection before or after they are symptomatic,<sup>65</sup> even if a facility conducts symptom screening at booking, it is simply not possible to identify all persons who will become ill. For the same reason, symptom screening will not prevent the spread of coronavirus from staff, vendors, or contractors. Finally, symptom screening is wholly inadequate to mitigate the spread of coronavirus once it has entered a facility.<sup>66</sup>

58. Given that governors of multiple states – including Illinois – have made urgent pleas for personal protective equipment and ventilators, and the President has declared major disasters in New York, California, and Washington, it is unlikely that ICE has the necessary resources to implement its mitigation measures.<sup>67</sup>

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<sup>64</sup> Ex. B (Williams Decl.) ¶¶ 16–18.

<sup>65</sup> Sam Whitehead, *CDC Director On Models For The Months To Come: 'This Virus Is Going To Be With Us'*, NPR (Mar. 31, 2020), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us> (Interview with CDC Director Dr. Robert Redfield).

<sup>66</sup> See generally Ex. B (Williams Decl.) ¶ 5–7.

<sup>67</sup> See *Coronavirus Live Updates: As State Pleas Mount, Trump Outlines Some Federal Action; Senate Democrats Block Stimulus Package*, N.Y. Times (Mar. 22, 2020), <https://www.nytimes.com/2020/03/22/world/coronavirus-updates-world-usa.html?action=click&module=Spotlight&pgtype=Homepage>.



59. As for Jerome Combs itself, it has not provided detainees with *any* information about the COVID-19 pandemic, let alone how to prevent the spread of the virus. Instead, detainees at the facility have learned about the virus only from the television and from telephone conversations with their families.<sup>68</sup>

60. Staff have not instructed detainees on any of the CDC-advised protocols to prevent the spread of COVID-19, such as the need to maintain social distance, to wash their hands frequently, or to avoid touching their faces.<sup>69</sup>

61. There do not appear to have been any changes in cleaning protocol at the Facility in response to COVID-19. The detainees are responsible for cleaning their living area with the limited supplies they are provided by the Facility, but again, the Facility has not informed the detainees of the need for enhanced cleaning.<sup>70</sup>

62. The Facility has not distributed gloves, masks, or hand sanitizer to detainees. While some, but not all, of the Facility staff recently started wearing gloves, Mr. Favi has only ever seen one staff member wear a mask.<sup>71</sup> This is in spite of ICE's representation that there are "[c]omprehensive protocols [ ] in place for the protection of staff and patients."<sup>72</sup>

63. Staff at the Facility do not maintain six feet of distance from the detainees when they interact with them, but rather come close to the detainees to speak with them.<sup>73</sup> They do so even though as of April 2, 2020,<sup>74</sup> Kankakee County's per-capita infection rate is the third highest in

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<sup>68</sup> Ex. A (Favi Decl.) ¶ 12.

<sup>69</sup> *Id.* ¶ 13; *see also How COVID-19 Spreads*, CDC (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited April 6, 2020).

<sup>70</sup> *Id.* ¶ 23.

<sup>71</sup> *Id.* ¶ 16.

<sup>72</sup> *ICE Guidance on COVID-19: Detention*, USCIS, <https://www.ice.gov/coronavirus> (last updated Mar. 15, 2020).

<sup>73</sup> Ex. A (Favi Decl.) ¶ 14.

<sup>74</sup> Lee Provost, *Kankakee Co. infection rate third highest in state*, Daily J. (Apr. 2, 2020), [https://www.daily-journal.com/news/local/kankakee-co-infection-rate-third-highest-in-state/article\\_c2019fd4-7421-11ea-8265-1f9475ecff4a.html](https://www.daily-journal.com/news/local/kankakee-co-infection-rate-third-highest-in-state/article_c2019fd4-7421-11ea-8265-1f9475ecff4a.html).

the state, and as of April 7, 2020, 107 positive cases and five deaths connected to the virus have been reported county-wide.<sup>75</sup>

64. Some of the staff and many of the detainees are coughing.<sup>76</sup>

65. There is no way for detainees to maintain social distance from one another. For example, Mr. Favi's housing unit consists of open dorms in a block that currently holds 40 people and can hold up to 48 people. Mr. Favi's cubicle consists of four people who share one toilet and sink.<sup>77</sup> Mr. Favi sleeps only one meter from the person in the bunk bed above him.<sup>78</sup>

66. The detainees all touch the same items. There is only one set of cleaning supplies, one phone, and one computer kiosk (for the limited use of filing grievances and similar administrative tasks) for all the people on Mr. Favi's block. The entire Facility shares one set of hair clippers.<sup>79</sup>

67. The living space on Mr. Favi's block consists of only the cubicle sleeping areas, a living space with a few televisions and tables, and a gym that is the size of a half-basketball court and includes a basketball hoop.

68. On a typical day, the detained immigrants will only be in the sleeping room, the common area in front of the cells, and the gym. There is no outdoor space for the detainees to access.

69. Even though ICE recommends that its detention facilities should "maximize social distancing as much as practicable...includ[ing] staggered meals and recreation times in order to limit the number of detainees gathered together,"<sup>80</sup> the Facility's schedule and layout forces

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<sup>75</sup> *Coronavirus Disease 2019 (COVID-19) in Illinois Test Results*, Ill. Dep't of Pub. Health, <https://www.dph.illinois.gov/covid19> <http://dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus> (last visited April 7, 2020).

<sup>76</sup> Ex. A (Favi Decl.) ¶¶ 15, 17.

<sup>77</sup> *Id.* ¶ 18.

<sup>78</sup> *Id.* ¶ 20.

<sup>79</sup> *Id.* ¶ 21.

<sup>80</sup> *ICE Guidance on COVID-19: Detention*, USCIS, <https://www.ice.gov/coronavirus> (last updated April 2, 2020).

detainees to congregate at multiple points a day. They are forced to line up close together to receive meals, for example, and they sit together at tables to eat.<sup>81</sup>

70. There are limited medical facilities at the Facility. There is only one part-time doctor, and while there is typically a nurse present, detainees only have access to the nurse at certain times of day.<sup>82</sup> As of the date that Mr. Favi signed his declaration, Facility staff had never taken the detainees' temperatures unless it was in connection with a specific medical request.

**F. People Most Vulnerable to COVID-19 Should Be Released from ICE Detention.**

71. People who are confined to detention centers will find it virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission. For this reason, correctional public health experts have recommended the release from custody of people most vulnerable to COVID-19.

72. Dr. Scott Allen and Dr. Josiah Rich, who are medical experts for the Department of Homeland Security, sent a letter to Congress arguing that the department should consider releasing *all* immigrant detainees who do not pose a risk to public safety before it is too late, writing that they were “gravely concerned about the threat the novel coronavirus poses.”<sup>83</sup> There is an “imminent risk to the health and safety of immigrant detainees’ and to the general public if the novel coronavirus spreads in ICE detention.”<sup>84</sup> They warn that, “[t]o be more explicit, a detention center with a rapid outbreak could result in multiple detainees — five, ten or more — being sent to the local community hospital where there may only be six or eight ventilators over a very short period. As they fill up and overwhelm the ventilator resources, those

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<sup>81</sup> Ex. A (Favi Decl.) ¶ 22.

<sup>82</sup> *Id.* ¶ 25.

<sup>83</sup> Priscilla Alvarez & Catherine E. Shoichet, *First ICE detainee tests positive for coronavirus*, CNN (Mar. 24, 2020), <https://www.cnn.com/2020/03/24/us/ice-detainee-coronavirus/index.html>.

<sup>84</sup> Catherine E. Shoichet, *Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention*, CNN (Mar. 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

ventilators are unavailable when the infection inevitably is carried by staff to the community and are also unavailable for all the usual critical illnesses (heart attacks, trauma, etc).”<sup>85</sup>

73. John Sandweg, former acting director of ICE during the Obama Administration, explained that “ICE is fortunate that the threat posed by these detention centers can be mitigated rather easily. By releasing from custody the thousands of detainees who pose no threat to public safety and do not constitute an unmanageable flight risk, ICE can reduce the overcrowding of its detention centers, and thus make them safer, while also putting fewer people at risk. . . . In fact, only a small percentage of those in ICE detention have been convicted of a violent crime. Many have never even been charged with a criminal offense. ICE can quickly reduce the detained population without endangering our communities.”<sup>86</sup> He continued, “[w]hen an outbreak of COVID-19 occurs in an ICE facility, the detainees won’t be the only ones at risk. An outbreak will expose the hundreds of ICE agents and officers, medical personnel, contract workers, and others who work in these facilities to the virus. Once exposed, many of them will unknowingly take the virus home to their family and community.”<sup>87</sup>

74. On March 23, 2020, the Ninth Circuit *sua sponte* ordered the immediate release of an immigrant detainee from detention due to COVID-19.<sup>88</sup> The Court emphasized that this decision was made “[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers.”<sup>89</sup>

75. On March 26, 2020, the Southern District of New York ordered immediate release of a group of ICE detainees who suffer from chronic medical conditions and face an imminent risk of

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<sup>85</sup> *Id.*

<sup>86</sup> John Sandweg, *I Used to Run ICE. We Need to Release the Nonviolent Detainees*, *The Atlantic* (Mar. 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>.

<sup>87</sup> *Id.*

<sup>88</sup> *Xochihua-Jaimes v. Barr*, 2020 WL 1429877, at \*1 (9th Cir. Mar. 24, 2020).

<sup>89</sup> *Id.*

death or serious injury in detention if exposed to COVID-19.<sup>90</sup> Again, on March 27, 2020, the Court ordered immediate release of another group of ICE detainees who faced imminent health risks.<sup>91</sup> That same day, the Central District of California ordered immediate release of two ICE detainees where “the Government fail[ed] to provide for [the] detainee’s basic needs, including medical care and reasonable safety.”<sup>92</sup> Notably, neither of these two individuals had one of the CDC-listed medical vulnerabilities.<sup>93</sup> On April 2, 2020, the Central District of California ordered the release of six detainees with underlying health conditions including asthma, diabetes, high blood pressure, and HIV infection.<sup>94</sup>

76. Even detainees in *criminal matters* are being released from jails due to the risk of COVID-19. A federal judge in the Southern District of New York released a criminal defendant in pretrial detention on March 19, 2020, recognizing that “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent.”<sup>95</sup>

77. The Cook County Public Defender and State’s Attorney are working together to identify and release detainees who are serving for nonviolent offenses or are elderly, pregnant or facing health issues. Between March 22, 2020, and March 27, 2020, 10% of Cook County Jail’s detainees were released in connection with that effort.<sup>96</sup>

78. ICE has made no such effort to identify and release particularly vulnerable populations.

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<sup>90</sup> *Basank*, 2020 WL 1481503, at \*7.

<sup>91</sup> *Coronel*, 2020 WL 1487274, at \*10.

<sup>92</sup> *Castillo & Rueda v. Barr*, 2020 WL 1502864, at \*3 (C.D. Cal. Mar. 27, 2020).

<sup>93</sup> *See id.*

<sup>94</sup> Temporary Restraining Order and Order to Show Cause, *Rodriguez v. Wolf*, No. 5:20-CV-00627-TJH-GJS (C.D. Cal. April 2, 2020), ECF Nos. 32, 35-39; *see also* Roxana Kopetman, *Coronavirus: Judge orders release of six immigrant detainees, citing health risk*, Press-Telegram (Apr. 2, 2020), <https://www.presstelegram.com/2020/04/02/coronavirus-judge-orders-release-of-two-immigrant-detainees-siting-health-risk/>.

<sup>95</sup> *United States v. Stephens*, 2020 WL 1295155, at \*2 (S.D.N.Y. Mar. 19, 2020).

<sup>96</sup> Matt Masterson, *Cook County Jail Population Decreases as Number of COVID-19 Cases Balloons*, WTTW (Mar. 27, 2020), <https://news.wttw.com/2020/03/27/cook-county-jail-population-decreases-number-covid-19-cases-balloons>.

79. Efforts to reduce jail populations by releasing large numbers of detainees have been happening across the country. Such releases are not limited to only vulnerable individuals. Rather, non-violent offenders have been released in large-scale numbers to decrease overall jail populations and hopefully limit the risk of infection spread. In line with this approach, the Los Angeles County Sheriff decreased the jail population by ten percent by releasing 1,700 individuals within the last month.<sup>97</sup> In Alameda County in Northern California, more than 300 individuals have been released from jail in the span of two weeks, amounting to eleven percent of the jail's population.<sup>98</sup> Oregon has similarly reduced its jail population in Washington County, outside Portland, by more than 120 inmates (from a population of 574), freeing up enough space for each remaining inmate to be housed in their own cell.<sup>99</sup> Washington State similarly released more than 400 individuals from county jails in Clark and King County over the course of a couple of days.<sup>100</sup> In Arizona, Coconino County released ten percent of the jail population<sup>101</sup> and the Pima County Sheriff has proposed reducing its jail population by seven percent by releasing 135 inmates.<sup>102</sup> In Utah, about 200 individuals are in the process of being released from the Salt Lake County jail over the coming days (a 10% reduction in population),

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<sup>97</sup> Justin Carissimo, *1,700 inmates released from Los Angeles County in response to coronavirus outbreak*, CBS News (Mar. 24, 2020), <https://www.cbsnews.com/news/inmates-released-los-angeles-county-coronavirus-response-2020-03-24/>.

<sup>98</sup> Bay City News, *Sheriff Releases 314 Inmates to Reduce Coronavirus Risk at Alameda County Jail*, NBC Bay Area, (Mar. 19, 2020), <https://www.nbcbayarea.com/news/coronavirus/sheriff-releases-314-inmates-to-reduce-coronavirus-risk-at-alameda-county-jail/2258026/>.

<sup>99</sup> Bob Heye, *Coronavirus and Crime: Jail releases, a rash of break-ins and one encouraging trend*, KATU (Mar. 23, 2020), <https://katu.com/news/coronavirus/coronavirus-and-crime-jail-releases-a-rash-of-break-ins-and-one-encouraging-trend>.

<sup>100</sup> Jerzy Shedlock, *Clark County Jail releases nearly 200 inmates due to COVID-19*, Columbian (Mar. 25, 2020), <https://www.columbian.com/news/2020/mar/25/clark-county-jail-releases-nearly-200-inmates-due-to-covid-19/>.

<sup>101</sup> Scott Buffon, *Coconino County jail releases nonviolent inmates in light of coronavirus concerns*, Ariz. Daily Sun (Mar. 20, 2020), [https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus-concerns/article\\_a6046904-18ff-532a-9dba-54a58862c50b.html](https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus-concerns/article_a6046904-18ff-532a-9dba-54a58862c50b.html).

<sup>102</sup> Jacques Billeaud, *Tucson lawyers seek release of nonviolent inmates from jail*, Tucson.com (Mar. 24, 2020), [https://tucson.com/news/local/crime-and-courts/tucson-lawyers-seek-release-of-nonviolent-inmates-from-jail/article\\_0cd49be4-6dd6-11ea-99d3-576d60e1dae5.html](https://tucson.com/news/local/crime-and-courts/tucson-lawyers-seek-release-of-nonviolent-inmates-from-jail/article_0cd49be4-6dd6-11ea-99d3-576d60e1dae5.html).

following the release of about 90 women from county jail.<sup>103</sup> In New Orleans, after judges overseeing the local criminal court issued a “blanket order” to release a substantial number of individuals being held in pretrial detention, the New Orleans jail population was reduced by about 14 percent.<sup>104</sup>

80. Supreme courts in several states have collaborated in or led the efforts to reduce jail populations by issuing orders, demonstrating a growing consensus on the huge impact that COVID-19 has within detention facilities. The Chief Justice of New Jersey ordered the release of approximately 1,000 individuals from New Jersey jails, which is nine percent of the population.<sup>105</sup> South Carolina’s chief justice ordered the release of all individuals charged with a non-capital offense on their own recognizance, unless the individual presents an unreasonable danger to the community or is an extreme flight risk.<sup>106</sup> Nearly 200 people were released pursuant to this order.<sup>107</sup> In Montana, the Chief Justice instructed his state’s judges to “review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses.”<sup>108</sup>

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<sup>103</sup> Jessica Miller, *Hundreds of Utah inmates will soon be released in response to coronavirus*, Salt Lake Trib. (Mar. 20, 2020), <https://www.sltrib.com/news/2020/03/21/hundreds-utah-inmates/> (the total jail population in Salt Lake County jail was 1,964 people).

<sup>104</sup> WDSU Digital Team, *Orleans Criminal Court judges order release of certain inmates amid coronavirus crisis*, WDSU News, (Mar. 26, 2020), <https://www.wdsu.com/article/orleans-criminal-court-judges-order-release-of-certain-inmates-amid-coronavirus-crisis/31943462#>.

<sup>105</sup> Consent Order, *In re Request to Commute or Suspend County Jail Sentences*, Dkt. No. 084230 (N.J. Mar. 22, 2020), available at <https://www.njcourts.gov/notices/2020/n200323a.pdf> (ordering the release of any inmate in New Jersey serving a county jail sentence as a condition of probation or as a result of a municipal court conviction); see Tracey Tully, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, N.Y. Times (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html>.

<sup>106</sup> Memorandum from Donald W. Beatty, Chief Justice of South Carolina Supreme Court, to Magistrates, Municipal Judges, and Summary Court Staff (Mar. 16, 2020), <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461>.

<sup>107</sup> Kyle C. Barry, *Some Supreme Courts Are Helping Shrink Jails To Stop Outbreaks. Others Are Lagging Behind.*, Appeal (Mar. 25, 2020), <https://theappeal.org/politicalreport/some-supreme-courts-are-helping-shrink-jails-coronavirus/>.

<sup>108</sup> Letter from Mike McGrath, Chief Justice of Montana Supreme Court, to Montana Courts of Limited Jurisdiction Judges (Mar. 20, 2020), <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>.

81. Release protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation for all people held or working in a prison, jail, or detention center. Release of both the most vulnerable people and nonviolent individuals from custody also reduces the burden on the region's limited health care infrastructure, as it lessens the likelihood that an overwhelming number of people will become seriously ill from COVID-19, necessitating hospitalization at the same time.

**G. Mr. Favi Should Be Released from ICE Detention.**

82. Mr. Favi suffers from underlying medical conditions that likely place him at a higher risk of severe illness or complications in he were to contract COVID-19.

83. His medical conditions include a history of respiratory issues. Mr. Favi contracted a severe case of pneumonia in 2007, for which he received six months of inpatient treatment. At the time of his hospitalization, an X-ray of Mr. Favi's chest indicated that his right lung was barely functioning.<sup>109</sup> Mr. Favi believes that his lungs have not fully recovered as he has continued to experience issues with his lung functioning since that time.<sup>110</sup>

84. Some research studies have recognized that having had pneumonia in the past can result in an increased risk of recurrent pneumonia. In line with that, one study recommended that “perhaps survivors of pneumonia should be managed like other common high-risk ‘chronic’ conditions (e.g., COPD, diabetes, heart failure).”<sup>111</sup>

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<sup>109</sup> Ex A. (Favi Decl.) ¶ 8.

<sup>110</sup> *Id.* ¶ 9.

<sup>111</sup> Dean T. Eurich et al.: *Ten-Year Mortality after Community-acquired Pneumonia. A Prospective Cohort.*, 192 *Am. J. Respiratory Critical Care Med.* 597, 603 (2015). *See also* Lee J. Quinton et al., *Integrative Physiology of Pneumonia*, 98 *Physiological Rev.* 1417, 1446 (2018) (stating that ““most pneumonia patients today suffer, survive, and deteriorate” and emphasizing “the indirect consequences [of pneumonia], including the predisposition to or exacerbation of ongoing chronic diseases such as COPD, atherosclerosis, cognitive decline, and more. The mechanisms driving the sequelae of pneumonia are multifactorial, including systemic inflammation and infection plus localized and diffuse aberrations involving the immune, cardiovascular, microbiome, hematologic, and nervous systems.”).



85. Mr. Favi also has a chronic sinus condition that is worsened by the poor ventilation and fungus at the Facility and which affects his ability to breathe at night.<sup>112</sup>

86. Due to these conditions, particularly his history of pneumonia, Mr. Favi is likely at a higher risk for severe illness from COVID-19.<sup>113</sup>

87. Mr. Favi is married to a U.S. citizen, with whom he has two young children; a one-and-a-half year-old daughter and a five-month-old son.<sup>114</sup> Mr. Favi and his wife are also the primary caretakers for his five-year-old daughter from a previous relationship, whose mother passed away in 2018.<sup>115</sup>

88. Mr. Favi and his wife submitted an I-130 application in August 2019, which if approved, would permit Mr. Favi to remain in the United States with a Permanent Resident Card (also called a Green Card).<sup>116</sup> USCIS scheduled Mr. Favi's I-130 interview for March 23, 2020, but informed him on March 20, 2020, that it was cancelled due to the COVID-19 pandemic.<sup>117</sup>

89. Mr. Favi's wife is taking care of the three young children by herself. It is difficult for her to maintain social distance under the circumstances.<sup>118</sup>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>112</sup> Ex. A (Favi Decl.) ¶ 10.

<sup>113</sup> See also *Groups at Higher Risk for Severe Illness*, CDC (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited Apr. 6, 2020).

<sup>114</sup> Ex. A (Favi Decl.) ¶ 5.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* ¶ 6.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* ¶ 27.

[REDACTED]

[REDACTED]

91. There is simply no reason for Mr. Favi to be detained, especially when he is at heightened risk of complications from COVID-19, and he is needed by his family.

### EXHAUSTION

92. Mr. Favi submitted a request to ICE for parole or release on recognizance on March 25, 2020.<sup>120</sup> On April 3, 2020, ICE denied the request.<sup>121</sup> There are no further remedies for Mr. Favi to exhaust.

### LEGAL BACKGROUND

#### A. Mr. Favi Has a Constitutional Right to Reasonable Safety in Custody.

93. Whenever the government detains or incarcerates someone, it has an affirmative duty to provide conditions of reasonable health and safety. 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 Cty. Dep’t 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. The affirmative duty to protect arises not from the State’s knowledge of the individual’s predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf. *Id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)) (“An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met.”).

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<sup>119</sup> *Id.* ¶ 28.

<sup>120</sup> Ex. C, Request for Parole or Release on Recognize (Multiple Individuals).

<sup>121</sup> Ex. D, ICE Denial of Group Request for Release from Detention.

94. Civil detainees are entitled to more considerate treatment and conditions of confinement than convicted prisoners. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *Hughes v. Scott*, 816 F.3d 955, 956 (7th Cir. 2016) (“Remember that he’s not a prison inmate but a civil detainee.”). Civil detainees’ rights derive from the Due Process Clause of the Fifth and Fourteenth Amendments, rather than the Eighth Amendment. *See Belbachir v. Cty. of McHenry*, 726 F.3d 975, 979 (7th Cir. 2013) (ICE detainees are entitled to “at least as much protection as convicted criminals are entitled to under the Eighth Amendment—namely protection from harm caused by a defendant’s deliberate indifference to the detainee’s safety or health” (citations omitted)); *Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015) (“In the context of a conditions of confinement claim, a pretrial detainee is entitled to be free from conditions that amount to ‘punishment,’ while a convicted prisoner is entitled to be free from conditions that constitute ‘cruel and unusual punishment.’” (citations omitted)); *Hardeman v. Curran*, 933 F.3d 816, 821 (7th Cir. 2019) (“Pretrial detainees are in a different position, because their detention is unrelated to punishment.”). Indeed, the Due Process Clause mandates that civil immigration detainees are entitled to more than minimal human necessities.

95. To establish constitutionally deficient conditions of confinement, a civil detainee must prove the conditions are “objectively unreasonable.” *See Hardeman*, 933 F.3d at 822-23 (pretrial detainee’s claims of general conditions of confinement “are subject only to the objective unreasonableness inquiry”); *Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) (medical care claims brought by pretrial detainees under the Fourteenth Amendment are subject only to the objective unreasonableness inquiry).

96. At a minimum, here, the Government owes a duty to Mr. Favi, as a civil immigration detainee, to reasonably abate known risks. Even where the risk of harm may be unknown or

unpredictable, the Seventh Circuit has said that it is inexcusable (*i.e.* “deliberately indifferent”) to fail to undertake “simple, inexpensive, obvious,” mitigation measures where the possible adverse consequences are great. *Belbachir*, 726 F.3d at 981–82 (in a matter where an ICE detainee died by suicide, finding that placing the detainee in a mental hospital, or on suicide watch, were simple and obvious precautions against suicide). In the context of COVID-19, courts in other jurisdictions have already concluded that “[c]onfining vulnerable individuals such as Petitioners without enforcement of requisite social distancing and without specific measures to protect their delicate health” demonstrates deliberate indifference. *Basank*, 2020 WL 1481503, at \*5; *see also Coronel*, 2020 WL 1487274, at \*4-6 (finding deliberate indifference where Government’s actions in response to COVID-19 were inadequate to mitigate the transmission of the virus in light of community-based transmission and where Government’s actions did nothing to alleviate needs of medically high-risk detainees); Memorandum & Order at 22 n.15, *Thakker v. Doll*, No. 1:20-cv-00480-JEJ (M.D. Pa Mar. 31, 2020), ECF No. 47 (concluding that petitioners, similarly situated ICE detainees, not only established a likelihood of success on the merits on their Fifth Amendment claim, but also demonstrated that their claim was likely to be successful under the more exacting Eighth Amendment standard).

97. Conditions that meet the aforementioned deliberate indifference standard would undoubtedly meet the more lenient “objectively unreasonable” standard. *See Farmer v. Brennan*, 511 U.S. 825, 842 (1994) (“[A] factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious”); *see also Helling v. McKinney*, 509 U.S. 25, 33 (1993) (expressing “great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate’s current health problems” where those authorities “ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering

the next week or month or year,” such as “**exposure of inmates to a serious, communicable disease**”) (emphasis added); *Hardeman*, 933 F.3d at 824-25 (finding water deprivation and unsanitary jail conditions “were objectively unreasonable and excessive in relation to any legitimate non-punitive purpose” (quotations omitted)); *Green v. Beth*, 663 Fed. App’x 471, 472 (7th Cir. 2016) (pretrial detainee stated a claim for a due process violation based on deliberate indifference to serious medical needs by alleging that unnamed members of county jail’s nursing staff needlessly made him wait six days to treat his injury); *Fambro v. Fulton Cty., Ga.*, 713 F. Supp. 1426, 1430-31 (N.D. Ga. 1989) (holding that “[d]eliberate indifference to serious medical needs is established where there are systematic deficiencies in the staffing facility’s equipment or procedures which effectively deny inmates access to adequate health care,” including deficiencies that “subject[] other inmates to unnecessary risk of contracting dangerous or fatal communicable diseases”).

98. Moreover, conditions that pose an unreasonable risk of future harm violate the constitution, even if that harm has not yet come to pass. *Helling*, 509 U.S. at 33. “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.” *Id.* Jail officials cannot ignore a condition of confinement that is sure to cause “serious illness and needless suffering,” including “exposure of inmates to a serious, communicable disease.” *Id.* The risk of exposure to COVID-19 constitutes exactly the type of “unsafe, life-threatening condition” that “need not await a tragic event” in order to be remedied. *Id.* at 33-34.

99. While the precise probability of the spread of COVID-19 at the facility may be unknown, the fact that “[t]here are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained

persons between facilities and systems” and the limited “ability of incarcerated/detained persons to exercise disease prevention measures”<sup>122</sup> means that the spread is all but inevitable, especially given the growing concentration of cases in Kankakee County, Illinois and neighboring Cook County, Illinois.<sup>123</sup>

100. At the Jerome Combs Detention Center, ICE has not ensured that “staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested”; instructed detainees to maintain social distance; or implemented policies to frequently clean high-touch surfaces, as recommended by CDC Guidance.<sup>124</sup> Nor has the government provided cloth masks, even though the CDC and Governor Pritzker now recommend wearing such masks in public settings where other social distancing measures are difficult to maintain.<sup>125</sup> Where the government “by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs,” such inaction violates the minimum constitutional guarantees of the due process clause. *Hardeman*, 933 F.3d at 825 (quoting *DeShaney*, 489 U.S. at 200).

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<sup>122</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

<sup>123</sup> See, e.g., Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases* 1047, 1047 (Oct. 2007), <https://doi.org/10.1086/521910> (noting that in jails “[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise”).

<sup>124</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

<sup>125</sup> *Use of Cloth Face Coverings to Help Slow the Spread of COVID-19*, CDC (Apr. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html/>; *Gov. Pritzker Recommends Wearing Masks Outside During Coronavirus Pandemic*, NBC Chi. (April 3, 2020), <https://www.nbcchicago.com/news/local/gov-pritzker-recommends-wearing-masks-outside-during-coronavirus-pandemic/2249965/>.

**B. ICE Has the Authority to Release Detained People in Its Custody.**

101. It is well within ICE’s prosecutorial discretion to comply with these constitutional requirements by releasing people who would be vulnerable to severe illness or death from COVID-19.

102. High-level ICE officials corroborate this fact. As former Deputy Assistant Director for Custody Programs in ICE Enforcement and Removal Operations Andrew Lorenzen-Strait explains, “ICE has exercised and still exercises discretion for purposes of releasing individuals with serious medical conditions from detention.” In fact, “ICE exercises humanitarian parole authority all the time for serious medical reasons.”<sup>126</sup>

103. This exercise of discretion comes from a long line of agency directives explicitly instructing officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating against detention.

**C. This Court Has Authority to Order Mr. Favi’s Release to Vindicate His Fifth Amendment Rights, and Such Relief Is Appropriate Here.**

104. “When 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).

105. Courts have regularly exercised this authority to remedy constitutional violations caused by overcrowding. *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).

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<sup>126</sup> Declaration of Andrew Lorenzen-Strait at 1-2, *Dawson v. Asher*, 2:20-cv-00409-JLR-MAT (W.D. Wash. Mar. 16, 2020), ECF No. 7 (available at [https://www.aclu.org/sites/default/files/field\\_document/7\\_declaration\\_of\\_andrew\\_lorenzen-strait.pdf](https://www.aclu.org/sites/default/files/field_document/7_declaration_of_andrew_lorenzen-strait.pdf)).

106. The same principle applies here. As the constitutional principles and public health experts make clear, releasing Mr. Favi is the only viable remedy to ensure his safety from the threat to his life that COVID-19 poses. Mr. Favi has underlying medical conditions that put him at higher risk of severe illness or death if he contracts COVID-19.

107. The Second Circuit recently found that “[c]ourts can and must help ensure that constitutional boundaries are not transgressed by considerations of expediency. At the same time, the careful balancing of needs and rights that such emergencies require is likely not best achieved by protracted and contentious litigation after the fact, and certainly not at the appellate level.” *Fed. Defenders of N.Y. v. Fed. Bureau of Prisons*, 2020 WL 1320886, at \*12 (2d Cir. Mar. 20, 2020).

108. In the face of this great threat, social distancing and hygiene measures are Mr. Favi’s only defense against COVID-19. Those protective measures are exceedingly difficult, if not impossible, in the environment of an immigration detention center, where Mr. Favi shares toilets, sinks, and showers, eats in communal spaces, and is in close contact with the many other detainees and officers around him. These conditions pose even greater risk of infectious spread, and as a result, Mr. Favi faces unreasonable harm from continued detention.

109. Numerous courts have now ordered release of civil detainees like Mr. Favi in light of the threat of COVID-19. *See supra* ¶¶ 74–75.



**D. Statutory and Constitutional Limits for Immigration Detention.**

110. Respondents are detaining Mr. Favi under 8 U.S.C. § 1226(c), a mandatory detention statute. But despite the statute’s mandate, many courts have found that the mandatory detention statute “give[s] way” when an individual’s continued detention is in violation of the United States Constitution. *Malam v. Adducci, et al.*, No. 20-10829, 2020 WL 1672662, at \*13 (E.D. Mich. Apr. 5, 2020).

111. The Fifth Amendment to the U.S. Constitution provides limits on detention. As the Supreme Court has noted, “[i]t is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This fundamental due process protection applies to all noncitizens, even if they are removable or inadmissible. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious.”). Under these due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

112. Due process therefore requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotations omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 538.

113. Following *Zadvydas* and *Demore*, every circuit court to confront the issue has protected the due process rights of people detained in civil immigration detention by requiring a custody hearing for noncitizens subject to unreasonably prolonged detention pending removal proceedings. See *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199 (11th Cir. 2016); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

114. While the Seventh Circuit has not explicitly addressed the issue, the court has noted that “[i]t would be a considerable paradox to confer a constitutional or quasi-constitutional right to release on an alien ordered removed,” as required by *Zadvydas*, “but not on one who might have a good defense to removal.” *Hussain v. Mukasey*, 510 F.3d 739, 743 (7th Cir. 2007). In *Zadvydas*, the Supreme Court set constitutional time limits for the government’s detention of individuals with final orders of removal; *i.e.*, those for whom defenses to removal had been denied. See *id.*; see also 8 U.S.C. §§ 1231(a)(1) & 1231(a)(6) (governing the detention of individuals with final removal orders). In *Hussain*, the Court suggested that if a noncitizen with a final order of removal has a right to be free from prolonged detention, then so too must a noncitizen “before he is subjected to a final order of removal.” *Hussain*, 510 F.3d at 743.

115. In 2018, the Supreme Court considered a challenge to prolonged detention brought by two classes of noncitizens. The Court resolved that case on statutory grounds, holding that the Ninth Circuit erred by interpreting Sections 1226(c) and 1225(b) to require bond hearings as a matter of statutory construction. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). The Court remanded the case to the Ninth Circuit to address the constitutional questions because they were not addressed by the court below. *Id.* at 851. Upon then remanding the case to the district court,

the Ninth Circuit cast “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.”

*Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). The case is currently pending before the district court.

116. The answer to the question left open by the Supreme Court is: Yes, due process requires that the government provide bond hearings to noncitizens facing prolonged detention.

**E. Due Process Requires Bond Hearings.**

117. Numerous circuit and district courts, even after *Jennings*, have expressly found that the Constitution, at a minimum, requires bond hearings in cases of prolonged detention. *See, e.g., De Oliveira Viegas v. Green*, 370 F. Supp. 3d 443, 448-49 (D.N.J. 2019) (collecting cases); *Gonzalez v. Bonnar*, 2019 WL 330906 at \*3 (N.D. Cal. Jan. 25, 2019) (same). In fact, “[n]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019) (internal citations and quotations omitted).

118. The Supreme Court has suggested that detention becomes prolonged when it exceeds six months. *See Demore*, 538 U.S. at 529-30 (upholding only “brief” detentions under Section 1226(c), which last “roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal”); *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of detention for more than six months”).

119. The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). The Court has likewise recognized the need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (14 days for re-interrogation following invocation of Miranda rights); *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (48 hours for probable cause hearing).

120. Here, whether this Court employs a bright-line rule at six months or concludes that such analysis should be more individualized, Mr. Favi has faced prolonged detention: he has been detained for more than nine months and faces the prospect of many more months of detention during the pendency of his I-130 petition, which has been delayed due to COVID-19. *See, e.g., Glennis H. v. Rodriguez*, 2019 WL 2866069, at \*2 (D.N.J. July 2, 2019) (“Whether detention under § 1226(c) is constitutional continues to be a function of the length of the detention,’ whereby the constitutional case for continued detention without inquiry into its necessity becomes more and more suspect as detention continues. Thus, at some point, detention under § 1226(c), in an individual case, may become so unreasonable as to amount to an arbitrary deprivation of liberty in violation of the Due Process Clause.”) (internal citations and quotation marks omitted).

121. In addition to the amount of time the petitioner has spent in detention, courts weigh heavily whether he has a substantial defense to removal or claim for immigration benefits. *Gonzalez v. O’Connell*, 355 F.3d 1010, 1019–20 (7th Cir. 2004) (“A wholly different [habeas] case arises when a detainee who has a good-faith challenge to his deportability is mandatorily detained under § 1226(c)” as opposed to one with a meritless case); *Vargas v. Beth*, 378 F. Supp.

3d 716, 728 (E.D. Wis. 2019) (granting habeas petition where petitioner “asserted a colorable defense to his removal”).

122. Courts consider the following additional factors: (1) how long the detention will likely continue in the absence of judicial relief; (2) the nature and extent of removal proceedings, including whether any delays are attributable to the government or the immigrant; and (3) the conditions of detention.

123. Recently, a district court granted two habeas corpus petitions in immigration cases after weighing the factors discussed above. *See Doe v. Beth*, 2019 WL 1923867, at \*4 (E.D. Wis. Apr. 30, 2019); *Vargas*, 2019 WL 1320330, at \*8. In *Doe*, the Court held that ICE had unconstitutionally prolonged Petitioner’s detention following the circuit court’s third remand to the BIA. “[A]t some point the continuation of the proceeding may as a practical matter approach the indefinite mark that has mandated a bail hearing in so many other cases. We have reached that point here.” *Doe*, 2019 WL 1923867, at \*4. In *Vargas*, the Court granted the habeas petition where petitioner presented a colorable claim regarding the applicability of his criminal sentence to immigration law, he spent no time in criminal incarceration, and his detention had exceeded nine months. 2019 WL 1320330, at \*8.

124. As to the conditions of detention, as discussed extensively above, the conditions of jail settings make detainees far more susceptible to COVID-19. Courts also look at “whether the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention,” *Sajous v. Decker*, 2018 WL 2357266, at \*11 (S.D.N.Y. May 23, 2018), often finding that where detainees are housed in county jails that detain both immigrants and pretrial male and female detainees in criminal custody, that factor weighs in favor of release. *Arana v. Barr*, 2020 WL 1659713, at \*4 (S.D.N.Y. Apr. 3, 2020).

**F. Immigration Bond Hearings Require Procedural Protections.**

125. At a bond hearing, due process requires certain minimal protections to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention; and if the government cannot meet its burden, the noncitizen's ability to pay a bond must be considered in determining the appropriate conditions of release.

126. To justify prolonged immigration detention, the government must bear the burden to prove by clear and convincing evidence that the noncitizen presents a danger or flight risk. *See, e.g., Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 775 (N.D. Cal. 2019) ("If due process requires a second bond hearing, the government would bear the burden to prove Petitioner's dangerousness by clear and convincing evidence at that hearing."); *Guerrero-Sanchez v. Warden of York Cty. Prison*, 905 F.3d 208, 224 n.12 (3d Cir. 2018).

127. Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the Government bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750 (1987) (upholding pretrial detention where there had been a "full-blown adversary hearing," requiring "clear and convincing evidence" and a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee).

128. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are

alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

129. Due process likewise requires consideration of a noncitizen’s ability to pay a bond. That is, the detention of an “indigent [person], whose appearance at trial could reasonably be assured by one of the alternate forms of release, . . . for inability to post money bail would constitute imposition of an excessive restraint.” *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5<sup>th</sup> Cir. 1978) (en banc); *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9<sup>th</sup> Cir. 2017) (concluding that due process likely requires “consideration of the detainees’ financial circumstances, as well as of possible alternative release conditions . . . to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring their appearance at future hearings”).

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Violation of Fifth Amendment Right to Substantive Due Process (Conditions of Confinement)**

130. Mr. Favi repeats and re-alleges the allegations contained in each preceding paragraph.

131. The Due Process Clauses of the Fifth and Fourteenth Amendments of the Constitution guarantee that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment or does not ensure those detainees’ safety and health.

132. Respondent’s conditions of confinement subject Mr. Favi to heightened risk of contracting COVID-19, for which there is no vaccine, known treatment, or cure. Mr. Favi risks serious illness and death if infected with COVID-19. Because of the conditions in the detention facilities, Mr. Favi is not able to take steps to protect himself—including social distancing, using

hand sanitizer, wearing personal protective equipment such as gloves and face masks, or disinfecting common surfaces. Respondent has not provided adequate protections to Mr. Favi, nor has Respondent advised Mr. Favi and other detainees at Jerome Combs about what steps they should be taking to protect themselves. Respondent is subjecting Mr. Favi to a substantial risk of serious harm, in violation of Mr. Favi's rights under the Due Process Clause.

133. As public health experts in correctional medical care and infectious disease agree, detained immigrants who are vulnerable to COVID-19 are at grave risk of severe illness and death.

134. For these reasons, Respondent's ongoing detention of Mr. Favi violates Due Process.

## COUNT II

### **Violation of Fifth Amendment Right to Substantive Due Process (Failure to Provide Adequate Medical Care)**

135. Mr. Favi repeats and re-alleges the allegations contained in each preceding paragraph.

136. The Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution guarantee immigrant detainees the right to be provided with adequate medical care. The government violates that guarantee where it is unable to provide adequate medical care during an outbreak of a contagious disease.

137. Mr. Favi's underlying medical conditions put him at a higher risk of suffering serious complications or death from COVID-19.

138. Respondent is aware of the serious risks of COVID-19 and yet has not taken any necessary or appropriate precautions to provide appropriate medical care to Mr. Favi. Respondent has not changed Mr. Favi's sleeping conditions, meal times, or any other aspect of Mr. Favi's daily schedule to permit him to maintain appropriate social distancing. Respondent has not provided Mr. Favi with face masks or gloves to protect himself, or with hand sanitizer or



sufficient cleaning agents in order to maintain appropriate levels of hygiene. Nor has the government been willing to release Mr. Favi so he can provide for his medical needs on his own. The medical care provided by Respondent is objectively unreasonable under the circumstances.

### COUNT III

#### **Violation Of Fifth Amendment Procedural Due Process As Applied To Mr. Favi Whose Detention Has Become Unconstitutionally Prolonged**

139. Mr. Favi repeats and re-alleges the allegations contained in each preceding paragraph.

140. Mr. Favi is entitled to procedural due process protections. Although the mandatory detention statute has been upheld against a statutory challenge, it may still be unconstitutional as applied to individuals whose detention has become unreasonably prolonged.

141. The removal process takes many months or years to conclude, particularly when the noncitizen has a viable claim for relief.

142. As applied to individuals with viable claims for relief, such as adjustment of status through a spouse, mandatory detention fails under *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976), which requires a court to weigh the individual's interest and the risk of erroneous deprivation of that interest against the government's interest. *See Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 474-75 (3rd Cir. 2015) (“[D]ue process requires us to recognize that, at a certain point—which may differ case by case—the burden to an alien's liberty outweighs a mere presumption that the alien will flee and/or is dangerous.”)

143. Here, Mr. Favi's interest is substantial—freedom from physical restraint is an interest that “lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

144. The government's interest in detaining noncitizens during deportation proceedings is to effectuate removal. As to noncitizens with viable legal defenses, this interest is diminished. In

Mr. Favi's case, for example, where his U.S. Citizen wife has filed an I-130 petition on his behalf, the likelihood that the government will be legally permitted to remove him is reduced.

Mr. Favi has every incentive to appear at his USCIS proceedings because it is likely that he will ultimately be granted lawful permanent residence (also known as a green card).

145. Mr. Favi was detained in June 2019. He has already been in detention for far longer than six months.

146. Absent judicial relief, Mr. Favi will likely spend significantly more time in detention. Mr. Favi's wife filed an I-130 Petition for Alien Relative on August 8, 2019. It was received by USCIS on August 9, 2019. Mr. Favi had an I-130 interview scheduled for March 23, 2020, but on March 20, 2020, USCIS suddenly postponed that interview to a date to be determined based on COVID-19. USCIS has announced that it is closed to in-person interviews until at least May 3, 2020. In light of the many interviews delayed due to COVID-19, it may take months or years for USCIS to address its growing backlog.

147. Mr. Favi's conditions of detention further render his confinement unreasonable. Due to the COVID-19 pandemic, the Facility has ceased all visitation. That means that Mr. Favi, who is a civil detainee, is unable to see his wife or children.

148. Mr. Favi's proceedings are unlikely to end in a removal order. Accordingly, his continued detention violates his due process rights.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Jerome Combs Detention Center is a congregate environment where the risk of the spread of COVID-19 is imminent and serious, Mr. Favi requests that the Court grant the following relief:

- a. Assume jurisdiction over this matter;

- b. Issue a Writ of Habeas Corpus and order Mr. Favi's immediate release, with appropriate precautionary public health measures, on the ground that his continued detention violates the Due Process Clause;
- c. Issue a declaration that Respondent's continued detention in civil immigration custody of individuals at increased risk for severe illness, including all people over fifty years old and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;
- d. Require ICE to release the individual facility plans mandated under its Detention Standards that address the management of infectious and communicable diseases;
- e. In the alternative, should the Court not grant immediate release, order a bond hearing within 7 days where the government bears the burden to prove flight risk and dangerousness; Mr. Favi's ability to pay a bond is taken into consideration; and alternatives to detention are considered.
- f. Award Mr. Favi his 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;
- g. Grant such relief as this Court deems just and proper.

Dated: April 7, 2020

Delome Ostian Johannes Favi

By: /s/ Michaela Kabat  
One of His Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2020, I caused two copies of the foregoing document and accompanying exhibits to be served by first-class mail and email to:

**Chad Kolitwenzew**  
Chief of Corrections  
Jerome Combs Detention Center  
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/s/ Michaela Kabat  
Michaela Kabat

# EXHIBIT A

**DECLARATION OF DELOME OSTIAN JOHANNES FAVI**

I, Delome Ostian Johannes Favi, declare under penalty of perjury that the following is true and correct:

1. I am an adult over the age of 21. The facts set forth in this affidavit are known to me personally, and I could competently testify to those facts were I called as a witness in this case.
2. I am the Petitioner in this action.
3. My United States Citizenship and Immigration Services (“USCIS”) A-number is [REDACTED] [REDACTED]087.
4. I am currently detained at Jerome Combs Detention Center (“Jerome Combs” or “the Facility”) in Kankakee, Illinois, located at 3050 Justice Way, Kankakee, IL 60901. I have been detained at the Facility since June 7, 2019.
5. I have lived in the United States since 2013. I am married to a United States citizen and we have two children together. Our daughter is a year and a half and our son is four months old (born on November 20, 2019). We are also raising my five-year-old daughter from a previous relationship, [REDACTED] We are the primary caretakers for my daughter.
6. My wife and I submitted an I-130 application in August 2019. If USCIS approves the I-130 application, I will be permitted to remain in the United States and get a Permanent Resident Card (also called a Green Card). USCIS scheduled the I-130 interview for March 23, 2020. On or about March 20, 2020, USCIS cancelled my interview due to

the recent coronavirus pandemic crisis. USCIS has not yet rescheduled the interview and will notify me regarding the new appointment.

7. I am concerned about the possibility of contracting the coronavirus COVID-19 at Jerome Combs.
8. I have underlying medical conditions, including respiratory issues. In 2007, I contracted pneumonia and was hospitalized at a clinic for approximately six months. I suffered high fevers and difficulties breathing. At the time of my hospitalization, I was told that the X-ray revealed that my right lung was barely functioning.
9. My lungs are not as strong as they were before I had pneumonia. When I breathe deeply, I can feel the difference. I cannot hold my breath as long as I could before, for example.
10. I also have a chronic sinus condition. The ventilation system in our shower area at the Facility is broken and there is a significant amount of fungus as a result. Due to the humidity levels, the fungus, and the lack of ventilation in the Facility, my sinuses are frequently congested and I struggle to breathe at night. I have been prescribed a strong nasal spray that I use twice daily. I have also been given Benadryl to treat allergies.
11. My blood pressure was taken several times in March, most recently on March 24, 2020. Even though I do not have a history of high blood pressure, I was informed that I now have high blood pressure. I have not been prescribed any blood pressure medications.
12. The Facility has not informed us about the COVID-19 pandemic. Instead, we have learned about it from the television and from our families. I am very frightened about



the possibility that the virus will spread here, particularly because of my history of respiratory issues.

13. The Facility has not given us any instructions on how to prevent the spread of the virus.

They have not instructed detainees to maintain social distance, to wash their hands frequently, or to avoid touching their faces. They have not distributed gloves, masks, or hand sanitizer.

14. The staff do not maintain social distance from the detainees. They come close to us to speak to us.

15. Some of the staff are coughing.

16. I have only seen one staff person wear a mask. Some of the staff have started wearing gloves, but not all of them.

17. Many of the detainees are coughing right now, too.

18. I live in close proximity to the other detainees. I am housed in open dorms in a block that currently holds 40 people and can hold up to 48 people. The open dorm is split into 12 cubicles with dividers. There are no doors. My cubicle has four people. We share one toilet and sink.

19. The sinks in the cubicles in my unit all have various problems. For example, the sink in my cubicle only has cold water; another cubicle's sink only has hot water; and a third has very little water pressure. This makes it more challenging for detainees in my unit to wash their hands well.

20. There is no way to maintain social distance from the other detainees. I sleep in a bunk bed and another person sleeps one meter above me; the other beds are three meters away.
21. Everyone on my block touches the same items. We use the same phone to call our families and the same computer kiosk to file grievances. The entire Facility shares one set of hair clippers.
22. Everyone lines up close together to receive meals. I have a job where I am responsible for distributing the meals on my block, so I am forced to interact with everyone. We then sit together at tables. The seats are close together, just like at a restaurant or a food court.
23. We are responsible for cleaning our living areas with the limited cleaning supplies we are provided by the Facility. We all share the same cleaning supplies. It is only possible to clean the shower area once a week, for example.
24. In the past two weeks, I have noticed the staff using a spray bottle and wipes to clean the areas that they are touching. They do not clean the other areas.
25. There are limited medical facilities at the Facility. There is only one part-time doctor. While there is typically a nurse present, we only have access to the nurse at certain times of day.
26. I am scared of the possibility that I will get COVID-19. I wash my hands constantly, but we are all close together and touching the same items.
27. I am also very concerned about my family's health. While I am very proud of how my wife is managing things while I am gone, I know it is difficult for her to maintain social distance while supporting a family of three small children by herself.

28. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

29. I want to return home to my family and help keep them safe.

30. I am very careful about cleanliness. If I were home, I would be the one who would go out and get groceries and needed supplies. [REDACTED]  
[REDACTED]

31. If I were home, I would try my best to keep my family as safe as possible.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

07/02/2020  
Date

Delome FAVI  
Delome Ostian Johannes Favi

# EXHIBIT B



4. I submit this affidavit in support of any defendant seeking release from custody during the COVID-19 pandemic, so long as such release does not jeopardize public safety and the inmate can be released to a residence in which the inmate can comply with CDC social distancing guidelines. The statements in this affidavit are based only on the current state of emergency and the circumstances described below.

**The Risk of Infection and Accelerated Transmission of COVID-19 within Jails and Prisons is Extraordinarily High.**

5. Prisons and jails are not actually isolated from our communities: hundreds of thousands of correctional officers and correctional healthcare workers enter these facilities every day, returning to their families and to our communities at the end of their shifts, bringing back and forth to their families and neighbors and to incarcerated patients any exposures they have had during the day. Access to testing for correctional staff has been “extremely limited,” guards have reported a “short supply” of protective equipment, and prisons are not routinely or consistently screening correctional officers for symptoms.<sup>1</sup>

6. The risk of exposure is particularly acute in pre-trial facilities where the inmate populations shift frequently.<sup>2</sup> For example, despite the federal government’s guidance to stay

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<sup>1</sup> Keegan Hamilton, *Sick Staff, Inmate Transfers, and No Tests: How the U.S. Is Failing Federal Inmates as Coronavirus Hits*, Vice (Mar. 24, 2020), [https://www.vice.com/en\\_ca/article/jge4vg/sick-staff-inmate-transfers-and-no-tests-how-the-us-is-failing-federal-inmates-as-coronavirus-hits](https://www.vice.com/en_ca/article/jge4vg/sick-staff-inmate-transfers-and-no-tests-how-the-us-is-failing-federal-inmates-as-coronavirus-hits).

*See also* Daniel A. Gross, “*It Spreads Like Wildfire*”: *The Coronavirus Comes to New York’s Prisons*, The New Yorker (Mar. 24, 2020), <https://www.newyorker.com/news/news-desk/it-spreads-like-wildfire-covid-19-comes-to-new-yorks-prisons>; Josiah Bates, ‘*We Feel Like All of Us Are Gonna Get Corona.*’ *Anticipating COVID-19 Outbreaks, Rikers Island Offers Warning for U.S. Jails, Prisons*, Time (Mar. 24, 2020), <https://time.com/5808020/rikers-island-coronavirus/>; Sadie, Gurman, *Bureau of Prisons Imposes 14-Day Quarantine to Contain Coronavirus*, WSJ (Mar. 24, 2020), <https://www.wsj.com/articles/bureau-of-prisons-imposes-14-day-quarantine-to-contain-coronavirus-11585093075>; Cassidy McDonald, *Federal Prison Workers Say Conflicting Orders on Coronavirus Response Is Putting Lives at Risk*, CBS News (Mar. 19, 2020), <https://www.cbsnews.com/news/coronavirus-prison-federal-employees-say-conflicting-orders-putting-lives-at-risk-2020-03-19/>.

<sup>2</sup> Emma Grey Ellis, *Covid-19 Poses a Heightened Threat in Jails and Prisons*, Wired (Mar. 24, 2020), <https://www.wired.com/story/coronavirus-covid-19-jails-prisons/>.

inside and many states' stay-in-place orders, many prosecutors are still arresting individuals and seeking detention.<sup>3</sup> Pre-trial detention facilities are still accepting new inmates who are coming from communities where COVID-19 infection is rampant. As of today's date, the Bureau of Prisons is still moving inmates from facility to facility, including prisoners in New York.<sup>4</sup>

7. Because inmates live in close quarters, there is an extraordinarily high risk of accelerated transmission of COVID-19 within jails and prisons. Inmates share small cells, eat together and use the same bathrooms and sinks. They eat together at small tables that are cleaned only irregularly. Some are not given tissues or sufficient hygiene supplies.<sup>5</sup> Effective social distancing in most facilities is virtually impossible, and crowding problems are often compounded by inadequate sanitation, such as a lack of hand sanitizer or sufficient opportunities to wash hands.<sup>6</sup>

**Inmate Populations Also Have the Highest Risk of Acute Illness and Poor Health Outcomes if Infected with COVID-19.**

8. There are more than 2.3 million people incarcerated in the United States<sup>7</sup>

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<sup>3</sup> Stephen Rex Brown, *'Business as Usual' For Federal Prosecutors Despite Coronavirus, Nadler Writes, Calling for Release of Inmates*, N.Y. Daily News (Mar. 20, 2020), <https://www.nydailynews.com/new-york/ny-nadler-doj-inmates-20200320-d6hbdjcu5aitppi3ui2xz7tjy-story.html>.

<sup>4</sup> Courtney Bubl , *Lawmakers, Union Urge Halt to All Prison Inmate Transfers*, Government Executive (Mar. 25, 2020), <https://www.govexec.com/management/2020/03/lawmakers-union-urge-halt-all-prison-inmate-transfers/164104/>; Hamilton, *Sick Staff, Inmate Transfers*; Luke Barr, *Despite Coronavirus Warnings, Federal Bureau of Prisons Still Transporting Inmates*, ABC News (Mar. 23, 2020), <https://abcnews.go.com/Health/warnings-bureau-prisons-transporting-inmates-sources/story?id=69747416>.

<sup>5</sup> Justine van der Leun, *The Incarcerated Person Who Knows How Bad It Can Get*, Medium (Mar. 19, 2020), <https://gen.medium.com/what-its-like-to-be-in-prison-during-the-coronavirus-pandemic-1e770d0ca3c5> ("If you don't have money, you don't have soap or tissues."); Keri Blakinger and Beth Schwartzapfel, *How Can Prisons Contain Coronavirus When Purrell Is a Contraband?*, ABA Journal (Mar. 13, 2020), <https://www.abajournal.com/news/article/when-purrell-is-contraband-how-can-prisons-contain-coronavirus>.

<sup>6</sup> Rosa Schwartzburg, *The Only Plan the Prison Has Is to Leave Us To Die in Our Beds*, The Nation (Mar. 25, 2020), <https://www.thenation.com/article/society/coronavirus-jails-mdc/>.

<sup>7</sup> Kimberly Kindy et al., *'Disaster Waiting to Happen': Thousands of Inmates Released as Jails and Prisons Face Coronavirus Threat*, Washington Post (Mar. 25, 2020), [https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc\\_story.html](https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html).



approximately 16% of whom are age 50 or older.<sup>8</sup> The risk of coronavirus to incarcerated seniors is high. “Their advanced age, coupled with the challenges of practicing even the most basic disease prevention measures in prison, is a potentially lethal combination.”<sup>9</sup> To make matters worse, correctional facilities are often ill-equipped to care for aging prisoners, who are more likely to suffer from chronic health conditions than the general public.

9. An estimated 39-43% of all prisoners, and over 70% of older prisoners, have at least one chronic condition, some of the most common of which are diabetes, hypertension, and heart problems.<sup>10</sup> According to the CDC, each of these conditions—as well as chronic bronchitis, emphysema, heart failure, blood disorders, chronic kidney disease, chronic liver disease, any condition or treatment that weakens the immune response, current or recent pregnancy in the last two weeks, inherited metabolic disorders and mitochondrial disorders, heart disease, lung disease, and certain neurological and neurologic and neurodevelopment conditions<sup>11</sup>—puts them at a “high-risk for severe illness from COVID-19.”<sup>12</sup>

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<sup>8</sup> Brie Williams *et al.*, *Strategies to Optimize the Use of Compassionate Release from US Prisons*, 110 AJPH S1, S28 (2020), available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305434>; Kimberly A. Skarupski, *The Health of America’s Aging Prison Population*, 40 *Epidemiologic Rev.* 157, 157 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5982810/>.

<sup>9</sup> Weihua Li and Nicole Lewis, *This Chart Shows Why the Prison Population is So Vulnerable to COVID-19*, The Marshall Project (Mar. 19, 2020), <https://www.themarshallproject.org/2020/03/19/this-chart-shows-why-the-prison-population-is-so-vulnerable-to-covid-19>.

<sup>10</sup> Brie A. Williams *et al.*, *How Health Care Reform Can Transform the Health of Criminal Justice-Involved Individuals*, 33 *Health Affairs* 462-67 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4034754/>; Brie A. Williams *et al.*, *Coming Home: Health Status and Homelessness Risk of Older Pre-release Prisoners*, 25 *J. Gen. Internal Med.* 1038-44 (2010), available at <https://link.springer.com/content/pdf/10.1007/s11606-010-1416-8.pdf>; Laura M. Maruschak *et al.*, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Dept of Justice (Oct. 4, 2016), at 5, available at <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>.

<sup>11</sup> Harvard Health Publishing, *Coronavirus Research Center*, Harvard Medical School (Mar. 25, 2020), <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>.

<sup>12</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019: People Who Are at Higher Risk*, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html> (last updated Mar. 22, 2020).

10. However, even many young federal prisoners suffer from asthma, rendering them also very vulnerable to coronavirus.<sup>13</sup>

11. But it is not only the elderly, or those with preexisting medical conditions that are at risk of coronavirus in a correctional setting. As of March 23, 2020, New York City reported that “[p]eople ranging in ages from 18 to 44 have accounted for 46 percent of positive tests.”<sup>14</sup> Across the United States, 38% of those hospitalized are between the ages of 20 and 54 and 12% of the intensive care patients are between 20 and 44.<sup>15</sup>

12. This data is of particular concern for inmate populations, since prisoners’ physiological age *averages 10 to 15 years older* than their chronological age.<sup>16</sup> Therefore, the consensus of those who study correctional health is that inmates are considered “geriatric, by the age of 50 or 55 years.”<sup>17</sup> It is not clear that prison health care administrations are taking accelerated ageing into account when determining the eligibility criteria for age-related screening tools and medical care protocols for coronavirus, potentially leaving large swathes of the prison population at risk.<sup>18</sup>

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<sup>13</sup> Laura Maruschak, *Medical Problems of Jail Inmates*, Dep’t of Justice (Nov. 2006), at p. 2, available at <https://www.bjs.gov/content/pub/pdf/mpji.pdf>.

<sup>14</sup> Kimiko de Freytas-Tamura, *20-Somethings Now Realizing That They Can Get Coronavirus, Too*, N.Y. Times (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/nyregion/nyc-coronavirus-young.html>.

<sup>15</sup> *Id.*

<sup>16</sup> Brie A. Williams *et al.*, *Aging in Correctional Custody: Setting a Policy Agenda for Older Prisoner Health Care*, 102 Am. J. Public Health 1475-81 (2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3464842/>; see also Brie Williams *et al.*, *Detained and Distressed: Persistent Distressing Symptoms in a Population of Older Jail Inmates*, 64 J. Am. Geriatrics Soc. 2349-55 (2016), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/jgs.14310> (“For example, older jail inmates with an average age of 60 in this study reported poor or fair health [and] chronic lung disease . . . at rates similar to those reported by community-based lower income older adults with an average age of 72.”).

<sup>17</sup> Brie A. Williams *et al.*, *The Older Prisoner and Complex Chronic Medical Care* 165-70 in World Health Organization, *Prisons and Health* (2014), <https://pdfs.semanticscholar.org/64aa/10d3cff6800ed42dd152fcf4e13440b6f139.pdf>.

13. In one study, we found that inmates who died in hospitals were, on average, nearly two decades younger than non-incarcerated decedents, had significantly shorter hospitalizations, and had higher rates of several chronic conditions including cancer, liver disease and/or hepatitis, mental health conditions, and HIV/AIDS.”<sup>19</sup>

### **The Entire Community is at Risk If Prison Populations Are Not Reduced**

14. As the World Health Organization has warned, prisons around the world can expect “huge mortality rates” from Covid-19 unless they take immediate action including screening for the disease.<sup>20</sup>

15. As of March 24, 2020, at least 38 people involved in the New York City correctional system have tested positive for Covid-19.<sup>21</sup> Already, three inmates and three staff at federal correctional facilities across the United States have tested positive for the coronavirus, according to the Federal Bureau of Prisons.<sup>22</sup>

16. Jails and prisons are fundamentally ill-equipped to handle a pandemic.

17. Medical treatment capacity is not at the same level in a correctional setting as it is in a hospital. Some correctional facilities have no formal medical ward and no place to quarantine

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<sup>18</sup> Brie A. Williams *et al.*, *Differences Between Incarcerated and Non-Incarcerated Patients Who Die in Community Hospitals Highlight the Need For Palliative Care Services For Seriously Ill Prisoners in Correctional Facilities and in Community Hospitals: a Cross-Sectional Study*, 32 *J. Palliative Med.* 17-22 (2018), available at <https://journals.sagepub.com/doi/pdf/10.1177/0269216317731547>.

<sup>19</sup> *Id.* at 20.

<sup>20</sup> Hannah Summers, ‘Everyone Will Be Contaminated’: Prisons Face Strict Coronavirus Controls, *The Guardian* (Mar. 23, 2020), <https://www.theguardian.com/global-development/2020/mar/23/everyone-will-be-contaminated-prisons-face-strict-coronavirus-controls>.

<sup>21</sup> Ellis, *Covid-19 Poses a Heightened Threat in Jails and Prisons*.

<sup>22</sup> Ryan Lucas, *As COVID-19 Spreads, Calls Grow to Protect Inmates in Federal Prisons*, NPR (Mar. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/24/820618140/as-covid-19-spreads-calls-grow-to-protect-inmates-in-federal-prisons>.

sick inmates, other than the facilities' Special Housing Unit (SHU).<sup>23</sup> While the cells in the SHU have solid doors to minimize the threat of viral spread in otherwise overcrowded facilities, they rarely have intercoms or other ways for sick inmates to contact officers in an emergency.<sup>24</sup> This is particularly dangerous for those with COVID-19 infection since many patients with COVID-19 descend suddenly and rapidly into respiratory distress.<sup>25</sup>

18. Even those facilities that do have healthcare centers can only treat relatively mild types of respiratory problems for a very limited number of people.<sup>26</sup> This means that people who become seriously ill while in prisons and jails will be transferred to community hospitals for care. At present, access to palliative care in prison is also limited.

19. Corrections officers may also be particularly vulnerable to coronavirus due to documented high rates of diabetes and heart disease.<sup>27</sup> Prison staff in Pennsylvania, Michigan, New York and Washington state have tested positive for the virus, resulting in inmate quarantines. In Washington, D.C., a U.S. marshal who works in proximity to new arrestees tested positive for the virus, meaning dozens of defendants headed for jail could have been exposed.<sup>28</sup> In New York,

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<sup>23</sup> MCC New York COVID 19 Policy Memo, Mar. 19, 2020, <https://www.documentcloud.org/documents/6818073-MCC-New-York-COVID-19-Policy-Memo.html>; Danielle Ivory, *'We Are Not a Hospital': A Prison Braces for the Coronavirus*, N.Y. Times (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html>.

<sup>24</sup> Brie Williams *et al.*, *Correctional Facilities in the Shadow of COVID-19: Unique Challenges and Proposed Solutions*, Health Affairs (Mar. 26, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>.

<sup>25</sup> Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure From COVID-19—Even in His Young Patients*, ProPublica (Mar. 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients>.

<sup>26</sup> Ellis, *Covid-19 Poses a Heightened Threat in Jails and Prisons*; Li and Lewis, *This Chart Shows Why the Prison Population is So Vulnerable to COVID-19*.

<sup>27</sup> Brie Williams, *Role of US-Norway Exchange in Placing Health and Well-Being at the Center of US Prison Reform*, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305444> (published Jan. 22, 2020).

<sup>28</sup> Zusha Elinson and Deanna Paul, *Jails Release Prisoners, Fearing Coronavirus Outbreak*, WSJ (Mar. 22, 2020), <https://www.wsj.com/articles/jails-release-prisoners-fearing-coronavirus-outbreak-11584885600> (“We’re all headed for some dire consequences,” said Daniel Vasquez, a former warden of San Quentin and Soledad state prisons in

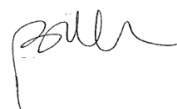
236 members of the New York Police Department have tested positive for coronavirus and 3,200 employees are sick, triple the normal sick rate.<sup>29</sup> Two federal prison staffers have also tested positive.<sup>30</sup>

20. For this reason, correctional health is public health. Decreasing risk in prisons and jails decreases risk to our communities.

21. Reducing the overall population within correctional facilities will also help medical professionals spread their clinical care services throughout the remaining population more efficiently. With a smaller population to manage and care for, healthcare and correctional leadership will be better able to institute shelter in place and quarantine protocols for those who remain. This will serve to protect the health of both inmates as well as correctional and healthcare staff.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: San Francisco, California  
March 27, 2020



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Dr. Brie Williams

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California. “They’re in such close quarters—some double- and triple-celled—I think it’s going to be impossible to stop it from spreading.”).

<sup>29</sup> Erin Durkin, *Thousands of NYPD Officers Out Sick Amid Coronavirus Crisis*, Politico (Mar. 25, 2020), <https://www.politico.com/states/new-york/albany/story/2020/03/25/thousands-of-nypd-officers-out-sick-amid-coronavirus-crisis-1268960>.

<sup>30</sup> Elinson and Paul, *Jails Release Prisoners, Fearing Coronavirus Outbreak*.

# EXHIBIT C



March 25, 2020

VIA FED EX AND EMAIL

Field Office Director Robert Guadian  
Assistant Field Officer Sandra Salazar  
Department of Homeland Security  
Immigration & Customs Enforcement  
536 S. Clark Street, Fourth Floor  
Chicago, Illinois 60605

Sent via email to:



on behalf of Director Guadian

**Re: REQUEST FOR PAROLE OR RELEASE ON RECOGNIZANCE  
(Multiple Individuals)**

Dear Director Guadian and Assistant Director Salazar:

The National Immigrant Justice Center represents the following individuals in their removal proceedings, and writes this letter to request their release from custody based on the dangers they face in detention related to exposure to COVID-19.

These individuals face indefinite detention at a time when U.S. Immigration & Customs Enforcement is aware that confined settings increase the risk of transmission of COVID-19. Because of this risk, ICE has committed to exercising discretion in its detention and enforcement actions, in order to minimize the spread of COVID-19. On Wednesday March 18, 2020, ICE publicly stated that:

ICE Enforcement and Removal Operations (ERO) will focus enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds. For those individuals who do not fall into those categories, ERO will exercise discretion to delay enforcement actions until after the crisis or **utilize alternatives to detention, as appropriate.**

Ex. A, ICE Press Statement. While this statement was made in the context of enforcement actions, there is no rational or reasonable basis for refusing to apply the same logic to the individuals referenced below, many of whom already face prolonged detention.

Multiple medical experts have warned that ICE facilities are not equipped to handle a COVID-19 outbreak. Dr. Ranit Mishori, a senior medical advisor at Physicians for Human

Rights, has expressed deep concern about ICE’s ability to protect detained individuals, especially considering that the virus is twice as contagious as the seasonal flu, and detention centers have already experienced other severe disease outbreaks, including mumps and chickenpox.<sup>1</sup> Infectious disease specialist Dr. Carlos Franco-Paredes has pointed out that “the number of isolation rooms in a given detention facility is insufficient to comply with the recommended airborne/droplet isolation guidelines.” Ex. B, Letter from Dr. Carlos Franco-Paredes. Furthermore, doctors warn that “[a]s local hospital systems become overwhelmed by the patient flow from detention center outbreaks, precious health resources will be less available for people in the community.”<sup>2</sup> An outbreak within ICE detention would therefore not only affect immigrant detainees and detention center staff, but also community hospitals and those who rely on them.

Due to these risks, there has been overwhelming support from the medical community urging the release of detained immigrants. Doctors Josiah Rich, Mavis Nimoh, and Scott Allen (who is an expert consultant contracted by DHS) have all warned that “[u]nless government officials act now, the novel coronavirus will spread rapidly in our jails and prisons, endangering not only prisoners and corrections workers but the general public as well.”<sup>3</sup> Amnesty International USA, Doctors Without Borders USA, Human Rights First, Physicians for Human Rights, Refugees International, and Women’s Refugee Commission Public have released a joint statement noting that “health experts universally agree that limiting detention, not expanding it, is one of the most important steps authorities can take to combat the spread of COVID-19.”<sup>4</sup>

Beyond the medical community, individuals with extensive knowledge of the ICE detention system have warned about the risks that detention creates during the pandemic. John Sandweg, a former acting head of ICE, warned that “[t]he design of [ICE] facilities requires inmates to remain in close contact with one another—the opposite of the social distancing now recommended for stopping the spread of the lethal coronavirus.”<sup>5</sup> Sandweg

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<sup>1</sup> Ranit Mishori, “Risk behind bars: Coronavirus and immigration detention.” The Hill. (March 17, 2020) <https://thehill.com/opinion/immigration/487986-risk-behind-bars-coronavirus-and-immigration-detention>

<sup>2</sup> Catherine E. Shoichet, “Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE detention.” CNN. (March 20, 2020) <https://amp.cnn.com/cnn/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>

<sup>3</sup> Josiah Rich, Scott Allen and Mavis Nimoh. “We must release prisoners to lessen the spread of coronavirus.” The Washington Post. (March 17, 2020) <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus/>

<sup>4</sup> Amnesty International USA, Doctors Without Borders USA, Human Rights First, Physicians for Human Rights, Refugees International, and Women’s Refugee Commission. “Responding to the COVID-19 Crisis While Protecting Asylum Seekers.” (March 19, 2020) <https://docs.google.com/document/d/1beORFZsFhKgSd17qoOLkes9A0FeNCIyoGB5MiWOsBKU/edit>

<sup>5</sup> John Sandweg. “I Used to Run ICE. We Need to Release the Nonviolent Detainees.” The Atlantic. (March 22, 2020) <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>



advised that “ICE should try to shrink this down to only those individuals to whom they can credibly say pose a threat to public safety.”<sup>6</sup> More than 750 private entities wrote to ICE acting Director Matthew T. Albence urging release.<sup>7</sup>

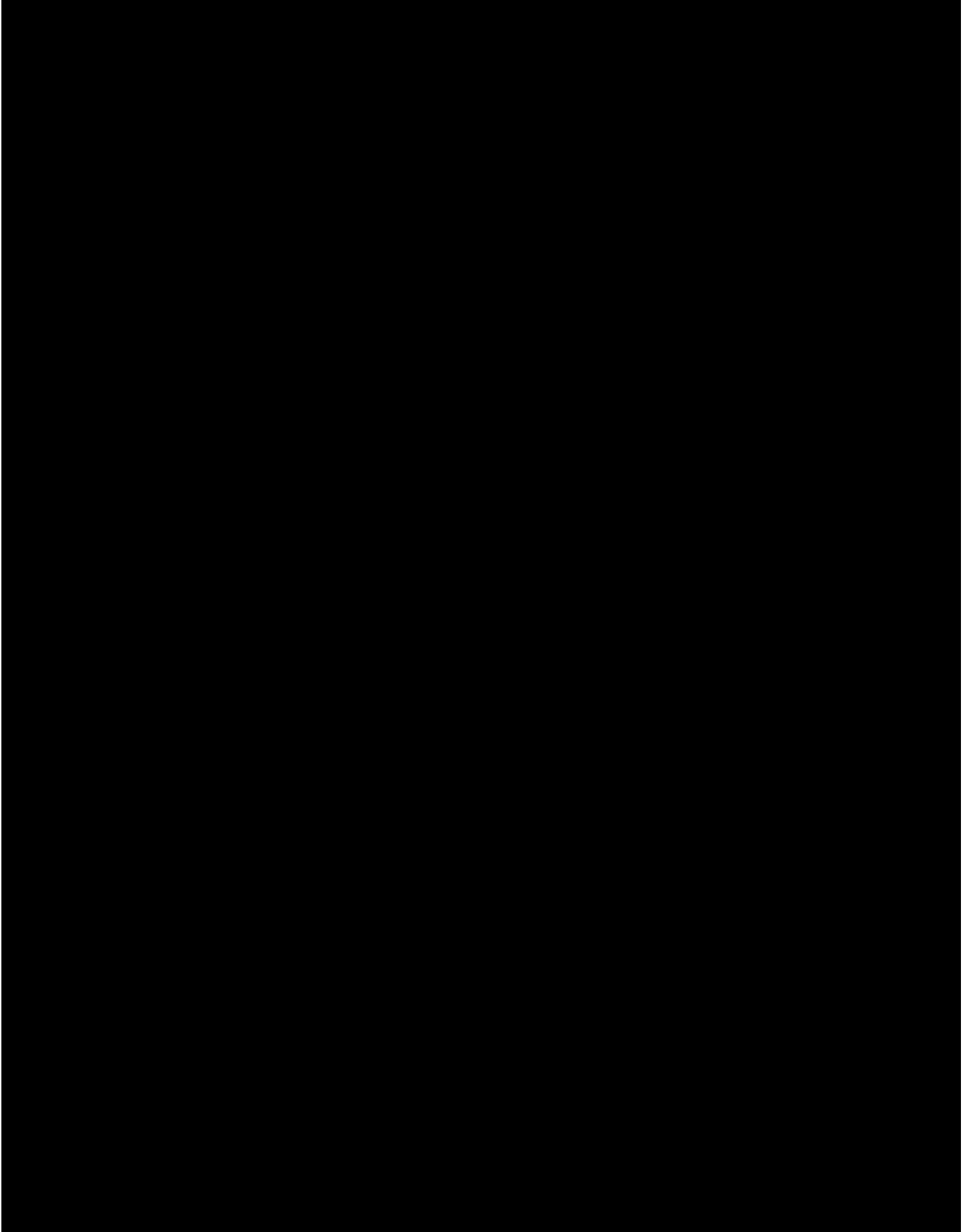
Given the overwhelming evidence that COVID-19 poses both humanitarian and public health risks, the individuals listed below should be released. Respondents are at greater risk of infection within ICE detention, and continued crowded detention exacerbates the risk to detention facility staff and their communities.

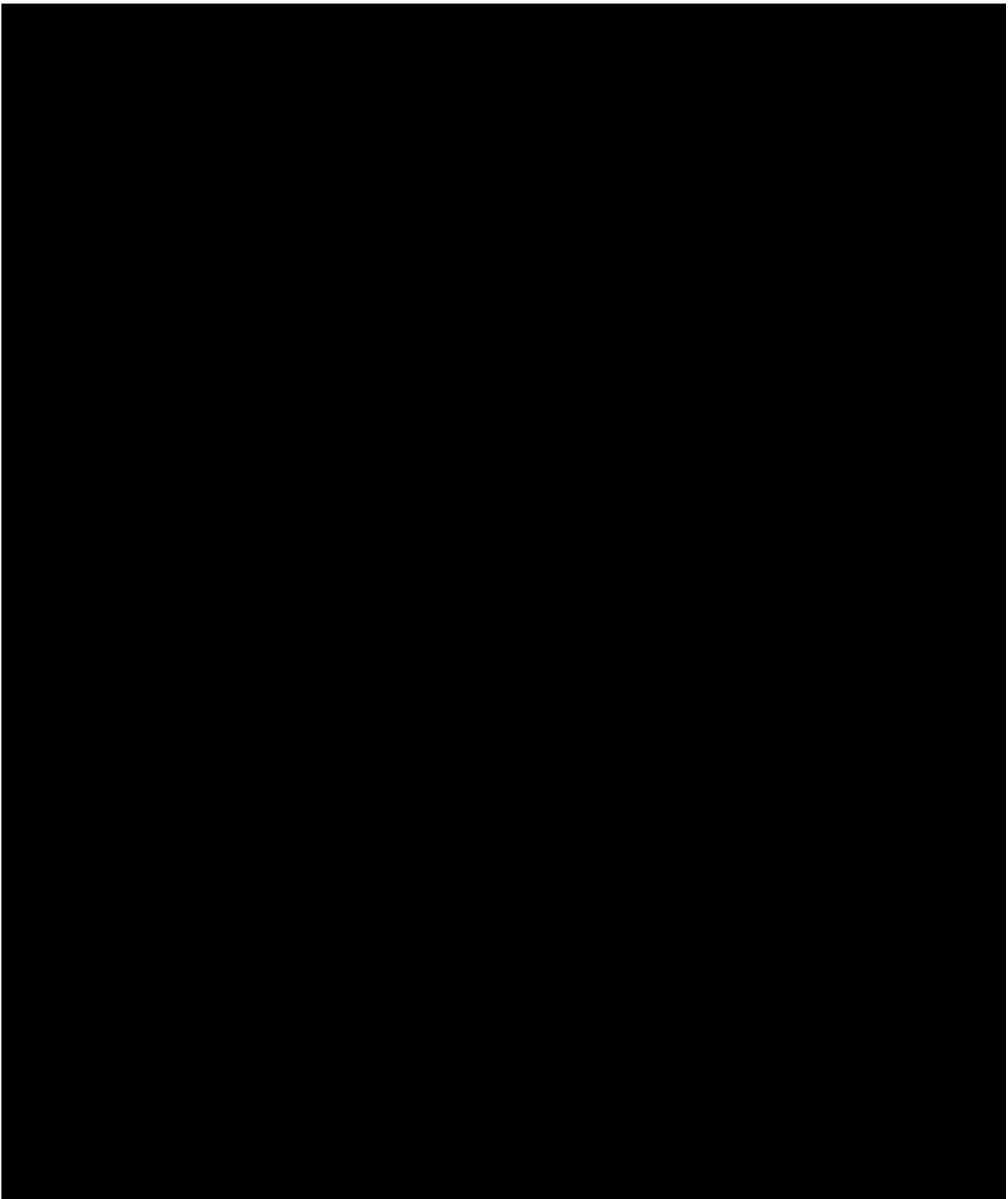
Your office has the authority to authorize such release. Section 212(d)(5)(A) of the INA allows DHS to parole an immigrant for urgent humanitarian reasons or significant public benefit. That parole authority aside, DHS further has discretion to release individuals on their own recognizance or on “conditional parole” under § 236(a), *see Rivera v. Holder*, 307 F.R.D. 539, 553 (W.D. Wash. 2015), or to impose an appropriate alternative to physical confinement through enrollment in the Intensive Supervision Appearance Program (ISAP). *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (explaining that the “Intensive Supervision Appearance Program . . . [has] resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). ICE should exercise this authority to release each of the following individuals.

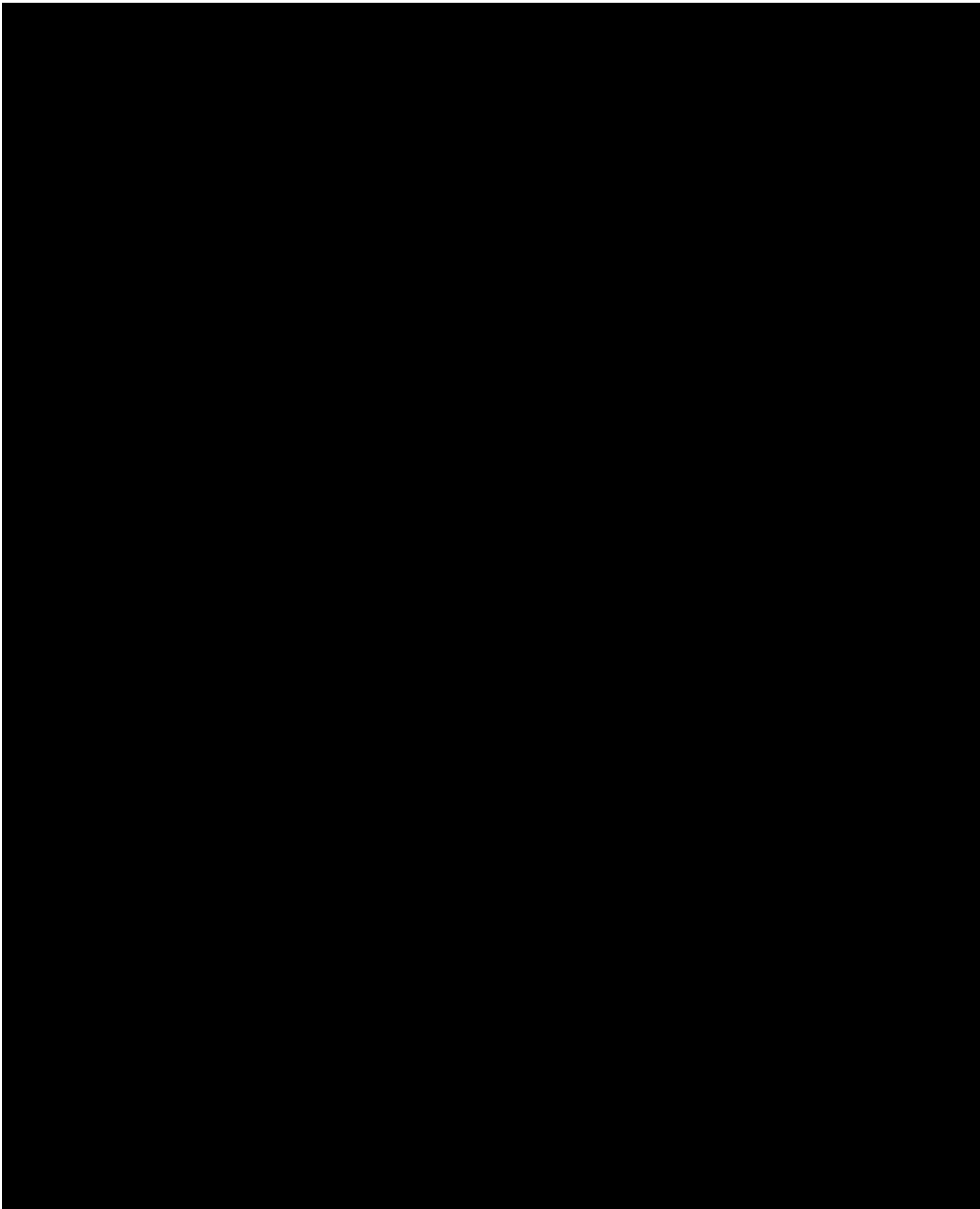
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<sup>6</sup> Camilo Montoya-Galvez. “Powder kegs’: Calls grow for ICE to release immigrants to avoid coronavirus outbreak.” CBS News. (March 19, 2020) <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>

<sup>7</sup> “Re: ICE’s response to COVID-19: Release all people and cease enforcement operations.” Detention Watch Network. (March 19, 2020) <https://www.detentionwatchnetwork.org/sites/default/files/ICE%20Response%20to%20Coronavirus%20for%20People%20Detained%20-%20Organizational%20Sign%20on%20Letter%20-%20Final.pdf>







8. Delome Ostian Johannes Favi, [REDACTED] 087

Delome Ostian Johannes Favi is a 32-year-old man from Benin. Mr. Favi has resided in the U.S. since 2013. He has been detained since June 2019 and is currently detained in Kankakee. Mr. Favi is seeking adjustment of status through his U.S. citizen wife, and his I-130 application was filed in August 2019. USCIS scheduled the I-130 interview for March 23, 2020, but this was cancelled due to the coronavirus pandemic and has yet to be rescheduled. Mr. Favi has three children, aged 5, 2, and 4 months old. His oldest child [REDACTED]

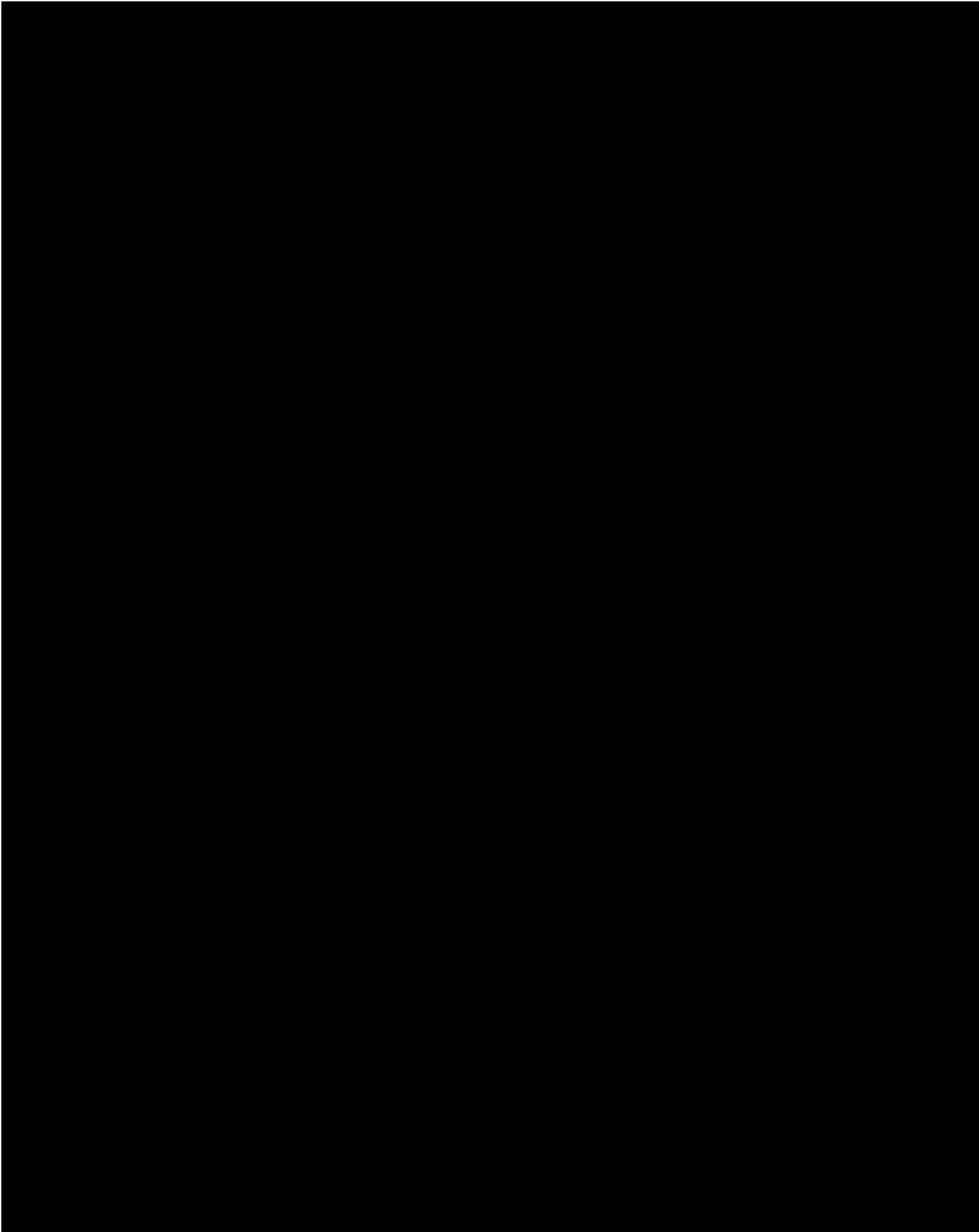
[REDACTED]

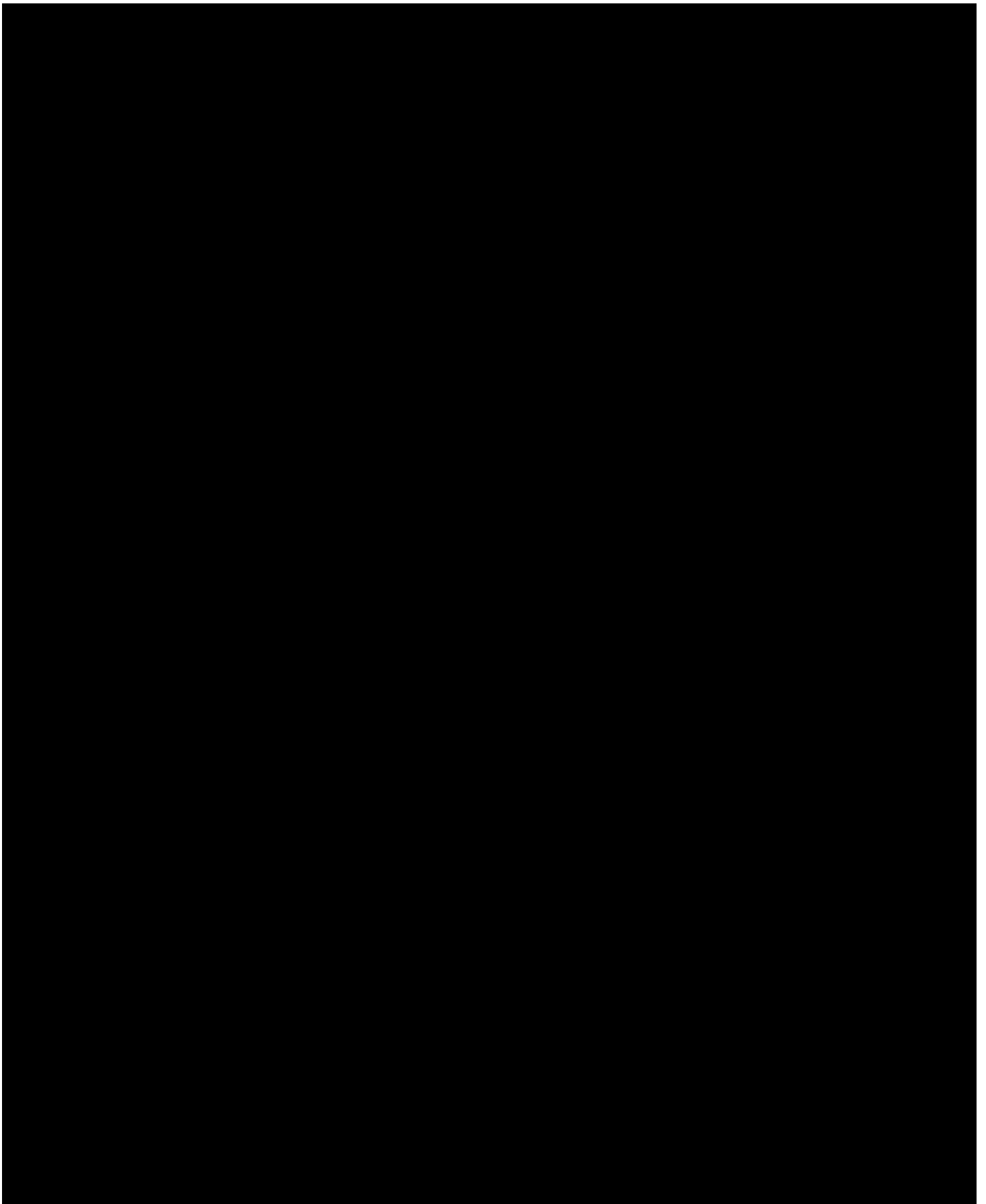
[REDACTED]

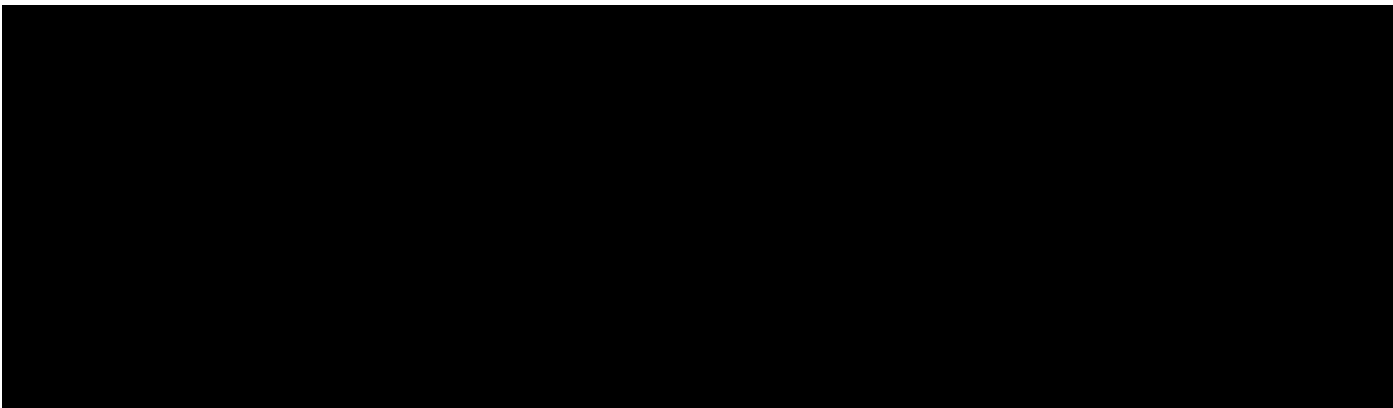
If released, Mr. Favi will live with his wife Ranetta Favi and his children at 3347 Heather Ridge Drive, Apt 101, Indianapolis, Indiana 46214.

With this request, undersigned has included a G-28 for David Faherty, also an attorney at the National Immigrant Justice Center and Respondent's primary counsel. Ex. P, G-28 of D. Faherty for Mr. Favi. We have also included Ms. Favi's statement in support of Mr. Favi's I-130, Ex. R, and medical records relating to [REDACTED] Mr. Favi's daughter. Ex. S.

[REDACTED]







If you would like further information, please do not hesitate to contact me. I look forward to hearing from you promptly, and thank you in advance for your assistance in this matter.

Sincerely,

Keren Zwick, Counsel for Respondents  
312.660.1364 (phone) | 312.660.1505 (fax)  
[kzwick@heartlandalliance.org](mailto:kzwick@heartlandalliance.org)

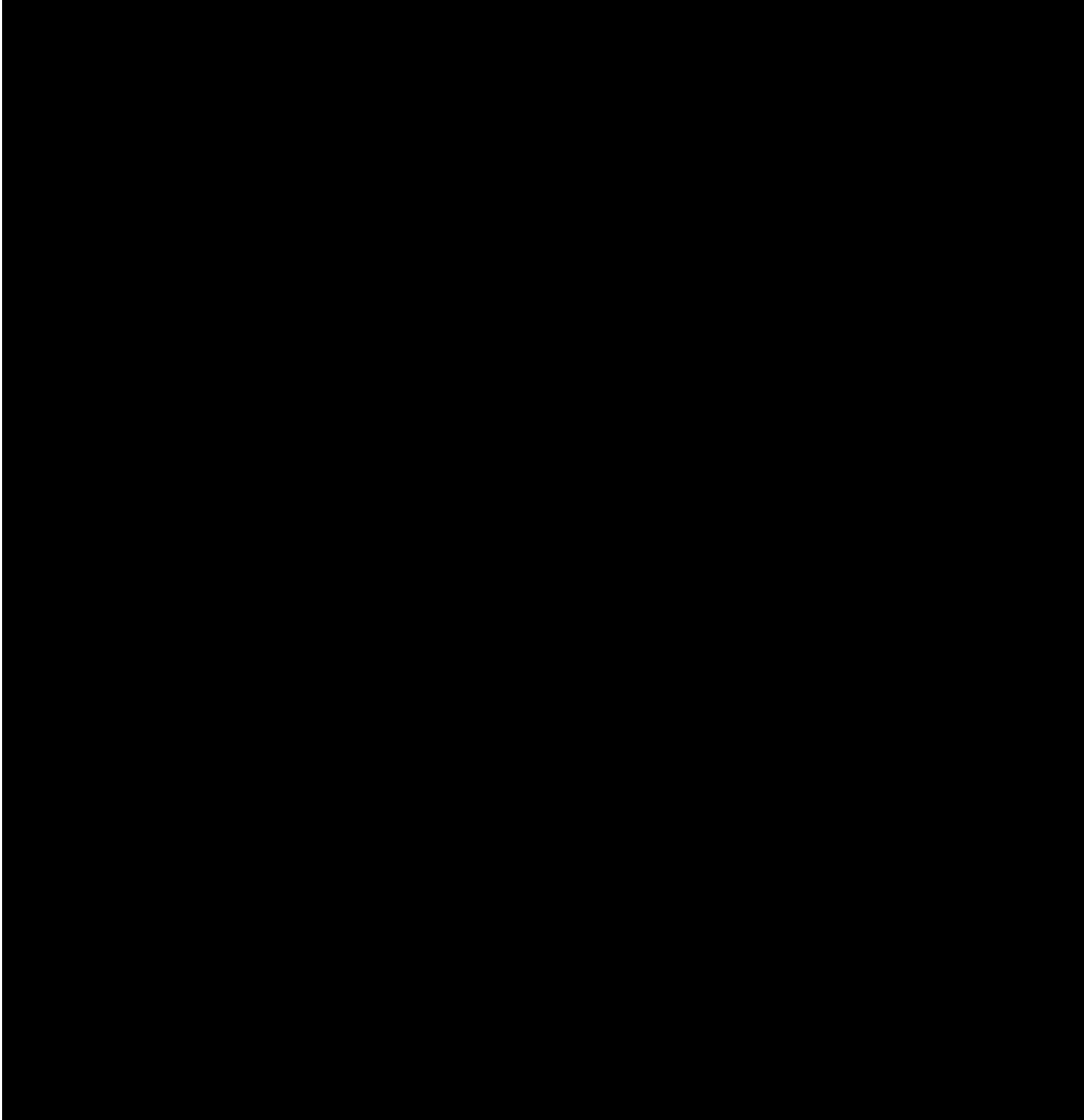
cc: Daniel Leibas [redacted]  
Brian Rathnow, [redacted]  
Lynette Sumait, [redacted]



**Index of Exhibits**

Ex. A, ICE Press Statement

Ex. B, Letter from Dr. Carlos Franco-Paredes

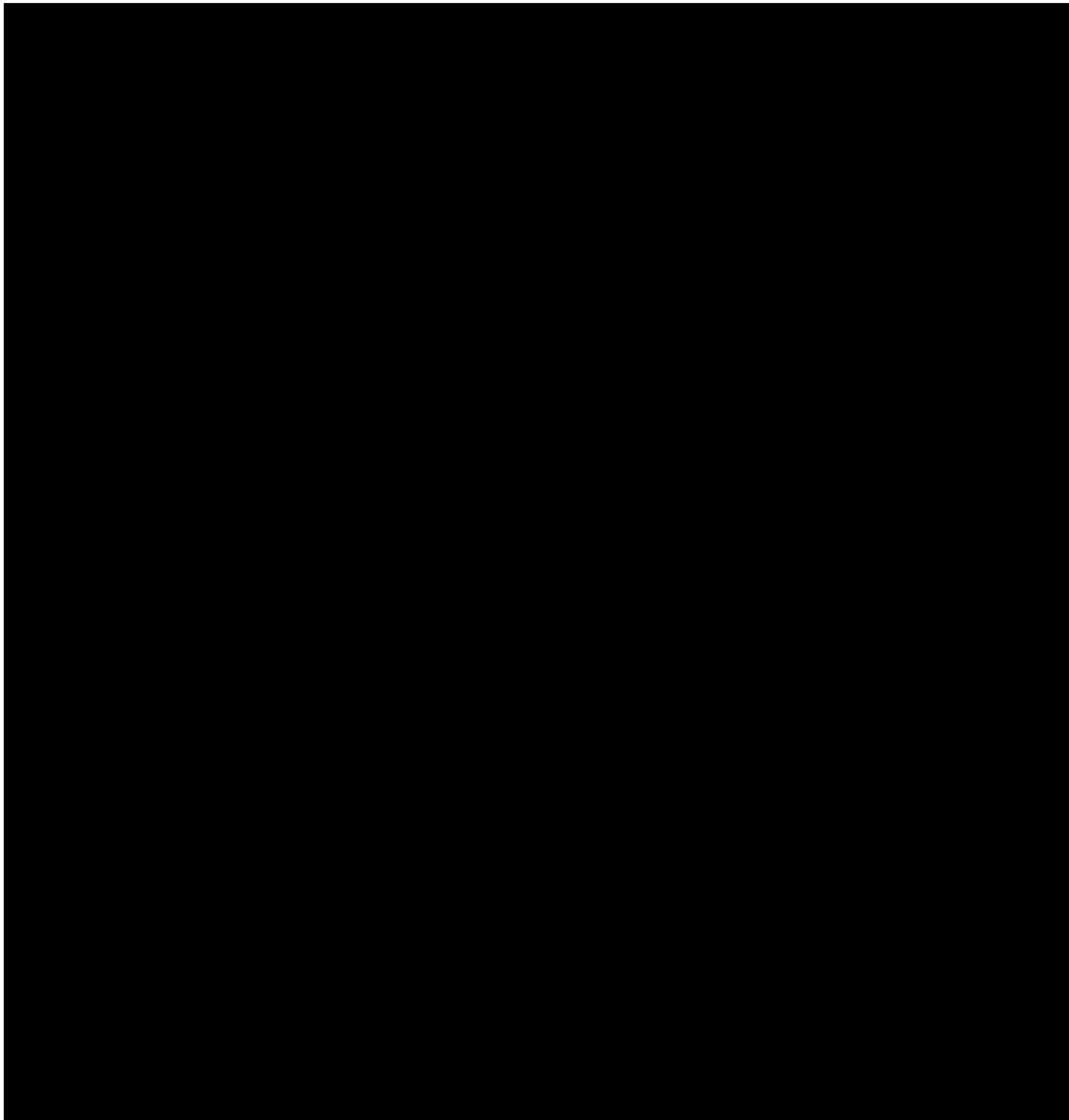


**Specific to Delome Ostian Johannes Favi, A 215 721 087**

Ex. Q, G-28 of D. Faherty for Mr. Favi

Ex. R, Ms. Favi’s statement in support of Mr. Favi’s I-130

Ex. S, Medical records relating to [REDACTED] Mr. Favi’s daughter



# EXHIBIT D

**Keren Zwick**

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**From:** Salazar, Sandra [REDACTED]  
**Sent:** Friday, April 3, 2020 10:49 AM  
**To:** Keren Zwick  
**Subject:** FW: Group Request For Release from Detention

Greetings,

Please contact the Dallas Field Office in regards to:

[REDACTED]

ICE ERO Chicago has reviewed the remaining 7 cases per your request for release. At this time, per service discretion, your parole requests on these remaining 7 cases are denied. The health and safety of our detainees remains of paramount importance. As an agency, we continue to evaluate our operational preparedness in an effort to reduce exposure, and protect the detained population.

Thank you,

Sandra Salazar  
Assistant Field Office Director  
U.S. Department Of Homeland Security  
101 W. Ida B. Wells Drive, Suite 4000  
Chicago, IL 60605

[REDACTED]



**Warning:** This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 522). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

---

**From:** Keren Zwick <KZwick@heartlandalliance.org>  
**Sent:** Friday, April 03, 2020 10:22 AM  
**To:** Salazar, Sandra [REDACTED]  
**Subject:** RE: Group Request For Release from Detention

Officer Salazar,

Thank you for your office's attention to our request for release of the 13 individuals mentioned below. Of the 13 people listed in our request:

[REDACTED]

[REDACTED]

We have not heard any word as to the remainder of our requests. If we do not hear from your office today, we will construe silence as denials of the remaining requests and proceed accordingly.

Keren

**From:** Salazar, Sandra [REDACTED]  
**Sent:** Thursday, March 26, 2020 4:33 PM  
**To:** Keren Zwick <[KZwick@heartlandalliance.org](mailto:KZwick@heartlandalliance.org)>  
**Subject:** Group Request For Release from Detention

Good afternoon,

Please allow me some time to review your request.

Respectfully,

Sandra Salazar  
Assistant Field Office Director  
U.S. Department Of Homeland Security  
101 W. Ida B. Wells Drive, Suite 4000  
Chicago, IL 60605

[REDACTED]



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**From:** Keren Zwick <[KZwick@heartlandalliance.org](mailto:KZwick@heartlandalliance.org)>  
**Sent:** Wednesday, March 25, 2020 7:11 PM  
**To:** Walters, Manda [REDACTED]; Salazar, Sandra [REDACTED]; Leibas, Daniel [REDACTED]; Rathnow, Brian E [REDACTED]; Sumait, Lynette A [REDACTED]  
**Subject:** Group Request For Release from Detention

Director Guadian and Assistant Director Salazar:

(Ms. Walters, please pass this request along to Director Guadian)

The National Immigrant Justice Center represents the individuals referenced below in their removal proceedings and writes to request each of their respective release from detention.

[REDACTED]

8. Delome Ostian Johannes Favi, [REDACTED] 087

[REDACTED]

Given the urgency of the current situation, we hope to hear from you as soon as possible. Please feel free to follow up with me directly if you have questions or require further information. Each of the above-referenced individuals also has primary counsel at NIJC on their respective cases, and a G-28 is provided for each one. You can also reach out to those individual attorneys.

**Keren Zwick**

**National Immigrant Justice Center**

A HEARTLAND ALLIANCE Program

224 S. Michigan Ave., Suite 600, Chicago, IL 60604

T: 312.660.1364 | F: 312.660.1505 | E: [kzwick@heartlandalliance.org](mailto:kzwick@heartlandalliance.org)

[www.immigrantjustice.org](http://www.immigrantjustice.org) | [Facebook](#) | [Twitter](#)

CIVIL COVER SHEET

E-FILED Tuesday, 07 April 2020 04:48:29 PM Clerk, U.S. District Court, ILCD

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Delome Ostian Johannes Favi

(b) County of Residence of First Listed Plaintiff Kankakee (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

Chad Kolitwenzew, in his capacity as Chief of Corrections, the Jerome Combs Detention Center

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 2241

Brief description of cause: Petition for immediate release from ICE custody

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/07/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Michaela Kabat

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**Attorneys**

SIDLEY AUSTIN LLP

Michelle A. Ramirez (*admission pending*)

Michaela Kabat

One South Dearborn St.

Chicago, IL 60603

(312) 853-7000 (phone)

NATIONAL IMMIGRANT JUSTICE CENTER

Katherine Melloy Goettel (*admission pending*)

224 S. Michigan Ave., Ste. 600

Chicago, Illinois 60604

Tel: (312)660-1335





Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: