

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS**

JUAN MANUEL HERNANDEZ	)	
	)	
<i>Petitioner-Plaintiff,</i>	)	
	)	
v.	)	<b>EMERGENCY PETITION FOR</b>
	)	<b>WRIT OF HABEAS CORPUS</b>
CHAD KOLITWENZEW, in his capacity	)	<b>PURSUANT TO 28 U.S.C. § 2241 AND</b>
as Chief of Corrections, the Jerome Combs	)	<b>COMPLAINT FOR INJUNCTIVE</b>
Detention Center;	)	<b>RELIEF</b>
	)	
	)	
<i>Respondent-Defendant.</i>	)	

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**EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS**

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Petitioner, Juan Manuel Hernandez, respectfully moves this Court to issue an Emergency Writ of Habeas Corpus and order Mr. Hernandez’s immediate release from the Jerome Combs Detention Center (“Jerome Combs” or “the Facility”), among other requested relief, on the ground that his continued detention in the face of the Facility’s failure to provide basic protections from COVID-19 for vulnerable detainees such as Mr. Hernandez violates the Due Process Clause. In support, Mr. Hernandez states:

**INTRODUCTION**

1. These are unprecedented times. The novel coronavirus that causes COVID-19 has led to a global pandemic. There is no vaccine against COVID-19, and there is no known cure. No one is immune.

2. This public health crisis has already caused the President of the United States to declare a national state of emergency, and almost every U.S. state has declared a state of emergency,

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. Hernandez is detained, remain woefully unprepared and incapable of taking necessary precautions to protect people in their custody against a life-threatening illness. ICE and the Facility are not informing Mr. Hernandez 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; and they are not providing detainees with prophylactic equipment including masks, gloves, hand sanitizer, or sufficient cleaning supplies; and they are not

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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 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).

regularly sanitizing common 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 8, 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.

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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 8, 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 8, 2020).

10. Mr. Hernandez faces serious illness or death if infected by COVID-19 due to his preexisting medical issues: diabetes, high blood pressure, and high cholesterol. He has also previously had a heart attack and suffers from breathing issues due to smoke inhalation from a fire in his home. ICE is holding Mr. Hernandez in civil detention at the Jerome Combs Detention Center as he awaits the adjudication of his immigration case. Despite the fact that his underlying medical conditions place him at higher risk of developing serious complications if he contracts COVID-19, Jerome Combs continues to detain him based solely on his inability to pay his \$2,000 bond. As detailed below, the danger posed by Mr. Hernandez'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. Hernandez from serious debilitating complications or death in a jail environment, and a clear path to release him, ICE has disregarded the course of action that will provide Mr. Hernandez with reasonable safety: to release him to his family, who can provide a safe haven 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. Hernandez 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. Juan Manuel Hernandez is a 46-year-old undocumented man who has resided in the United States since 1988.<sup>6</sup> Mr. Hernandez is married to a U.S. citizen who currently resides in a nursing home in Burbank, Illinois, due to her medical condition and need for care.<sup>7</sup> The immigration judge in Mr. Hernandez’s case granted him a \$2,000 bond, but he is not able to post this amount.<sup>8</sup> Mr. Hernandez suffers from several serious underlying medical conditions, and has been diagnosed with diabetes, high blood pressure, and high cholesterol.<sup>9</sup> In 2016 he suffered a heart attack.<sup>10</sup> Because of these medical conditions, Mr. Hernandez is at a higher risk for severe illness from COVID-19.<sup>11</sup>

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

### **JURISDICTION AND VENUE**

16. 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

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<sup>6</sup> Ex. A, Declaration of Juan Manuel Hernandez, ¶ 5.

<sup>7</sup> *Id.* ¶ 28-29.

<sup>8</sup> *Id.* ¶ 34; *see also*, Ex. E, Aug. 14, 2019 and Aug. 30, 2019 Bond Orders.

<sup>9</sup> *Id.* ¶ 23.

<sup>10</sup> *Id.* ¶ 24.

<sup>11</sup> *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. 8, 2020).

courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

17. 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).

18. 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.

19. Venue is proper under 28 U.S.C. § 1391(e) because Mr. Hernandez 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. Hernandez’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.

20. 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>12</sup>

21. The CDC reports 374,329 confirmed cases and 12,064 deaths across the United States as of April 7, 2020.<sup>13</sup> The number is quickly rising.

22. 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>14</sup>

23. 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 the Jerome Combs Detention Center is located.<sup>15</sup>

24. Illinois governor JB Pritzker issued a disaster proclamation on March 9, 2020, regarding COVID-19.<sup>16</sup>

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

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<sup>12</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>13</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 8, 2020).

<sup>14</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 8, 2020).

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

<sup>16</sup> *Id.*

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

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

27. According to the CDC, infected individuals likely are capable of infecting others up to 48 hours before they show symptoms.<sup>17</sup>

28. 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>18</sup>

29. 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 the use of simple cloth face coverings.<sup>19</sup>

30. Studies indicate that individuals may also transmit the virus up to eight days after their symptoms resolve.<sup>20</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

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<sup>17</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>18</sup> *Id.*

<sup>19</sup> *Use of Cloth Face Coverings to Help Slow the Spread of COVID-19*, CDC (Apr. 4, 2010), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html> (last visited Apr. 8, 2020).

<sup>20</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>.



droplets produced when an infected person coughs, sneezes, or talks.<sup>21</sup> The virus is also spread from contact with contaminated surfaces or objects.<sup>22</sup>

31. 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>23</sup>

32. The latest evidence suggests that people of all ages can be infected with COVID-19 and face serious illness or death.<sup>24</sup>

33. But older adults and those with certain medical conditions face even greater chances of serious illness or death from COVID-19.<sup>25</sup>

34. 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 conditions, and current or recent pregnancy, increase the risk of serious COVID-19 disease for people of any age.<sup>26</sup>

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<sup>21</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. 8, 2020).

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

<sup>23</sup> *Symptoms of Coronavirus*, CDC (Mar. 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Apr. 8, 2020).

<sup>24</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>25</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).

<sup>26</sup> Ex. B (Williams Aff.) ¶ 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. 8, 2020).

35. Pneumonia appears to be the most frequent serious manifestation of infection.<sup>27</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 systems. 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>28</sup>

36. The median incubation period is five days<sup>29</sup> and serious complications can manifest not long after the onset of symptoms, with some patients descending suddenly and rapidly into respiratory distress.<sup>30</sup>

37. 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>31</sup> in comparison with 0.1% for seasonal influenza.<sup>32</sup>

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<sup>27</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>28</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>29</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>30</sup> Ex. B (Williams Aff.) ¶ 17.

<sup>31</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>32</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).

38. 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>33</sup> Elderly individuals also face a higher mortality rate, with estimates of 8% for those over 70, and 14.8% for those over 80.<sup>34</sup>

39. 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 from 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>35</sup>

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

40. 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>36</sup>

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<sup>33</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>34</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>35</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 8, 2020).

<sup>36</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),

41. The risk of infectious spread is exacerbated by overcrowding, the proportion of vulnerable people detained, and often scant medical care resources.<sup>37</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>38</sup> They may be unable to maintain the recommended distance of 6 feet from others and may share or touch objects used by others. Toilets, sinks, and showers are shared, without disinfection between each use.<sup>39</sup>

42. 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>40</sup>

43. 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>41</sup> Likewise, during the H1N1 epidemic in 2009, many jails and prisons faced high numbers of cases.<sup>42</sup>

44. Jails and prisons are seeing outbreaks of COVID-19 grow at alarming rates. As of April 7, 2020, 406 staff members and 287 inmates assigned to NYC jails had tested positive for the

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<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>37</sup> Ex. B (Williams Aff.) ¶¶ 7, 17.

<sup>38</sup> *Id.* ¶ 7.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* ¶¶ 5-6.

<sup>41</sup> Claudia Lauer & Colleen Long, *US prisons, jails on alert for spread of coronavirus*, Associated Press (Mar. 6, 2020), <https://apnews.com/af98b0a38aaabedbc059092db356697>.

<sup>42</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/>.

virus.<sup>43</sup> Six NYC correction officers have also died from coronavirus in the last three weeks.<sup>44</sup>

On April 2, a 58-year old inmate became the first inmate to die in the New York state prison system.<sup>45</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>46</sup>

45. 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>47</sup> Two Illinois Cook County Jail detainees also tested positive for COVID-19.<sup>48</sup> On 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>49</sup> As of April 7, 2020, Cook County Jail had the largest cluster of COVID-19 cases – more than 350 cases have been connected to the facility.<sup>50</sup>

46. Meanwhile, a corrections officer at a northern New Jersey facility, which is used by ICE to detain immigrants, tested positive for the virus.<sup>51</sup> A medical staffer at the ICE detention facility in Elizabeth, New Jersey has also tested positive for COVID-19.<sup>52</sup> On March 24, the first

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<sup>43</sup> Chelsea Rose Marcius, *Coronavirus claims the lives of at least 6 NYC correction officers, 1 captain*, N.Y. Daily News (Apr. 7, 2020), <http://www.nydailynews.com/coronavirus/ny-coronavirus-correction-officers-dead-20200407-7p7ipsyss5dw3jy6bjeb6xkxhe-story.html>.

<sup>44</sup> *Id.*

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

<sup>46</sup> *Id.*

<sup>47</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>48</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>49</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>50</sup> *Report: Cluster of COVID-19 Cases at Cook County Jail the Largest in the Nation*, NBC Chi. (Apr. 7, 2020), <https://www.nbcchicago.com/news/local/report-cluster-of-covid-19-cases-at-cook-county-jail-the-largest-in-the-nation/2252000/>.

<sup>51</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/>.

<sup>52</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/>.

ICE detainee tested positive, while being held at the same northern New Jersey facility where the corrections officer tested positive a week earlier.<sup>53</sup>

47. As of April 7, 2020, ICE reports 19 confirmed COVID-19 cases among detainees in custody and 11 confirmed cases among ICE employees and personnel working in ICE detention facilities.<sup>54</sup>

48. 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>55</sup>

49. It is highly likely, and perhaps inevitable, that COVID-19 will reach the Jerome Combs Detention Center.

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

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

51. 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

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<sup>53</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>54</sup> *ICE Guidance on COVID-19: Confirmed Cases*, USCIS (Apr. 4, 2020), <https://www.ice.gov/coronavirus> (last visited Apr. 8, 2020).

<sup>55</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>.

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>56</sup>

52. 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.

53. The interim guidance sheet provided by ICE Health Services Corps, which oversees medical care in ICE detention facilities, on March 6, 2020<sup>57</sup> as a protocol for their clinical COVID-19 response, as well as ICE’s guidance on its website,<sup>58</sup> is grossly deficient in multiple areas, including:<sup>59</sup>

- 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.

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<sup>56</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>57</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>58</sup> *ICE Guidance on COVID-19*, USCIS, <https://www.ice.gov/coronavirus> (last updated Apr. 4, 2020).

<sup>59</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.

54. 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>60</sup> During the H1N1 influenza epidemic in 2009, jails and prisons were sites of severe outbreaks.<sup>61</sup> It is reasonable to expect COVID-19 will also readily spread in detention centers, especially when people cannot engage in proper hygiene and isolate themselves from infected residents or staff.

55. Testing kits are also not currently available in the volume necessary to screen all detainees. Moreover, because certain individuals do not become symptomatic, or may spread the infection before or after they are symptomatic,<sup>62</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>63</sup>

56. 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>64</sup>

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<sup>60</sup> Ex. B (Williams Aff.) ¶¶ 16-18.

<sup>61</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>62</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>63</sup> See generally Ex. B (Williams Aff.) ¶¶ 5-7.

<sup>64</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>.



57. Staff at Jerome Combs have not explained to detainees what coronavirus is or how contagious it is, or detailed the preventative measures required by CDC guidance, including 6-foot social distancing and the use of cloth face coverings in public settings where other social distancing measures are difficult to maintain. Instead, detainees at the Facility learn about the virus from news and other programs on TV.<sup>65</sup>

58. New detainees continue to enter the Facility. On April 2, 2020 approximately twenty new detainees arrived at Jerome Combs.<sup>66</sup>

59. While new detainees now arrive with face masks, they are under no instruction to continue wearing their face masks. Many detainees take their masks off hours after arriving.<sup>67</sup>

60. Gloves, masks, or hand sanitizer are not provided to any of the detainees who arrived before the pandemic started.<sup>68</sup>

61. Facility staff and guards do not wear masks or other protective gear when they interact with detainees.<sup>69</sup>

62. Facility staff do not clean high-touch surfaces such as light switches and door knobs.<sup>70</sup>

63. The living space on Mr. Hernandez'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.

64. 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.

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<sup>65</sup> Ex. A (Hernandez Decl.) ¶¶ 6, 11.

<sup>66</sup> *Id.* ¶ 7.

<sup>67</sup> *Id.* ¶ 8-9.

<sup>68</sup> *Id.* ¶ 8.

<sup>69</sup> *Id.* ¶ 13.

<sup>70</sup> *Id.* ¶ 14.

65. 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>71</sup> the Facility’s schedule and layout forces detainees to congregate at multiple points each day. All detainees line up close together to receive meals, usually front-to-back. Detainees sit together at tables to eat. Detainees continue to play basketball and cards with each other. There are no restrictions on any of these activities nor has staff advised detainees to maintain distance from each other.<sup>72</sup>

66. Each detainee shares his cell with three other detainees. They share a common bathroom and a common sink. They sleep on bunk beds. At any given moment they can be, at most, only three to four feet away from another person.<sup>73</sup> The recommended social distancing is impossible.

67. There has been no routine temperature taking. Indeed, staff has only checked temperatures of the inmates once: on April 1, 2020.<sup>74</sup>

68. Staff informed detainees that no one has coronavirus, yet no COVID-19 tests had actually been performed.<sup>75</sup>

69. To Mr. Hernandez’s knowledge, as of April 3, 2020, 22 of 48 detainees in Mr. Hernandez’s unit had symptoms associated with coronavirus (cough and/or fever). Yet, the staff at Jerome Combs had not quarantined a single detainee despite ICE’s recommendations that “detainees with fever and/or respiratory symptoms [be placed] in a single medical housing room, or in a medical airborne infection isolation room specifically designed to contain biological agents, such as COVID-19.”<sup>76</sup>

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<sup>71</sup> *ICE Guidance on COVID-19: Detention*, USCIS, <https://www.ice.gov/coronavirus> (last updated April 2, 2020).

<sup>72</sup> *Id.* ¶¶ 15-17.

<sup>73</sup> *Id.* ¶ 18.

<sup>74</sup> *Id.* ¶ 21.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* ¶ 22; *see also ICE Guidance on COVID-19: Detention*, USCIS, <https://www.ice.gov/coronavirus> (last updated Mar. 15, 2020).

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

70. 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.

71. 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 don't 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>77</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>78</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 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>79</sup>

72. 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

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<sup>77</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>78</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>.

<sup>79</sup> *Id.*

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>80</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>81</sup>

73. On March 23, 2020, the Ninth Circuit *sua sponte* ordered an immediate release of an immigrant detainee from detention and stay of removal due to COVID-19.<sup>82</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>83</sup>

74. 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 death or serious injury in detention if exposed to COVID-19.<sup>84</sup> Again, on March 27, 2020, the Court ordered immediate release of another group of ICE detainees who faced imminent health risks.<sup>85</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>86</sup> Notably, neither of these two individuals has one of the

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<sup>80</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>81</sup> *Id.*

<sup>82</sup> *Xochihua-Jaimes v. Barr*, 2020 WL 1429877, at \*1 (9th Cir. Mar. 24, 2020).

<sup>83</sup> *Id.*

<sup>84</sup> *Basank*, 2020 WL 1481503, at \*7.

<sup>85</sup> *Coronel*, 2020 WL 1487274, at \*10.

<sup>86</sup> *Castillo & Rueda v. Barr*, 2020 WL 1502864, at \*3 (C.D. Cal. Mar. 27, 2020).

CDC-listed medical vulnerabilities.<sup>87</sup> On April 2, 2020, Central District of California ordered the release of six at-risk detainees who have underlying health conditions such as asthma, diabetes, high blood pressure, and HIV infection.<sup>88</sup> And most recently, on April 7, 2020, the Middle District of Pennsylvania ordered the release of twenty-two at-risk detainees with underlying health conditions that included diabetes and asthma.<sup>89</sup>

75. 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>90</sup>

76. The Cook County Public Defender and State’s Attorney are working together to identify and release detainees who are serving for nonviolent offenses or who 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>91</sup>

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

78. 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

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<sup>87</sup> *See id.*

<sup>88</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>89</sup> Memorandum and Order at 13-14, *Hope v. Doll*, No. 1:20-cv-562-JEJ (M.D. Pa. Apr. 7, 2020), ECF No. 11.

<sup>90</sup> *United States v. Stephens*, 2020 WL 1295155, at \*2 (S.D.N.Y. Mar. 19, 2020).

<sup>91</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>.

Angeles County Sheriff decreased the jail population by ten percent by releasing 1,700 individuals within the last month.<sup>92</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>93</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>94</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>95</sup> In Arizona, Coconino County released ten percent of the jail population<sup>96</sup> and the Pima County Sheriff has proposed releasing seven percent of its jail population by releasing 135 inmates.<sup>97</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), following the release of about 90 women from county jail.<sup>98</sup> In New Orleans, after judges overseeing the local criminal court issued a "blanket order" to release a substantial number of

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<sup>92</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>93</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>94</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>95</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>96</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>97</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).

<sup>98</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).

individuals being held in pretrial detention, the New Orleans jail population was reduced by about 14 percent.<sup>99</sup>

79. 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>100</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 presented an unreasonable danger to the community or an extreme flight risk.<sup>101</sup> Nearly 200 people were released pursuant to this order.<sup>102</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>103</sup>

80. 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

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<sup>99</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>100</sup> Consent Order, *In re Request to Commute or Suspend County Jail Sentences*, Dkt. No. 084230 (N.J. Mar. 22, 2020) (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>101</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>102</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>103</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>.

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.

**F. Mr. Hernandez Should Be Released from ICE Detention.**

81. Mr. Hernandez suffers from a number of serious medical conditions that make him especially vulnerable to both contracting coronavirus and to suffering serious illness or death as a result.

82. First, Mr. Hernandez has diabetes<sup>104</sup>, which the CDC has highlighted as a condition that puts individuals at high risk for severe illness from coronavirus.<sup>105</sup> Mr. Hernandez has a heightened risk of contracting coronavirus due to his immunocompromised state from his diabetes.<sup>106</sup> If he contracts COVID-19, he may be slow to respond to any treatment and the viral infection may even be fatal. This is because fluctuations in blood glucose levels can suppress the immune system, making it both easier to contract coronavirus<sup>107</sup> and harder to treat a viral infection.<sup>108</sup> As a result, the mortality rate associated with COVID-19 for those with diabetes is 9.2%, **six times** higher than the rate for those without underlying conditions.<sup>109</sup>

83. Secondly, Mr. Hernandez also suffers from asthma.<sup>110</sup> According to the CDC, those with moderate to severe asthma are at high risk for severe illness from coronavirus.<sup>111</sup> Doctors

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<sup>104</sup> Ex B. (Hernandez Decl.) ¶ 23.

<sup>105</sup> *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. 8, 2020).

<sup>106</sup> Emmanuel Ocbazghi, *How COVID-19 affects people with diabetes, cancer, and other conditions: Interview with Dr. Amir Khan*, Bus. Insider (Apr. 2, 2020) <https://www.businessinsider.com/how-covid-19-affects-conditions-diabetes-asthma-cancer-underlying-copd-2020-3>.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Org., 12 (Feb. 28, 2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

<sup>110</sup> Ex. A (Hernandez Decl.) ¶ 23.

<sup>111</sup> *People with Moderate to Severe Asthma*, CDC (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html> (last visited Apr. 8, 2020).



recommend that the best thing to do to avoid suffering serious complications from coronavirus for those with asthma is to “make sure you’re using your inhaler correctly.”<sup>112</sup> Mr. Hernandez does not have an inhaler. Indeed, he requested an inhaler at the time of his initial detention at Jerome Combs but was denied.<sup>113</sup> His asthma, and his inability to manage it, means that if he were to contract coronavirus, he could suffer a serious asthmatic attack.<sup>114</sup>

84. Thirdly, Mr. Hernandez’s lung condition is further compromised. He narrowly escaped a fire in the early 2000s and has since had serious difficulty breathing.<sup>115</sup> COVID-19 can affect the respiratory tract (nose, throat, lungs), and possibly lead to pneumonia and acute respiratory disease.<sup>116</sup> Mr. Hernandez’s damaged lungs may mean that he is more likely to suffer these severe outcomes should he contract coronavirus. Between March 31, 2020 and April 3, 2020, he has had difficulty breathing and a “feeling like someone is pushing on [his] chest.”<sup>117</sup>

85. Finally, Mr. Hernandez suffered a heart attack in 2016.<sup>118</sup> In a clinical bulletin issued by the American College of Cardiology, the fatality rate of COVID-19 for patients with cardiovascular disease was reported as 10.5%.<sup>119</sup> While the virus’s main target is the lungs, a diseased heart has to work harder to get oxygenated blood throughout the body.<sup>120</sup> As such, a

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<sup>112</sup> *Id*; see also Emmanuel Ocbazghi, *How COVID-19 affects people with diabetes, cancer, and other conditions: Interview with Dr. Amir Khan*, Bus. Insider (Apr. 2, 2020) <https://www.businessinsider.com/how-covid-19-affects-conditions-diabetes-asthma-cancer-underlying-copd-2020-3>.

<sup>113</sup> Ex. A (Hernandez Decl.) ¶ 25.

<sup>114</sup> Emmanuel Ocbazghi, *How COVID-19 affects people with diabetes, cancer, and other conditions: Interview with Dr. Amir Khan*, Bus. Insider (Apr. 2, 2020) <https://www.businessinsider.com/how-covid-19-affects-conditions-diabetes-asthma-cancer-underlying-copd-2020-3>.

<sup>115</sup> Ex. A (Hernandez Decl.) ¶ 25.

<sup>116</sup> *People with Moderate to Severe Asthma*, CDC (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html> (last visited Apr. 8, 2020).

<sup>117</sup> Ex. A (Hernandez Decl.) ¶ 26.

<sup>118</sup> *Id.* ¶ 24.

<sup>119</sup> *COVID-19 Clinical Guidance For the Cardiovascular Care Team*, Am. Coll. of Cardiology (Feb. 13, 2020) <https://www.acc.org/~/media/Non-Clinical/Files-PDFs-Excel-MS-Word-etc/2020/02/S20028-ACC-Clinical-Bulletin-Coronavirus.pdf>.

<sup>120</sup> *What heart patients should know about coronavirus*, Am. Heart Assoc. (Mar. 24, 2020) <https://www.heart.org/en/news/2020/02/27/what-heart-patients-should-know-about-coronavirus>.

viral attack could “exacerbate problems for someone with heart failure,” where the heart is already having problems pumping efficiently.<sup>121</sup> Someone with an underlying heart issue also might have a less robust immune system.<sup>122</sup> Mr. Hernandez has a heightened risk of contracting coronavirus due to his previous heart attack and may be slow to respond to any treatment.

86. ICE recommends that “[d]etainees who meet CDC criteria for epidemiologic risk of exposure to COVID-19 [be] housed separately from the general population.”<sup>123</sup> Yet, to Mr. Hernandez’s knowledge, ICE has not separated any of the detainees with medical risk factors.<sup>124</sup>

87. Given the inability to practice social distancing, the general lack of sanitation, and the number of symptomatic detainees at Jerome Combs, Mr. Hernandez is concerned about the possibility of contracting COVID-19.<sup>125</sup>

88. Mr. Hernandez’s wife also has medical conditions. She suffered a stroke and underwent open-heart surgery.<sup>126</sup> As noted above, her heart condition also makes her vulnerable to contracting and suffering severe complications from COVID-19.<sup>127</sup>

89. Until his detention, Mr. Hernandez was his wife’s primary caregiver. His wife is now in a nursing home in Burbank, Illinois.<sup>128</sup>

90. Mr. Hernandez knows that those living in nursing homes may be more susceptible to coronavirus.<sup>129</sup> If released, he would continue to care for his wife.<sup>130</sup>

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *ICE Guidance on COVID-19: Detention*, USCIS, <https://www.ice.gov/coronavirus> (last updated Mar. 15, 2020).

<sup>124</sup> Ex. A (Hernandez Decl.) ¶ 22.

<sup>125</sup> *Id.* ¶ 27.

<sup>126</sup> *Id.* ¶ 28.

<sup>127</sup> *COVID-19 Clinical Guidance For the Cardiovascular Care Team*, Am. Coll. of Cardiology (Feb. 13, 2020) <https://www.acc.org/~media/Non-Clinical/Files-PDFs-Excel-MS-Word-etc/2020/02/S20028-ACC-Clinical-Bulletin-Coronavirus.pdf>.

<sup>128</sup> Ex B. (Hernandez Decl.) ¶ 29.

<sup>129</sup> *Id.* ¶ 30.

<sup>130</sup> *Id.* ¶ 32.

91. The immigration judge in Mr. Hernandez's case set the bond at \$2,000 without asking him about his financial circumstances.<sup>131</sup> Mr. Hernandez is unable to afford this amount given his current circumstances.<sup>132</sup>

92. Mr. Hernandez remains detained solely due to his inability to pay his bond.

93. As he is at a high risk of contracting coronavirus and suffering severe complications, Mr. Hernandez's continued detention at Jerome Combs poses a grave risk to his life.

94. Mr. Hernandez should immediately be released to his family.

### EXHAUSTION

95. Mr. Hernandez submitted a request to ICE for parole or release on recognizance on March 25, 2020.<sup>133</sup> On April 3, 2020, ICE denied the request.<sup>134</sup> There are no further remedies for Mr. Hernandez to exhaust.

### LEGAL BACKGROUND

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

96. 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

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<sup>131</sup> *Id.* ¶¶ 33-34, *see also*, Ex. E, Aug. 14, 2019 and Aug. 30, 2019 Bond Orders.

<sup>132</sup> *Id.*

<sup>133</sup> Ex. C, Request for Parole or Release on Recognize (Multiple Individuals).

<sup>134</sup> Ex. D, ICE Denial of Group Request for Release from Detention.

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.”).

97. 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.

98. 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).

99. At a minimum, here, the Government owes a duty to Mr. Hernandez, 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); *Thakker v. Doll*, 2020 WL 1671563, at \*8 n. 15 (M.D. Pa Mar. 31, 2020) (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).

100. 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”).

101. 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.

102. 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>135</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>136</sup>

103. 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>137</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>138</sup> Where the government “by the

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<sup>135</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>136</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>137</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>138</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 Chicago (April 3, 2020), <https://www.nbcchicago.com/news/local/gov-pritzker-recommends-wearing-masks-outside-during-coronavirus-pandemic/2249965/>.

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).

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

104. 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.

105. ICE not only has the authority to exercise discretion to release individuals from custody, but has routinely exercised this discretion to release particularly vulnerable detainees like Mr. Hernandez.

106. 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>139</sup>

107. 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.

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<sup>139</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)).



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

108. “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).

109. 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).

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

111. 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).

112. In the face of this great threat, social distancing and hygiene measures are Mr. Hernandez’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. Hernandez 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. Hernandez faces unreasonable harm from continued detention.

113. Numerous courts have now ordered release of civil detainees like Mr. Hernandez in light of the threat of COVID-19. See *supra* ¶¶ 78-79.

**D. The Current Bond Violates the Due Process Clause.**

114. The Supreme Court has long recognized that “imprisoning a defendant solely because of his lack of financial resources” violates the Due Process Clause. *Bearden v. Georgia*, 461 U.S. 660, 661 (1983); *see also Turner v. Rogers*, 564 U.S. 431, 447-48 (2011) (holding that due process requires specific findings as to individual's *ability* to pay before incarcerating him for civil contempt).

115. In immigration matters, due process requires the immigration judge to consider a noncitizen's ability to pay a bond. To continue to hold a detainee “for [his] inability to post money bail would constitute imposition of an excessive restraint.” *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc); *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th 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”).

116. An immigration judge must set a bond by considering the individual's “financial circumstances and alternative conditions of release.” *Hernandez*, 872 F.3d at 991.

117. A bond determination signals that the immigration judge believes that the non-citizen poses no danger to society and is likely to appear at future proceedings.

118. In this case, the immigration judge did not ask Mr. Hernandez about his financial circumstances or determine what level of bond would be affordable.<sup>140</sup> The immigration judge also did not assess whether Mr. Hernandez might be eligible for alternative conditions of release.

119. The bond was set at \$2,000, an amount that likely reflects that the immigration judge determined that Mr. Hernandez poses no danger to society and is a low risk of flight.<sup>141</sup> Under the immigration regulations, the burden is on the immigrant to establish, by clear and convincing evidence, that release “would not pose a danger to property or persons, and that [he or she] is likely to appear for any future proceeding.” 8 C.F.R. §§ 236.1(c)(8); *see also Matter of Fatahi*, 26 I&N Dec. 791, 793 (BIA 2016) (finding that to be eligible for release on bond, an individual must demonstrate that he or she is not “a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk”) (citing *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006)).<sup>142</sup> Accordingly, the fact that an immigration judge granted a low bond amount recognizes that Mr. Hernandez is not a danger to the community, a threat to national security, or likely to abscond.<sup>143</sup>

120. Indeed, Mr. Hernandez’s bond is far lower than the median immigration bond amount of \$7,500 nationally, and \$5,000 in Chicago.<sup>144</sup> Additionally, in Fiscal Year 2018, the Chicago Immigration court only granted 54% of bond requests.<sup>145</sup>

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<sup>140</sup> Ex. A (Hernandez Decl.) ¶ 33.

<sup>141</sup> Ex. E, Aug. 14, 2019 and Aug. 30, 2019 Bond Orders.

<sup>142</sup> In the case of *Baez-Sanchez v. Kolutwenzew*, 360 F. Supp. 3d 808, 816-17 (C.D. Ill. 2018), the court determined that the petitioner’s due process rights had been violated and ordered the release of petitioner from the custody of Jerome Combs Detention Center within thirty days, unless an immigration judge determined that the government had met its burden of showing that the detainee’s continued detention was necessary to prevent a risk of flight or a threat to public safety. In this case, an immigration judge has already set bond for Mr. Hernandez, thereby showing that his continued detention is not necessary. Accordingly, ordering immediate release of Mr. Hernandez is an appropriate remedy for the violation of his due process rights.

<sup>143</sup> Ex. E, Aug. 14, 2019 and Aug. 30, 2019 Bond Orders.

<sup>144</sup> *See* Syracuse University, *Three-fold Difference in Immigration Bond Amounts by Court Location*, TRAC Immigration (July 2, 2018), <https://trac.syr.edu/immigration/reports/519/>.

<sup>145</sup> *Id.*

121. Mr. Hernandez cannot afford the \$2,000 bond.<sup>146</sup>

122. Mr. Hernandez is detained impermissibly at the Facility based solely on his inability to pay and without any legitimate purpose. This is a clear violation of procedural due process.

## **CLAIMS FOR RELIEF**

### **COUNT I**

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

123. Petitioner repeats and re-alleges the allegations contained in each preceding paragraph.

124. 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.

125. Respondent's conditions of confinement subject Mr. Hernandez to a heightened risk of contracting COVID-19, for which there is no vaccine, known treatment, or cure. Mr. Hernandez risks serious illness and death if infected with COVID-19. Because of the conditions in the detention facilities, Mr. Hernandez 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. Hernandez, nor has Respondent advised Mr. Hernandez and other detainees at Jerome Combs about what steps they should be taking to protect themselves. Respondent is subjecting Mr. Hernandez to a substantial risk of serious harm, in violation of Mr. Hernandez's rights under the Due Process Clause.

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<sup>146</sup> Ex. A (Hernandez Decl.) ¶ 34.

126. 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.

127. For these reasons, Respondent's ongoing detention of Mr. Hernandez violates Due Process.

## **COUNT II**

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

128. Petitioner repeats and re-alleges the allegations contained in each preceding paragraph.

129. 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 they are unable to provide adequate medical care during an outbreak of a contagious disease.

130. Mr. Hernandez has diabetes requiring insulin shots, high blood pressure, and high cholesterol, and in 2016 he suffered from a heart attack. His underlying medical conditions put him at a higher risk of developing a severe illness from COVID-19. He faces a heightened risk of contracting COVID-19 and suffering serious medical harm, or even death, as a result.

131. 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. Hernandez. Respondent has not changed Mr. Hernandez's sleeping conditions, meal times, or any other aspect of Mr. Hernandez's daily schedule to permit him to maintain appropriate social distancing. Respondent has not provided Mr. Hernandez 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. Hernandez 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 Right to Procedural Due Process (Bond)**

132. Petitioner repeats and re-alleges the allegations contained in each preceding paragraph.

133. The Due Process Clauses of the Fifth and Fourteenth Amendments of the Constitution guarantee that civil detainees cannot be detained solely on their indigence.

134. By setting the bond, the immigration judge in Mr. Hernandez's case has determined that Mr. Hernandez poses no danger to society.

135. By continuing to detain Mr. Hernandez, who is subject to a bond amount of \$2,000, which Mr. Hernandez simply cannot afford, Respondent is violating Mr. Hernandez's rights under the Due Process Clause.

### **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. Hernandez requests that the Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a Writ of Habeas Corpus and order Mr. Hernandez'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. Award Mr. Hernandez 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;

e. Grant such relief as this Court deems just and proper.

Dated: April 8, 2020

JUAN MANUEL HERNANDEZ

By: /s/ Michelle A. Ramirez  
One of His Attorneys

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*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 8, 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  
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/s/ Michelle A. Ramirez  
Michelle A. Ramirez



# **EXHIBIT A**

**Executed Declaration of Juan Hernandez in Spanish  
with Certified English Translation**

**DECLARACION DE JUAN MANUEL HERNANDEZ**

Yo, Juan Manuel Hernandez, declaro bajo pena de perjurio que lo siguiente es verdadero y correcto:

1. Soy un adulto mayor de 18 años. Conozco personalmente los hechos expuestos en esta declaración jurada, y podría testificar de manera competente de esos hechos si me llamaran como testigo en este caso.
2. Soy el peticionario en esta acción.
3. El número A de mi Servicio de Ciudadanía e Inmigración de los Estados Unidos ("USCIS") es [REDACTED] 625.
4. Actualmente estoy detenido en el Centro de Detención de Jerome Combs ("Jerome Combs" o "la Instalación") en Kankakee, Illinois, ubicado en 3050 Justice Way, Kankakee, IL 60901. He estado detenido en la Instalación desde o alrededor de mayo 13 de 2019. He estado detenido en la Instalación desde o alrededor de mayo 13 de 2019.
5. He vivido en los Estados Unidos desde 1988. Estoy casado con una ciudadana de los Estados Unidos, Dolores Villanueva Hernandez.
6. La Instalación no me ha informado, ni que yo sepa, a otros detenidos sobre la pandemia de COVID-19: cómo se propaga o qué es. En cambio, lo aprendí de las fuentes de noticias de televisión.
7. Nuevos detenidos continúan entrando en la Instalación. El 2 de abril de 2020, llegaron aproximadamente veinte nuevos detenidos.

8. Los nuevos detenidos recibieron máscaras faciales. Sin embargo, el personal no ha distribuido guantes, máscaras o desinfectante para manos a ninguno de los detenidos que llegaron antes de que comenzara la pandemia.
9. A los nuevos detenidos no son instruidos que se queden con la máscara puesta y los nuevos detenidos se quitan las máscaras.
10. Puedo solicitar jabón para lavarme las manos, y hay agua caliente disponible en los lavabos de cada celda.
11. Sin embargo, la Instalación no nos ha dado instrucciones sobre cómo prevenir la propagación del virus. No han ordenado a los detenidos que mantengan distancia social o que eviten tocarse la cara.
12. Desde que comenzó la pandemia de COVID-19, se han producido pocos o ningún cambio en las reglas de la Instalación.
13. No he visto al personal usar máscaras. La única vez que usan guantes es cuando nos sirven comida en el comedor.
14. El personal solo limpia las mesas del comedor. No los he visto limpiar superficies comunes como pomos de las puertas o interruptores de luz. Los detenidos son responsables de la limpieza de su propia celda.
15. Todos se ponen en fila para recibir comidas, generalmente de manera consecutiva. Los detenidos se sientan juntos en las mesas para comer donde todos están juntos.
16. Hay una zona de baloncesto interior en la que los detenidos juegan baloncesto. El personal no ha establecido ninguna restricción para jugar baloncesto.

17. También hay una sala común donde podemos jugar a las cartas, mirar televisión o tomar un café. El personal no ha restringido nuestras interacciones entre nosotros. Seguimos jugando a las cartas entre nosotros.
18. Vivo muy cerca de los otros detenidos. No hay forma de mantener la distancia social de los otros detenidos. Duermo en una litera y el otro detenido duerme aproximadamente 2 pies por encima de mí. Solo puedo estar a 3-4 pies de distancia del otro detenido en mi celda.
19. Escuché en las noticias que deberíamos mantenernos alejados de otras personas. Intento seguir este consejo. Durante la hora del almuerzo, como solo en mi celda. Pero es lo único que puedo hacer.
20. Hay servicios médicos limitados en la Instalación.
21. Desde que he estado aquí, el personal solo ha verificado las temperaturas de los detenidos una vez: el 1 de abril de 2020. El personal también nos dijo que nadie en la Instalación tiene coronavirus. Sin embargo, no conozco a nadie que haya sido probado para el virus.
22. Aproximadamente la mitad de los detenidos en mi unidad (22 de 48) muestran síntomas actualmente, ya sea tos o fiebre. No han sido aislados ni puestos en cuarentena.
23. Sé que soy una persona de alto riesgo. Tengo diabetes, presión arterial alta y colesterol alto. Actualmente estoy tomando medicamentos para todas estas condiciones. También me han diagnosticado asma.
24. También sufrí un ataque al corazón en 2016 y estuve hospitalizado durante dos meses. Mientras que me siento mucho mejor, no me siento completamente mejor.

25. A principios de la década de 2000 hubo un incendio en mi casa. Corrí para salvar a mis nietos. Me diagnosticaron con asma debido al incidente. Cuando llegué a Jerome Combs, solicité un inhalador, pero no me dieron uno. Como resultado, también tengo dificultad para respirar algunos días.
26. En los últimos tres días, tuve dificultades para respirar y la sensación de que alguien me está presionando el pecho.
27. Me preocupa la posibilidad de contraer el coronavirus COVID-19 en Jerome Combs.
28. Mi esposa también tiene condiciones médicas. Sufrió un derrame cerebral y se sometió a una cirugía a corazón abierto.
29. Hasta mi detención, yo era el cuidador principal de Dolores. Mi cuñada la trasladó a un hogar de ancianos en Burbank, Illinois, después de mi detención.
30. He visto en las noticias que los ancianos y los que viven en hogares de ancianos pueden ser más susceptibles al coronavirus. No tengo información específica sobre el hogar de ancianos de mi esposa.
31. No me gusta el hecho de que esté sola en un hogar de ancianos. La última vez que hablé con ella fue hace dos meses. No sé cómo le va.
32. Si me liberan, seguiría cuidando a Dolores de cualquier forma que pueda.
33. En mi audiencia de fianza, el juez de inmigración no me preguntó sobre mis circunstancias financieras.
34. La fianza se fijó en \$2000, que no puedo pagar.
35. Me gustaría ser liberado.

De conformidad con 28 U.S.C. § 1746, declaro bajo pena de perjurio que lo anterior es verdadero y correcto.

3/4/2020  
Fecha

JUAN HERNANDEZ  
Juan Manuel Hernandez

CERTIFICATION BY TRANSLATOR

I, Arturo J. Rodriguez, certify that I am fluent (conversant) in the English and Spanish languages, and that the attached document is an accurate translation of the document attached entitled Declaration of Juan Manuel Hernandez.

A handwritten signature in blue ink that reads "Arturo J. Rodriguez". The signature is written in a cursive style with a long, sweeping tail on the letter "z".

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Arturo J. Rodriguez  
Paralegal

Sidley Austin LLP, One S. Dearborn, Chicago, IL 60603

Date: April 3, 2020

**DECLARATION OF JUAN MANUEL HERNANDEZ**

I, Juan Manuel Hernandez, declare under penalty of perjury that the following is true and correct:

1. I am an adult over the age of 18. 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] 625.
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 on or around May 13, 2019.
5. I have lived in the United States since 1988. I am married to a United States citizen, Dolores Villanueva Hernandez.
6. The Facility has not informed me, or to my knowledge, other detainees about the COVID-19 pandemic – how it spreads or what it is. Instead, I have learned about it from the television news sources.
7. New detainees continue to come into the Facility. On April 2, 2020, approximately twenty new detainees arrived.
8. The new detainees were provided with facemasks. However, staff has not distributed gloves, masks, or hand sanitizer to any of the detainees who arrived before the pandemic started.



9. New detainees are not instructed to keep their mask on and the new detainees removed their masks.
10. I can request soap to wash my hands, and there is running hot water available at sinks in each cell.
11. However, 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, or to avoid touching their faces.
12. There have been little or no changes to the rules at the Facility since the COVID-19 pandemic began.
13. I have not seen the staff wear masks. The only time they wear gloves is when they are serving us food in the dining hall.
14. The staff only clean the dining room tables. I have not seen them wipe down common surfaces like doorknobs or light switches. Detainees are responsible for their own cell's cleanliness.
15. Everyone lines up close together to receive meals, usually back-to-back. Detainees sit together at tables to eat where everyone is close together.
16. There is an indoor basketball area in which detainees play basketball. The staff have not set any restrictions on playing basketball.
17. There is also a common room where we can play cards, watch TV, or drink coffee. The staff have not restricted our interactions with each other. We continue to play cards with each other.

18. I live in close proximity to the other detainees. There is no way to maintain social distance from the other detainees. I sleep in a bunk bed and the other detainee sleeps about 2 feet above me. I can only be 3-4 feet apart from the other detainee in my cell.
19. I heard on the news that we should keep distance from other people. I try to follow this advice. During lunchtime, I eat my meals alone in my cell. But there is only so much that I can do.
20. There are limited medical services at the Facility.
21. Since I have been here, staff has only checked temperatures of the inmates once: on April 1, 2020. The staff also told us that no one at the Facility has coronavirus. However, I do not know of anyone who has actually been tested for the virus.
22. Approximately half the detainees in my unit (22 out of 48) are currently showing symptoms – either a cough or a fever. They have not been isolated or quarantined.
23. I know that I am a high-risk individual. I have diabetes, high blood pressure and high cholesterol. I am currently on medication for all these conditions. I also have been diagnosed with asthma.
24. I also suffered a heart attack in 2016 and I was hospitalized for two months. While I am feeling a lot better, I do not feel fully better.
25. In the early 2000s there was a fire in my home. I ran in to save my grandchildren. I have been diagnosed with asthma because of the incident. When I arrived at Jerome Combs, I requested an inhaler but I was not provided with one. As a result, I also have shortness of breath on some days.

26. In the past three days, I have had some difficulty breathing and a feeling like someone is pushing on my chest.
27. I am concerned about the possibility of contracting the coronavirus at Jerome Combs.
28. My wife also has medical conditions. She suffered a stroke and underwent open-heart surgery.
29. Until my detention, I was Dolores' primary caregiver. My sister-in-law moved her to a nursing home in Burbank, Illinois, after my detention.
30. I have seen on the news that the elderly and those living in nursing homes may be more susceptible to coronavirus. I do not have specific information about my wife's nursing home.
31. I do not like the fact that she is alone in a nursing home. The last time I spoke to her was two months ago. I do not know how she is doing.
32. If released, I would continue to care for Dolores in any way I can.
33. At my bond hearing, the Immigration Judge did not ask me about my financial circumstances.
34. The bond was set at \$2000, which I am not able to afford.
35. I would like to be released.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Juan Manuel Hernandez

# 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

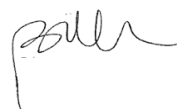
236 members of the New York Police Department have tested positive for coronavirus and 3,200 employees are sick, triple the normal sick rate.<sup>29</sup> Two federal prison staffers have also tested positive.<sup>30</sup>

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>

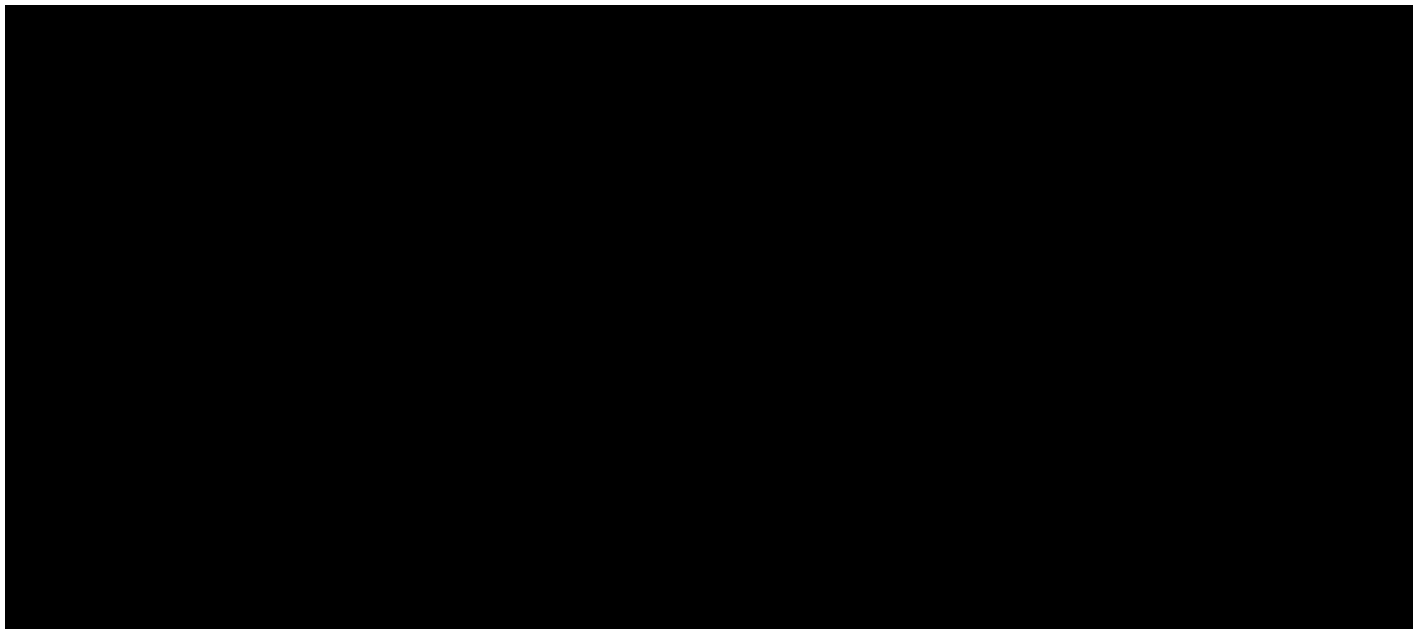
<sup>5</sup> John Sandweg. “I Used to Run ICE. We Need to Release the Nonviolent Detainees.” The Atlantic. (March 22, 2020) <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>



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>

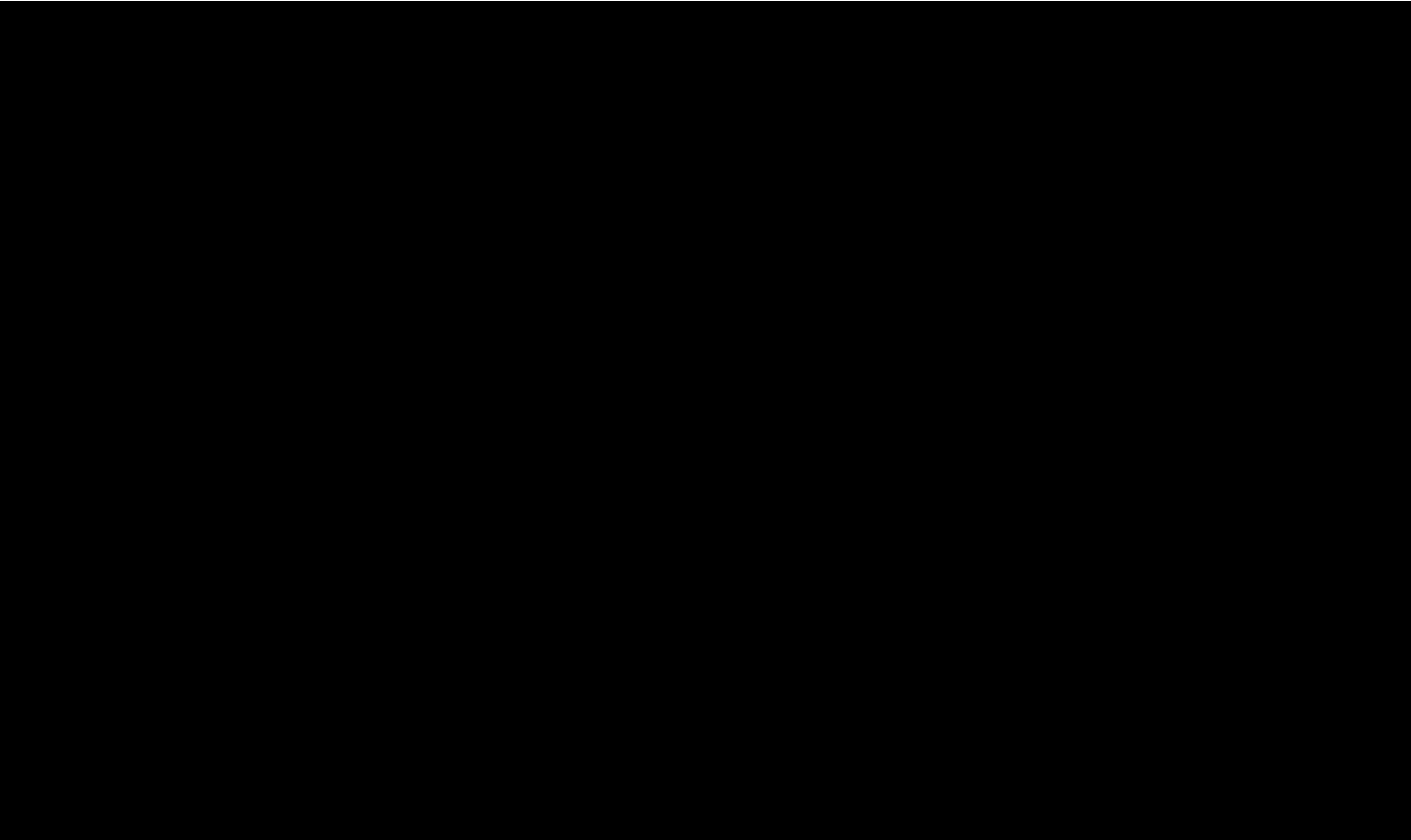


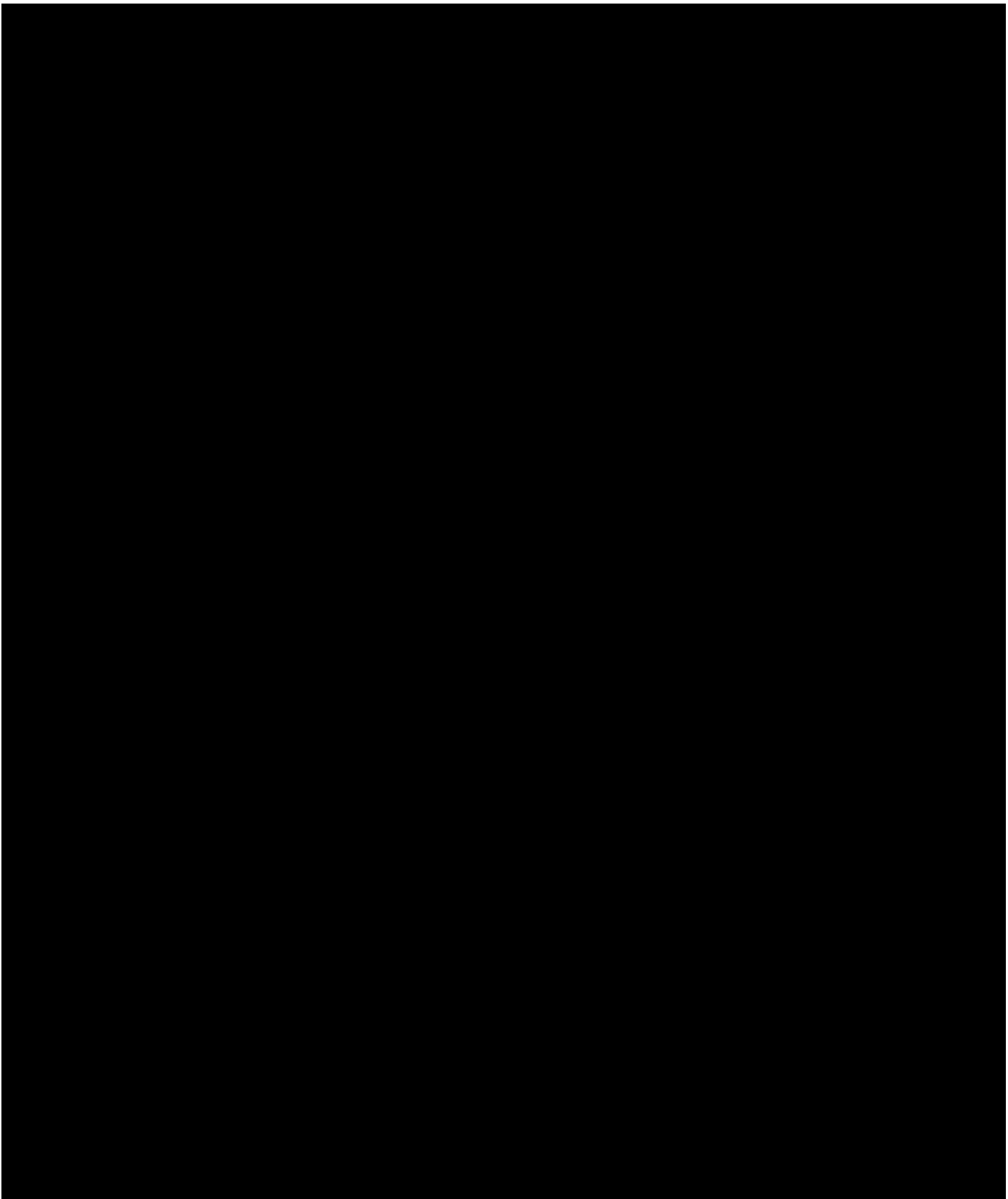
2. Juan Manuel Hernandez,  625

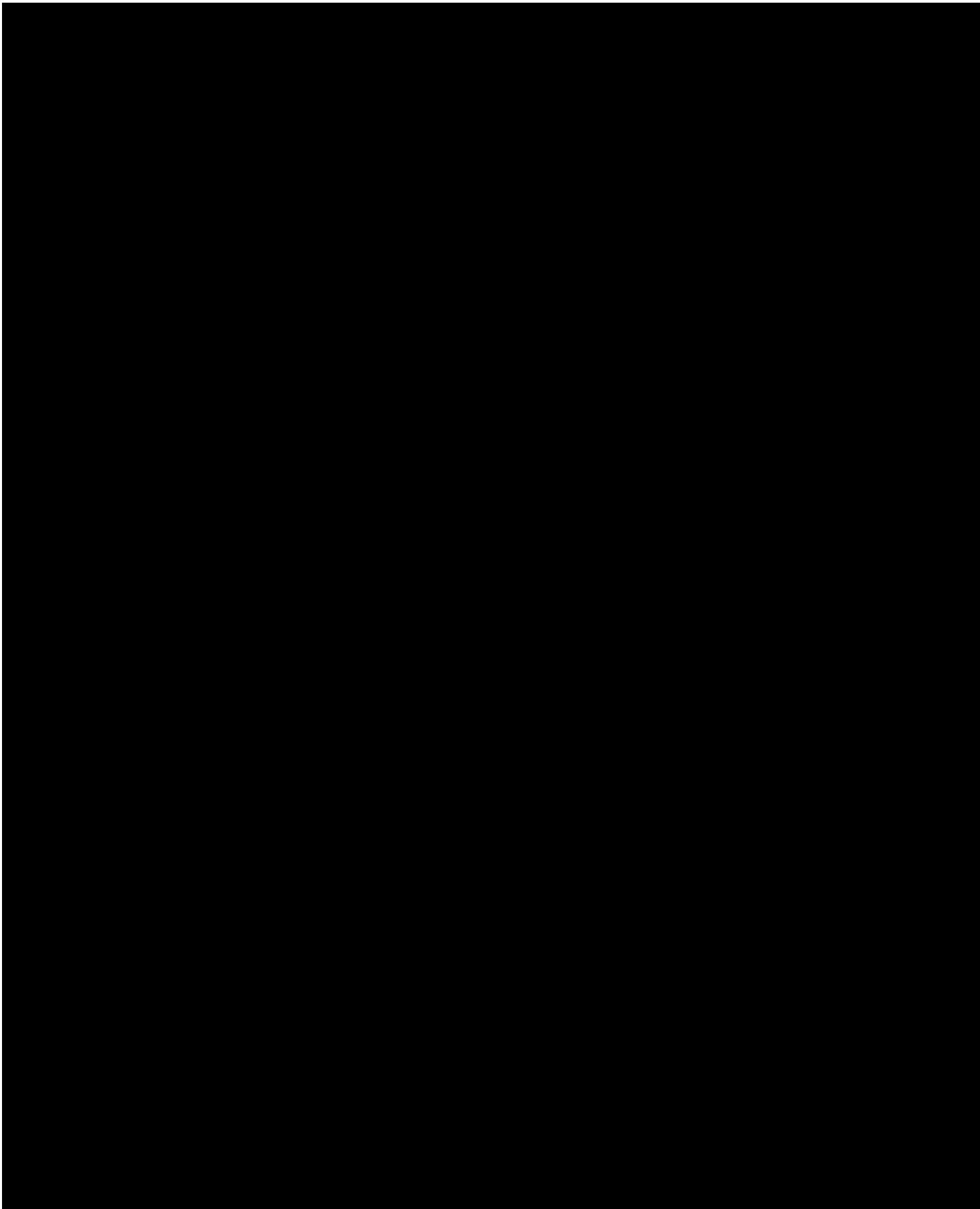
Mr. Hernandez is a 46-year-old undocumented man who has resided in the United States since 1988. He is married to a U.S. citizen who is currently in a nursing home in Burbank, Illinois. The IJ granted Mr. Hernandez a \$2000 bond but he is not able to post this amount. Mr. Hernandez has diabetes requiring insulin shots, high blood pressure, and high cholesterol, and in 2016 he suffered from a heart attack. His medical conditions make him particularly vulnerable to severe illness from COVID-19.

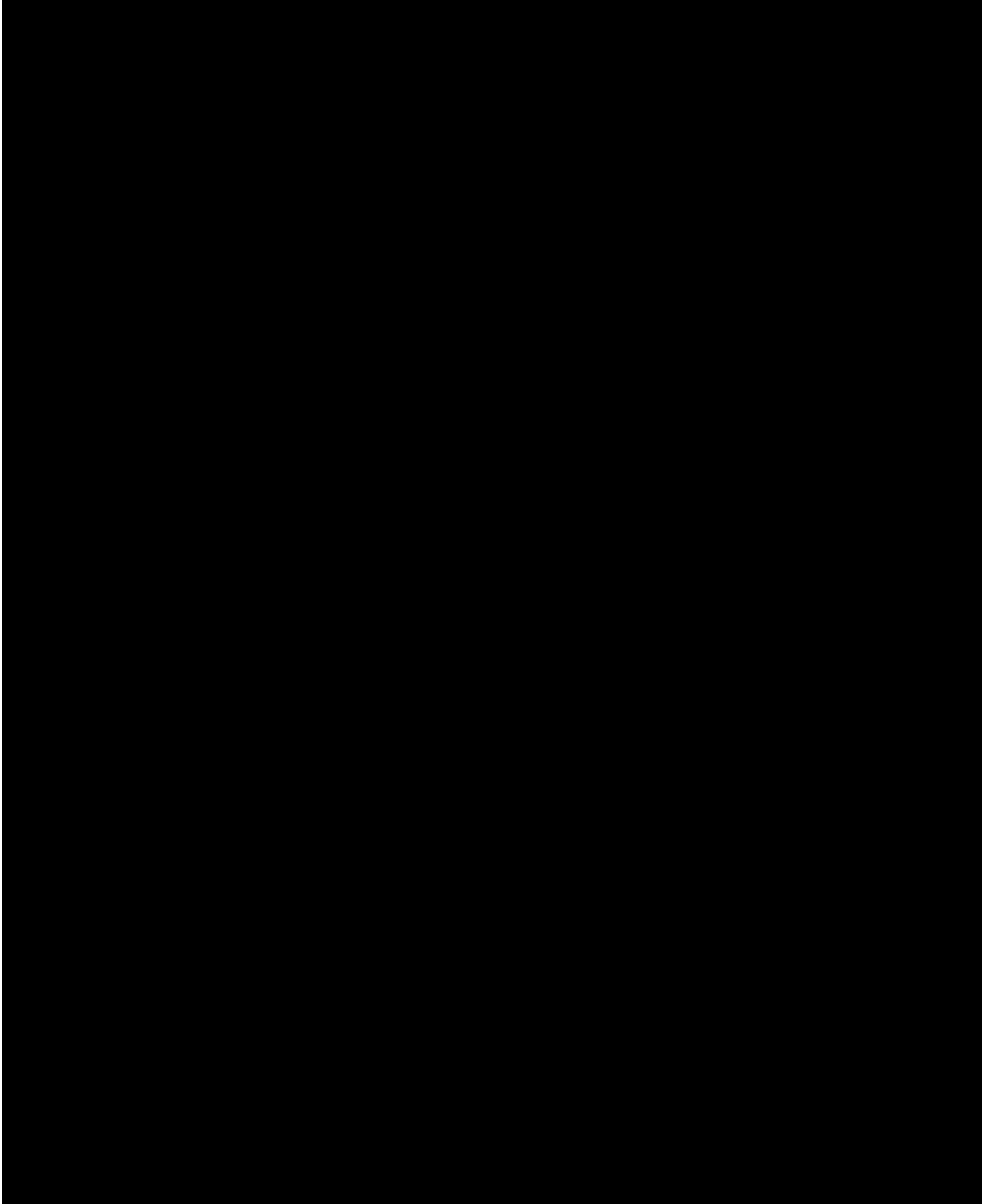
If released, Mr. Hernandez would reside in Kankakee, Illinois, where he resided for several years prior to his detention.

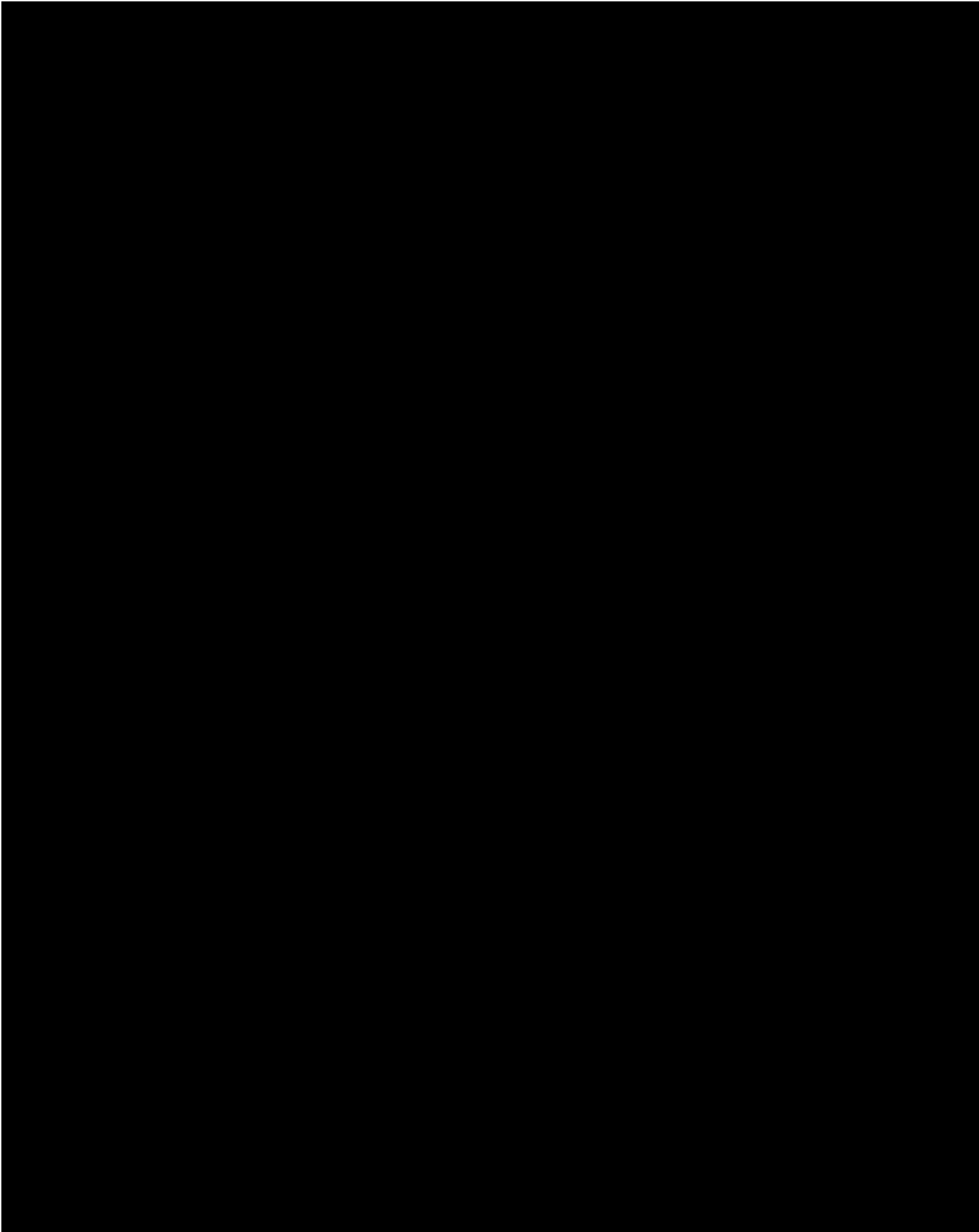
With this request, undersigned has included a G-28 for Lhesly Navarrete Fernandez, also an attorney at the National Immigrant Justice Center and Respondent's primary counsel. Ex. E, G-28 of L. Navarrete Fernandez for Mr. Hernandez.

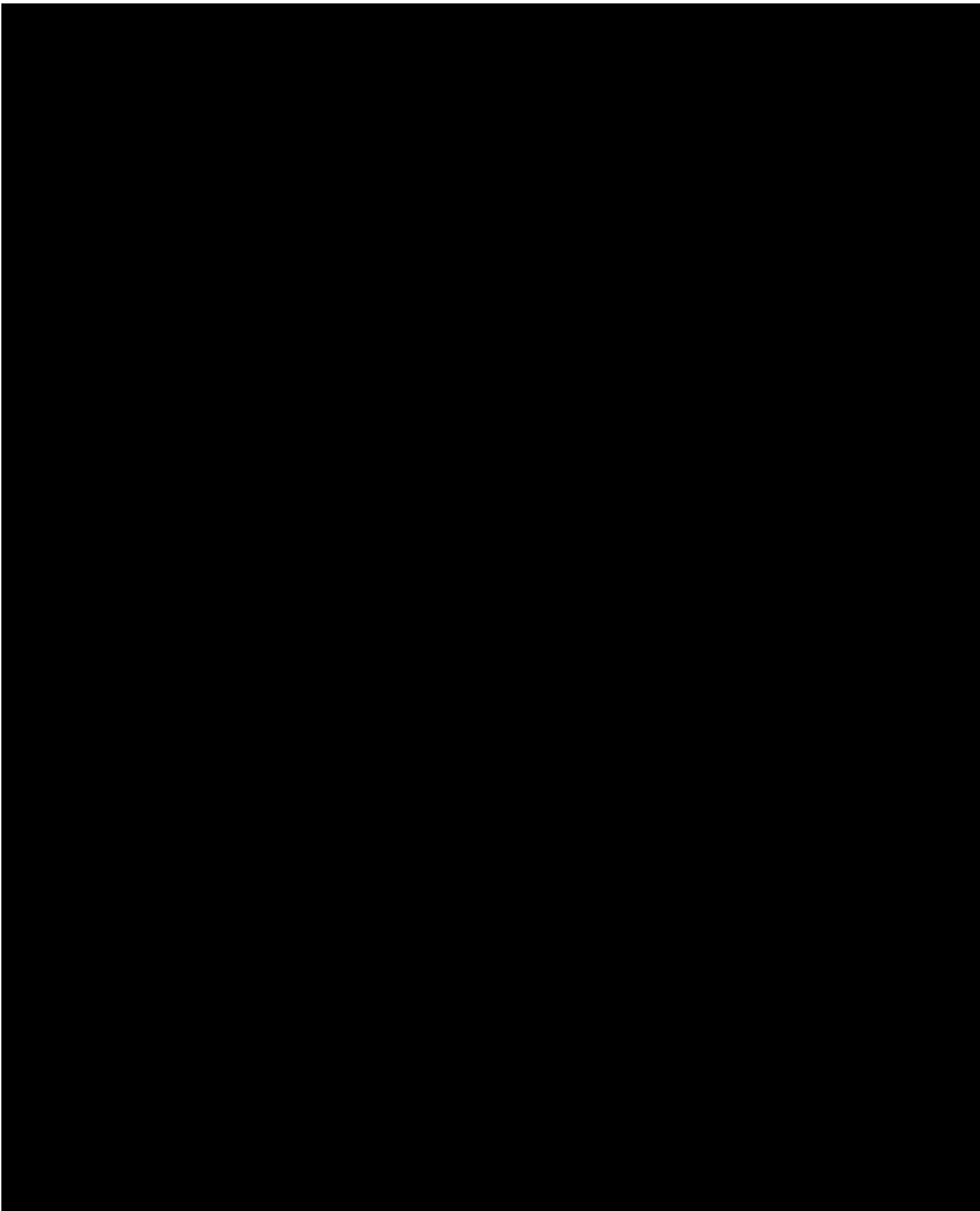


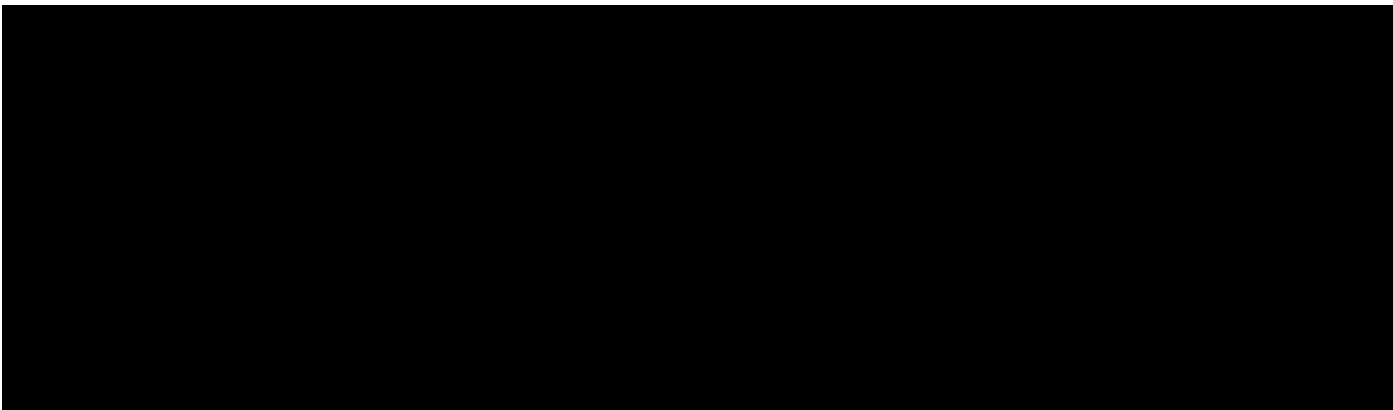












If you would like further information, please do not hesitate to contact me. I look forward to hearing from you promptly, and thank you in advance for your assistance in this matter.

Sincerely,

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

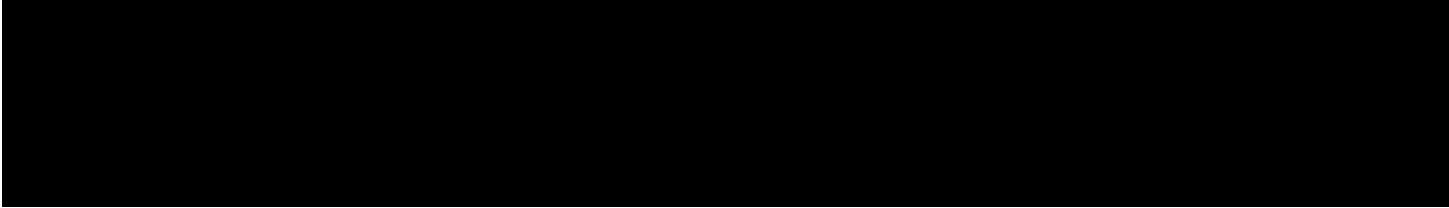
cc: Daniel Leibas [redacted]  
Brian Rathnow, [redacted]  
Lynette Sumait, [redacted]



**Index of Exhibits**

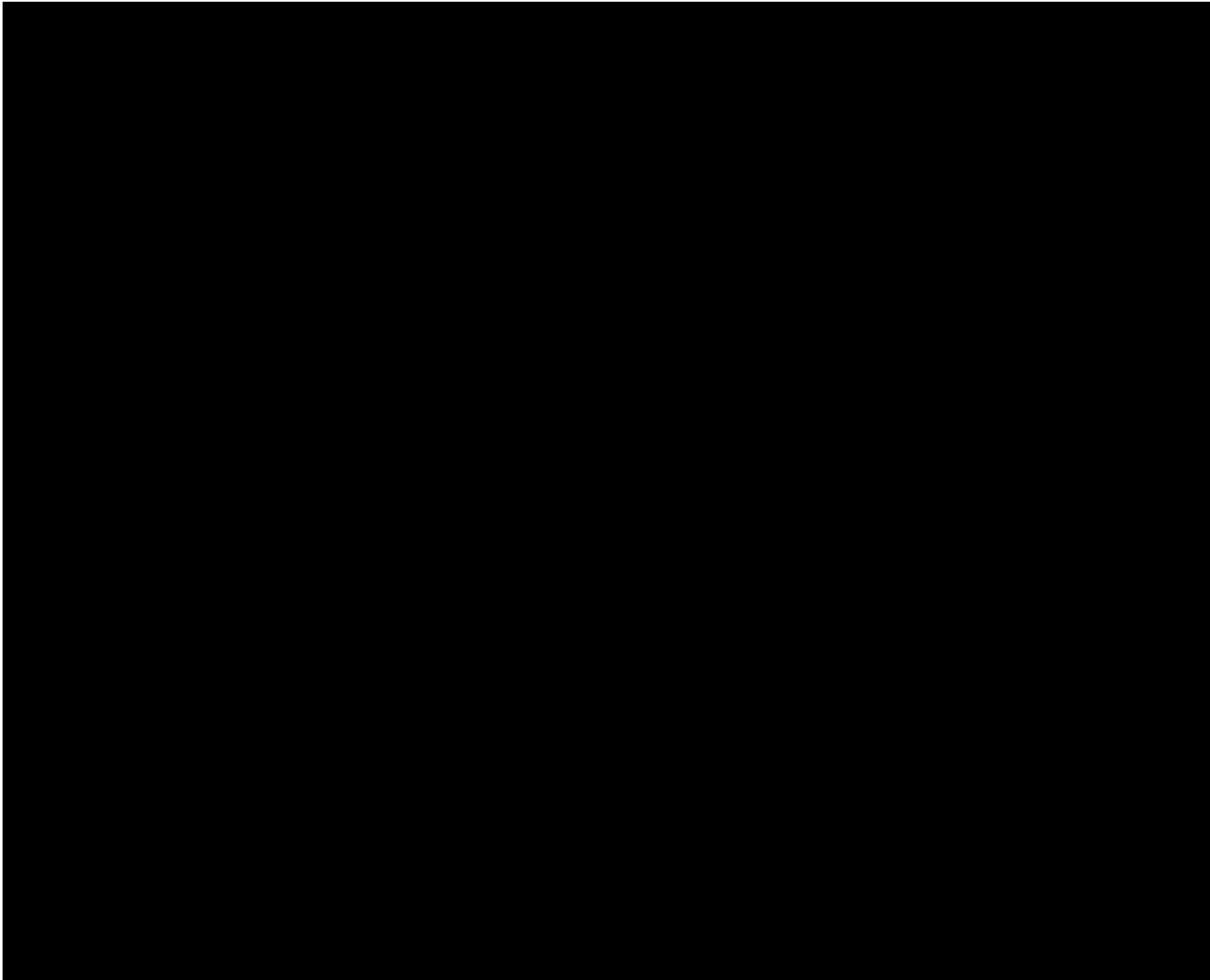
Ex. A, ICE Press Statement

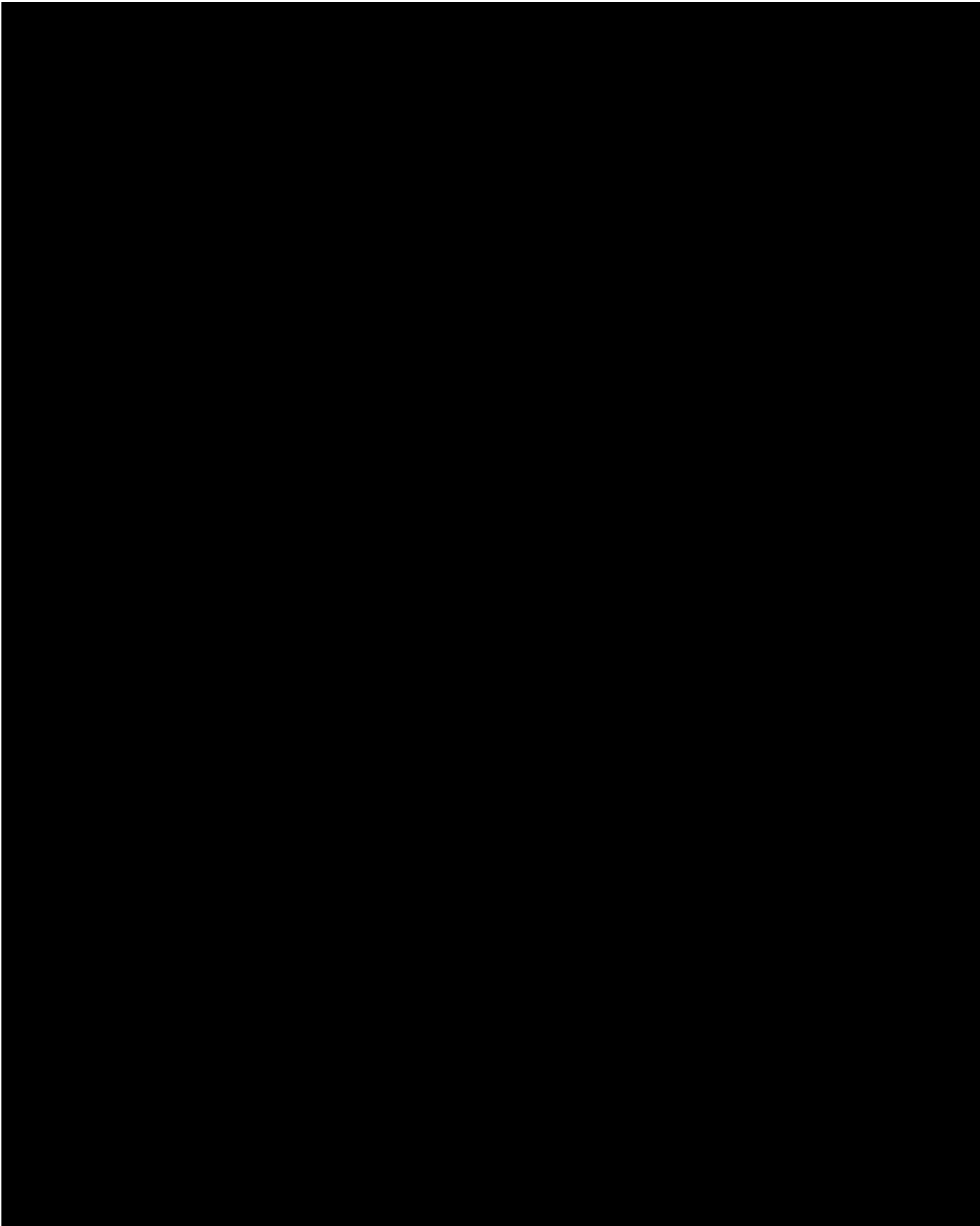
Ex. B, Letter from Dr. Carlos Franco-Paredes



**Specific to Juan Manuel Hernandez, [REDACTED] 625**

Ex. E, G-28 of L. Navarrete Fernandez for Mr. Hernandez





# 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.

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**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]



**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](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]  
2. Juan Manuel Hernandez, [REDACTED] 625  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[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](#)

# EXHIBIT E

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
CHICAGO, IL

FILE: A [REDACTED]-625

IN THE MATTER OF:

HERNANDEZ, JUAN MANUEL

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE  
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

ORDERED that the request for a change in custody status be denied.

ORDERED that the request be granted and that respondent be:

released from custody on his own recognizance

released from custody under bond of \$ 5000

OTHER \_\_\_\_\_

Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived -- reserved

CHICAGO -- CHICAGO DETAINED

Date: Aug 14, 2019



\_\_\_\_\_  
KATHRYN L. DEANGELIS  
Immigration Judge

XS



UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
CHICAGO, IL

FILE: A [REDACTED]-625

IN THE MATTER OF:

HERNANDEZ, JUAN MANUEL

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE  
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

\_\_\_\_\_ ORDERED that the request for a change in custody status be denied.

\_\_\_\_\_ ORDERED that the request be granted and that respondent be:

\_\_\_\_\_ released from custody on his own recognizance

released from custody under bond of \$ 2000

\_\_\_\_\_ OTHER \_\_\_\_\_

Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived -- reserved

CHICAGO -- CHICAGO DETAINED

Date: Aug 30, 2019

  
\_\_\_\_\_  
KATHRYN L. DEANGELIS  
Immigration Judge

XS

CIVIL COVER SHEET

E-FILED
Wednesday, 08 April, 2020, 03:18:28 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

Juan Manuel Hernandez

(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 and business location (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 04/08/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Michelle Ramirez

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**Attorneys**

SIDLEY AUSTIN LLP  
Michelle A. Ramirez  
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 \$ \_\_\_\_\_ .

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: