

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Rizza Jane Guanao AGANAN, Albert BOAMPONG, Hector GARCIA MENDOZA, and Bob Lupini NSIMBA, on behalf of themselves and all others similarly situated,

Petitioners-Plaintiffs,

v.

Orlando RODRIGUEZ, in his official capacity as Warden of Elizabeth Detention Center; **John TSOUKARIS**, in his official capacity as Newark Field Office Director for U.S. Immigration and Customs Enforcement; **Matthew ALBENCE**, in his official capacity as acting Deputy Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; **Chad WOLF**, in his official capacity as acting Secretary of the U.S. Department of Homeland Security; and **William BARR**, in his official capacity as Attorney General of the United States,

Respondents-Defendants.

Case no. 2:20-cv-5922

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

INTRODUCTION

1. This case seeks immediate relief on behalf of a putative class of Petitioner-Plaintiffs (“Plaintiffs”) at imminent risk of contracting COVID-19 due to their civil immigration confinement by Respondents-Defendants (“Defendants”). Despite a known COVID-19 outbreak within Elizabeth Detention Center (“EDC”) in New Jersey, Defendants keep Plaintiffs locked up in unsafe, congregate conditions at the facility, pursuant to a contractual agreement between CoreCivic, a private prison corporation, and Immigration and Customs Enforcement (“ICE”).

2. COVID-19 is an infectious disease that the World Health Organization has declared to be a global pandemic.¹ Experts estimate that as many as 214 million people in the United States could become infected, and as many as 1.7 million people could die.² As of May 14, 2020, 85,870 people have died from COVID-19 in the U.S., 9,946 of them in the state of New Jersey.³ Older individuals and individuals with certain pre-existing conditions are known to be at heightened risk for serious, and potentially deadly, complications from the disease.⁴ In addition, individuals of all ages and without pre-existing conditions have been hospitalized at significant rates and have suffered serious injury and death due to complications from the disease.⁵
3. As a result of the harms associated with COVID-19, New Jersey Governor Phil Murphy declared a state of emergency on March 9, 2020.⁶ The New Jersey Supreme Court, and Governor Murphy have taken steps to mitigate risk in jails and prisons by ordering the release of large numbers of people in criminal confinement.⁷

¹ World Health Organization, WHO Director-General's opening remarks at the media briefing on COVID-19 (Mar. 11, 2020), <https://bit.ly/35HR8GC>.

² Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The N.Y. Times (Mar. 13, 2020), <https://nyti.ms/35JnPnq>.

³ *Coronavirus in the U.S.: Latest Map and Case Count*, The N.Y. Times (May 14, 2020), <https://nyti.ms/360Xdhx>.

⁴ Centers for Disease Control and Prevention, *Groups at Higher Risk for Severe Illness* (May 14, 2020), <https://bit.ly/2yJoxF7>.

⁵ Pam Belluck, *Younger Adults Make Up Big Portion of Coronavirus Hospitalizations in U.S.*, The N.Y. Times (Mar. 20, 2020), <https://nyti.ms/2SLtX9m>.

⁶ State of New Jersey, Governor Murphy Declares State of Emergency, Public Health Emergency to Strengthen State Preparedness to Contain the Spread of COVID-19 (Mar. 9, 2020), <https://bit.ly/2yv5Vsp>.

⁷ *See, e.g.*, William P. Barr, Memorandum for Director of Bureau of Prisons, *Increasing Use of Home Confinement at Institutions Most Affected by COVID-19* (Apr. 3, 2020), <https://politi.co/3ciMd1m>; State of New Jersey, Governor Murphy Signs Executive Order to Establish a Process to Grant Temporary Reprieve to Certain At-Risk Inmates (Apr. 10, 2020), <https://bit.ly/2YQK75f>; Tracey Tully, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, The N.Y. Times (Mar. 23, 2020), <https://nyti.ms/364CJEU>.

4. The Trump Administration also declared a national emergency on March 13, 2020.⁸ On April 3, 2020, Attorney General William Barr issued a directive to the Bureau of Prisons, instructing them to “release all inmates who have Covid-19 risk factors, as established by the CDC,” permitting them to serve the remainder of their sentences in home confinement.⁹
5. ICE has taken a different approach. On March 18, 2020, ICE issued a statement that it would not be releasing people from civil immigration confinement due to COVID-19.¹⁰ After several lawsuits and under increasing public pressure, ICE directed its field offices to review the continued detention of certain individuals with a high risk of serious illness from COVID-19.¹¹ To date, the agency has released only around 900 immigrants detained in its jails and prisons nationwide,¹² and 27,908 individuals remain locked up.¹³ On April 17, 2020, ICE Acting Director Matthew Albence testified to Congress that ICE had released everyone it planned to release, emphasizing that continued detention was necessary to deter a “rush at the borders.”¹⁴

⁸ White House, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://bit.ly/2A4SRdq>.

⁹ William P. Barr, Memorandum for Director of Bureau of Prisons, *Increasing Use of Home Confinement at Institutions Most Affected by COVID-19* (Apr. 3, 2020), <https://politi.co/3ciMd1m>.

¹⁰ Spencer Ackerman, *ICE: No Plan to Free Migrants in Jail, but Will Arrest Fewer Due to Pandemic*, The Daily Beast (Mar. 19, 2020), <https://bit.ly/3dt48Tn>.

¹¹ ECF 2, Ex. P, Peter B. Berg, Memorandum to Field Office Directors and deputy Field Office Directors, *COVID-19 Detained Docket Review* (Apr. 4, 2020).

¹² U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19, Overview & FAQs, *Detention: What has ICE done to protect detainees in ICE custody?* (May 4, 2020), <https://www.ice.gov/coronavirus>.

¹³ *Id.*, ICE Guidance on COVID-19, Confirmed Cases (May 14, 2020).

¹⁴ House Comm. on Oversight and Reform, DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus (Apr. 17, 2020), <https://bit.ly/3dsMcIt>.

6. Acting Director Albence’s statement captures the Trump Administration’s anti-immigrant agenda. The pandemic has served as a key justification for the Administration’s “larger strategy to reduce overall immigration.”¹⁵ President Trump announced a wide-reaching immigration ban, backing away from the plan in part only in response to criticism by business groups.¹⁶ Border officials have “summarily expelled” over 20,000 immigrants at the U.S.-Mexico border since late March.¹⁷ Within the United States, ICE has reduced, but has not eliminated, enforcement actions, and continues to take individuals into custody, including at EDC.¹⁸
7. On March 19, 2020, news broke of the first publicly confirmed ICE employee to test positive for COVID-19: a medical staffer at EDC.¹⁹ COVID-19 quickly spread to both other staff and those confined in EDC thereafter.
8. Since that date, more than 965 detained people have tested positive for COVID-19 in civil immigration confinement across the country—over half of the population ICE has tested.²⁰ Eighteen of those individuals are in EDC. These data vastly undercount the number of people with COVID-19 since ICE does not engage in universal testing of people in civil immigration confinement. To date, ICE has only tested 1,804 detained

¹⁵ Rafael Bernal, *Stephen Miller indicates immigration pause will be long term: report*, The Hill (Apr. 24, 2020), <https://bit.ly/35NZ21l>.

¹⁶ Michael D. Shear, et al., *Trump Halts New Green Cards, but Backs Off Broader Immigration Ban*, The N.Y. Times (Apr. 21, 2020), <https://nyti.ms/3bc9TmN>.

¹⁷ Camilo Montoya-Galvez, *20,000 migrants have been expelled along border under coronavirus directive*, CBS News (May 7, 2020), <https://cbsn.ws/2WdmRfJ>.

¹⁸ U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19, Overview & FAQs, *Immigration Enforcement and Check-Ins: Has ICE modified enforcement efforts during COVID-19?* (May 4, 2020), <https://www.ice.gov/coronavirus>.

¹⁹ Emily Kassie, *First ICE employee tests positive for coronavirus*, The Marshall Project (Mar. 19, 2020), <https://bit.ly/2zo3gQZ>.

²⁰ U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19, Confirmed Cases (May 14, 2020), <https://www.ice.gov/coronavirus>.

people—a number that comprises only 6.5% of the total number of people currently detained.²¹

9. On May 14, 2020, it was reported that a CoreCivic guard at EDC died after contracting COVID-19. He last reported to work on April 20, 2020.²²
10. Although ICE does not release the numbers of confirmed cases or deaths among employees of private prison companies that it contracts with,²³ this recent death confirms a widespread contagion of COVID-19 at EDC. Indeed, the deteriorating conditions at EDC have compelled individuals, including Plaintiff Albert Boampong,²⁴ to engage in hunger strikes.²⁵
11. In response to the rapid spread of the disease in jails and prisons, the Centers for Disease Control and Prevention (“CDC”) issued guidelines for jails and prisons to reduce the spread of the disease.²⁶ These guidelines do not eliminate risk but provide mechanisms to lower risk in the absence of alternatives, such as release. Medical experts that have considered the risk to detained people have agreed that release is the only adequate protection. ICE subsequently issued a series of protocols for its jails and prisons to adopt, some of which contradict the CDC guidelines.²⁷ Neither the CDC guidelines nor ICE requirements are being adequately implemented or enforced in EDC.

²¹ U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19, Confirmed Cases (May 14, 2020), <https://www.ice.gov/coronavirus>.

²² Emily Kassie (@emilykassie), Twitter (May 14, 2020, 5:43 PM), <https://bit.ly/3bF5zwQ>.

²³ ECF 2, Ex. J, Schriro Dec. ¶ 26.

²⁴ ECF 2, Ex. B, Boampong Dec. ¶¶ 16-17.

²⁵ David Noriega, et al., Immigrants Are Now on Hunger Strike in 3 ICE Detention Centers Over Coronavirus Fears, VICE News (Mar. 20, 2020), <https://bit.ly/2Lrare6>.

²⁶ Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://bit.ly/2WBpbfH>.

²⁷ Enrique M. Lucero, Memorandum to Detention Wardens and Superintendents, *Memorandum on Coronavirus Disease 2019 (COVID-19), Action Plan, Revision 1* (Mar. 27, 2020),

12. Even prior to COVID-19, conditions in EDC were deficient in several respects, including health and sanitation.²⁸
13. Conditions in EDC with COVID-19 have become even more unsafe and expose detained individuals to an elevated risk of serious illness. Social distancing is impossible for those in custody and those who work at EDC. Soap, hand sanitizer, and cleaning supplies are in short supply, making it impossible for individuals to maintain proper personal hygiene. EDC does not have sufficient or consistent access to protective equipment for individuals in custody or staff. As a matter of policy, EDC cohorts individuals with suspected, not just confirmed cases, increasing exposure. In addition, staff and vendors who are potentially exposed to COVID-19 outside EDC regularly come into the facility despite evidence that individuals may be asymptomatic for days before exhibiting symptoms of COVID-19.
14. The medical unit within EDC is insufficiently equipped—in terms of staff, expertise, and equipment—to meet the medical needs during this epidemic. EDC does not even have an in-house infirmary.
15. Despite the rapid spread of COVID-19 within EDC and repeated outreach by advocates, ICE has not provided the individuals in confinement, their families, attorneys, and other advocates, or the general public with timely information about the steps taken at the prison to protect public health. ICE has not provided detained individuals or their families, attorneys, and other advocates with access to files, including medical records,

<https://bit.ly/3b8L9Mk>; U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *COVID-19 Pandemic Response Requirements* (Version 1.0) (Apr. 10, 2020), <https://bit.ly/3dpBORN>.

²⁸ Human Rights First, *Ailing Justice: New Jersey Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention February 2018*, <https://bit.ly/35IR0Hd>.

necessary to advocate for their care and release. The denial of accurate and relevant information is particularly detrimental for unrepresented individuals.

16. ICE has the authority to release every individual in its jails on humanitarian parole, bond, conditional parole, recognizance, and/or supervised release. Nonetheless, ICE has declined to release more than a small fraction of those in its custody. Even after public pressure and individual lawsuits prompted ICE to issue some limited guidance on releases, the vast majority of people, including Plaintiffs, remain confined.
17. The system left for these individuals to seek a prompt and fair custody review is in shambles. Defendants have suspended in-person visitation; vastly restricted detained people's ability to access law libraries, telephones, and/or videoconferencing with family or lawyers; delayed or denied prompt confidential legal calls with counsel; and declined to provide individuals with access to evidence, including medical records and evaluations necessary for their release requests.
18. Defendants have also abruptly cancelled or adjourned bond hearings and delayed the issuance of bond decisions. Immigration judges have refused to consider the increased risks of detention when determining whether to set bond. Even if an individual is granted bond, their family members have faced "virtually insurmountable challenges" to posting the bond amount to secure their loved one's freedom during the pandemic, including temporary closures of the Newark and New York City bond offices and requirements to pay via certified check issued by a bank, which is difficult to obtain during state lockdowns.²⁹ Although ICE operates an online bond-payment system—called

²⁹ Matt Katz, *ICE's "Mind-Blowing" Barriers to Posting Bond Keep Immigrants Locked Inside Coronavirus Hot Spots*, Gothamist (Apr. 24, 2020), <https://bit.ly/2YGJScR>; ECF 2, Ex. S, Letter

eBONDS—it permits only commercial surety agents to access the web-based application and denied access to members of the public.

19. Defendants cannot justify continuing to subject Plaintiffs to extraordinary risk of illness, injury, and death, particularly in light of readily available alternatives to physical confinement.
20. The danger posed by Plaintiffs' detention at EDC during the current outbreak of COVID-19 is "so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk" and violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993). In failing to create a system that mitigates risk by promptly and fairly processing all individuals for release under appropriate conditions, Defendants violate the U.S. Constitution.
21. Unless this Court intervenes to order the release of the Plaintiffs, they will face dramatically increased chances of contracting COVID-19, becoming seriously ill or injured, and dying. This Court should grant Plaintiffs speedy relief, including an order directing Defendants to release Plaintiffs immediately and prohibiting Defendants from detaining or re-detaining individuals in EDC.

PARTIES

22. Plaintiff **Rizza Jane Guanao Aganan** is a 30-year-old citizen of the Philippines who has been detained by ICE in Elizabeth Detention Center since February 2020. Defendants have confined her in conditions that place her at heightened risk of serious illness, injury, and/or death due to potential infection and/or complications from COVID-19. She suffers

from Bitta Mostofi, Commissioner of the New York City Mayor's Office of Immigrant Affairs, to ICE (Apr. 22, 2020).

from a rare genetic metabolic abnormality and requires a restricted diet that Defendants have refused to provide.

23. Plaintiff **Albert Adu Boampong** is a 35-year-old citizen of Ghana who has been detained by ICE in Elizabeth Detention Center since January 2020. Defendants have confined him in conditions that place him at heightened risk of serious illness, injury, and/or death due to potential infection and/or complications from COVID-19. He has received inadequate medical care at Elizabeth Detention Center, including after he suffered an injury from falling in a facility bathroom.
24. Plaintiff **Héctor García Mendoza** is a 30-year-old citizen of Mexico who has been detained by ICE in Elizabeth Detention Center since March 2020. Defendants have confined him in conditions that place him at heightened risk of serious illness, injury, and/or death due to potential infection and/or complications from COVID-19. He has a history of asthma and has experienced chest pain and shortness while detained, but the medical staff at Elizabeth Detention Center have refused him adequate treatment.
25. Plaintiff **Bob Lupini Nsimba** is a 28-year-old citizen of the Democratic Republic of Congo who has been detained by ICE in Elizabeth Detention Center since August 2019. Defendants have confined him in conditions that place him at heightened risk of serious illness, injury, and/or death due to potential infection and/or complications from COVID-19. He suffers from high blood pressure and psychological symptoms of trauma exposure.
26. Defendant **Orlando Rodriguez** is named in his official capacity as Warden of Elizabeth Detention Center. In this capacity, he is a custodian of Plaintiffs. Defendant Rodriguez's office is located at 625 Evans St, Elizabeth, New Jersey, 07201.

27. Defendant **John Tsoukaris** is named in his official capacity as the Field Office Director of the Field Office for ICE within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Plaintiffs. Defendant Tsoukaris's office is located at 970 Broad Street, 11th Floor, Newark, New Jersey, 07102.
28. Respondent **Matthew T. Albence** is named in his official capacity as acting Deputy Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement in the United States Department of Homeland Security. In this capacity, he is responsible for the administration of the immigration laws pursuant to Section 103(a) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of New Jersey; is legally responsible for pursuing any effort to remove the Plaintiffs; and as such is a custodian of the Plaintiffs. Respondent Albence's address is U.S. Immigration and Customs Enforcement, 500 12th St., S.W. Washington, District of Columbia, 20024.
29. Respondent **Chad F. Wolf** is named in his official capacity as the Acting Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, he is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of New Jersey; is legally responsible for pursuing any effort to remove the Plaintiffs; and as such is a custodian of the Plaintiffs. Respondent Wolf's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia, 20528.

30. Respondent **William Barr** is named in his official capacity as the Attorney General of the United States. In this capacity, he routinely transacts business in the District of New Jersey; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Plaintiffs. Respondent Barr's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia, 20530-0001.

JURISDICTION

31. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, and Article I, §9, cl. 2 (the Suspension Clause) of the U.S. Constitution.
32. Plaintiffs are in custody of Defendants by virtue of their civil immigration confinement in Elizabeth Detention Center.
33. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

VENUE

34. Venue in the District Court for the District of New Jersey is proper under 28 U.S.C. § 1391(b) because Defendants Rodriguez and Tsoukaris reside in this District, Plaintiffs are detained in this District, and this District is the site of the injury at issue.

FACTS

The COVID-19 Pandemic

35. The outbreak of COVID-19 has reached pandemic status both in the U.S. and globally.

36. New Jersey is one of the hardest hit states with more than 141,560 cases reported and widespread community transmission.³⁰ On April 4, 2020, New Jersey Health Commissioner Judith Persichilli issued a crisis alert, announcing that nine New Jersey hospitals were being forced to turn away patients due to lack of staff or beds.³¹ Other area hospitals are similarly overwhelmed.³²
37. All people share a risk of contracting and, upon contraction, transmitting the virus that causes COVID-19. Anyone who contracts the virus may experience life-threatening symptoms and death.³³
38. Medical experts have been regularly reevaluating the risk factors for contracting and/or developing complications from COVID-19. Not all risk factors are known at this time.
39. Some people are at heightened risk of developing serious complications or dying if they contract COVID-19. The current list of risk factors includes advanced age, certain living situations, and certain pre-existing health conditions.
40. Some people are at heightened risk due to pre-existing medical conditions but are unaware of their risk, due to the lack of prior medical care, prior diagnosis, or access to medical records.³⁴ Others may be aware of their medical condition, but unaware of their increased risk due to lack of access to news and rapidly changing science.

³⁰ *Coronavirus in New Jersey: Latest Map and Case Count*, The N.Y. Times, <https://nyti.ms/2T3Uw9R> (updated May 14, 2020, 8:06 a.m.).

³¹ Sergio Bichao, *NJ Issues 'Crisis Alert' — Overwhelmed Hospitals Need Volunteers Now*, New Jersey 101.5 (Apr. 4, 2020), <https://bit.ly/2y0VLiT>; see also Alexandra Villarreal, *'I feel defeated': inside New Jersey hospitals overwhelmed by Covid-19*, The Guardian (Apr. 10, 2020), <https://bit.ly/3fHqEK2>; Wendy Ruderman, *Full N.J. Hospitals Force COVID-19 Patients to Seek Care in Philadelphia*, Tribune News Service (Apr. 4, 2020), <https://bit.ly/2Zf0p8f>.

³² Somini Sengupta, *With Virus Surge, Dermatologists and Orthopedists Are Drafted for the E.R.*, The N.Y. Times (Apr. 3, 2020), <https://nyti.ms/35Z6F5d>.

³³ ECF 2, Ex. H, Keller Dec. ¶¶ 36-37, 41-42, 74.

³⁴ *Id.* ¶ 44, 77.

41. Young people and people with no known pre-existing conditions have contracted COVID-19, developed serious complications, and have died from the disease.³⁵
42. People who have contracted COVID-19 describe painful symptoms, such as fever, cough, shortness of breath, muscle pain, and even gastrointestinal symptoms like vomiting and severe diarrhea.³⁶
43. Individuals who have contracted COVID-19 may be asymptomatic for days.³⁷
44. Once individuals who have contracted COVID-19 show symptoms, serious complications from the infection may manifest quickly.³⁸
45. Some individuals who contract COVID-19 will require hospitalization, specialized medical equipment like ventilators, and other intensive care.³⁹
46. Emerging evidence suggests that individuals who survive COVID-19, even those who suffer only mild symptoms, may experience long-term and debilitating complications and effects, including permanent damage to the lungs, heart, liver, kidneys, and other organs.
47. Hospitals in the United States have reported an alarming trend of stroke among young and middle-aged people who contract COVID-19.⁴⁰

³⁵ Paul G. Auwaerter, M.D., *Coronavirus COVID-19 (SARS-CoV-2)*, Johns Hopkins ABX Guide (May 13, 2020), <https://bit.ly/2T2WIyy> (Adults aged 20-44 account for 20% of hospitalizations and 12% of ICU admissions); Ariana Eunjung Cha, *Young and middle-aged people, barely sick with covid-19, are dying of strokes*, The Washington Post (Apr. 25, 2020), <https://wapo.st/2xKyHEV> (describing emerging correlation between stroke and COVID-19, with forty percent of patients under 50 years old, with few or no risk factors); Lois Parshley, *The emerging long-term complications of Covid-19, explained*, Vox (May 8, 2020), <https://bit.ly/2yWIVfr>.

³⁶ Centers for Disease Control, *Symptoms of Coronavirus* (May 13, 2020), <https://bit.ly/2y7A2G0>.

³⁷ *Id.*; ECF 2, Ex. H, Keller Dec. ¶ 33.

³⁸ ECF 2, Ex. H, Keller Dec. ¶ 35; *see also* Nick Brown and Deena Beasley, *From fine to flailing - rapid health declines in COVID-19 patients jar doctors, nurses*, Reuters (Apr. 8, 2020), <https://reut.rs/3cCKdl0>.

³⁹ ECF 2, Ex. I, Singer Dec. ¶ 12; Ex. H, Keller Dec. ¶¶ 36-37.

48. There is no vaccine or cure for COVID-19.⁴¹
49. The only known effective measures to reduce the risk of illness, injury or death from COVID-19 are to prevent infection in the first place and to limit community spread. Social distancing or remaining physically separated from known or potentially infected individuals; vigilant sanitation and hygiene, including repeated and thorough hand washing with soap and water; and the proper use of masks are the only known effective measures for protecting people from COVID-19.⁴²
50. Nationally, projections by the CDC indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the epidemic without effective public health intervention and as many as 1.5 million will die. Effective public health intervention will reduce these numbers, but only if it reaches people in prisons in jails.⁴³

The Public Health Need to Prevent the Spread of COVID-19 in Jails and Prisons and ICE's Knowledge of the Risk

51. The spread of COVID-19 within many U.S. jails and prisons is outpacing the spread of COVID-19 among the general public.⁴⁴ New Jersey leads the country as the state with the highest mortality rate of people in custody.⁴⁵

⁴⁰ Ariana Eunjung Cha, Young and middle-aged people, barely sick with covid-19, are dying of strokes, *The Wash. Post* (Apr. 25, 2020), <https://wapo.st/2xKyHEV>.

⁴¹ ECF 2, Ex. H, Keller Dec. ¶ 38.

⁴² ECF 2, Ex. H, Keller Dec. ¶ 40; Ex. I, Singer Dec. ¶13. *See also* Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://bit.ly/2WBpbfH>.

⁴³ American Civil Liberties Union, *COVID-19 Model Finds Nearly 100,000 More deaths than Current Estimates, Due to Failures to Reduce Jails*, <https://bit.ly/2SP5gc9>.

⁴⁴ ECF 2, Ex. M, Declaration of Dr. Robert Greifinger, M.D. ¶ 8, *Felix S. v. Decker*, No. 20-cv-4269 (JMV), Dkt. 18-3 (D.N.J. May 4, 2020); Ex. H, Keller Dec. ¶ 46.

⁴⁵ *A State-by-State Look at Coronavirus in Prisons*, The Marshall Project, <https://bit.ly/3fLNMXM> (May 8, 2020).

52. Medical and correctional health experts agree that a COVID-19 outbreak is difficult to contain in jails and prisons, and will endanger the lives of the people who are confined or work within those settings.⁴⁶
53. Medical and correctional health experts agree that a COVID-19 outbreak in a jail or prison will also strain the public health infrastructure for the surrounding area. Because jails and prisons do not employ sufficient medical personnel to address a pandemic and do not contain the specialized equipment needed to treat COVID-19, people who become seriously ill will need to be transported to a local hospital that serves the broader public for care. An outbreak of COVID-19 not only strains the public health infrastructure within the jail, but also impacts the entire community.⁴⁷
54. Soon after the World Health Organization declared COVID-19 a global pandemic, medical experts publicly warned ICE of the risk of serious illness, injury, and death if individuals were not released from civil immigration confinement.
55. By mid-March 2020, over 3,000 doctors submitted an open letter to ICE, urging the release of vulnerable immigrants.⁴⁸
56. On March 19, 2020, news broke of the first publicly confirmed ICE employee to test positive for COVID-19 in the nation: a medical staffer at EDC.⁴⁹

⁴⁶ ECF 2, Ex. H, Keller Dec. ¶ 49; Ex. J, Schriro Dec. ¶15; Ex. M, Greifinger Dec. ¶ 6.

⁴⁷ ECF 2, Ex. I, Singer Dec. ¶ 12; Ex. N, Letter from Dr. Scott A. Allen, M.D., FACP and Dr. Josiah Rich, M.D., MPH to Congress, at 4 (Mar. 19, 2020).

⁴⁸ Janus Rose, *Thousands of Doctors Demand ICE Release Detainees to Stop a COVID-19 Disaster*, VICE News (Mar. 18, 2020), <https://bit.ly/35FXGpv>.

⁴⁹ Emily Kassie, *First ICE Employee Tests Positive for Coronavirus. Case confirmed at Elizabeth, N.J., facility currently holding almost 200 detainees*. The Marshall Project (Mar. 19, 2020), <https://bit.ly/2WcnQNq>.

57. On March 19, 2020, Dr. Scott Allen and Dr. Josiah Rich, doctors contracted to work with the Department of Homeland Security, sent a letter to U.S. Congress urging the release of all individuals who are not public safety risks from immigration detention in light of the disease, describing it as a “tinderbox scenario” in light of the conditions in which people are detained and the inability of medical services in jails and prisons to respond adequately.⁵⁰
58. Noting these same concerns, on March 20, 2020, over forty advocacy organizations sent a letter to Defendant Tsoukaris urging him to release all people in ICE custody in New Jersey and to suspend ICE enforcement operations.⁵¹
59. On March 23, 2020, the CDC issued interim guidance to correctional facilities and detention centers, setting forth guidelines to help facilities lower the rate of infection.⁵² The CDC, for example, discourages practices like transfers between prisons and jails and cohorting individuals who may have been exposed to COVID-19 but have not tested positive.
60. ICE subsequently issued a series of protocols for its jails and prisons to adopt, some of which contradict the CDC guidelines.⁵³ ICE implemented cohorting as a response to COVID-19 exposure for individuals who have not tested positive. ICE continues to admit

⁵⁰ ECF 2, Ex. N, Letter from Dr. Scott A. Allen, M.D., FACP and Dr. Josiah Rich, M.D., MPH to Congress, at 4 (Mar. 19, 2020); Catherine E. Shoichet, *Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention*, CNN (Mar. 20, 2020), <https://cnn.it/3biZPse>.

⁵¹ ECF 2, Ex. O, Letter to John Tsoukaris, *Emergency measures to stop the spread of COVID-19 in New Jersey immigration detention centers* (Mar. 20, 2020).

⁵² Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://bit.ly/2WBpbfH>.

⁵³ Enrique M. Lucero, Memorandum to Detention Wardens and Superintendents, *Memorandum on Coronavirus Disease 2019 (COVID-19), Action Plan, Revision 1* (Mar. 27, 2020), <https://bit.ly/3b8L9Mk>; U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *COVID-19 Pandemic Response Requirements (Version 1.0)* (Apr. 10, 2020), <https://bit.ly/3dpBORN>.

new individuals into custody and transfer individuals across facilities unilaterally and without individual consent or notice to family or counsel. It is not clear whether all personnel and individuals transferred are provided protective equipment or permitted to socially distance while in transit. Individuals from New Jersey jails with known exposure to COVID-19, for example, were transferred to Buffalo Federal Detention Facility before an outbreak spread at that facility.⁵⁴

61. As of May 14, 2020, more than 965 people have tested positive for COVID-19 in civil immigration confinement—a number that vastly undercounts overall cases since ICE does not engage in universal testing.⁵⁵

CoreCivic's History of Abuse and Its Response to the COVID-19 Outbreak

62. EDC is a private prison owned and operated by CoreCivic, Inc. (formerly known as Corrections Corporation of America, or CCA), the largest private prison company in the United States.⁵⁶ Well before the COVID-19 pandemic hit CoreCivic-run detention centers, they had a documented history of numerous human rights abuses including medical neglect,⁵⁷ sexual and physical assault of detained persons,⁵⁸ forced labor,⁵⁹

⁵⁴ Hamed Aleaziz, *ICE Moved Dozens of Detainees Across the Country During the Coronavirus Pandemic. Now Many Have COVID-19*, BuzzFeed News (Apr. 29, 2020), <https://bit.ly/2yTTFld>.

⁵⁵ U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19, Confirmed Cases (May 14, 2020), <https://www.ice.gov/coronavirus>.

⁵⁶ CoreCivic, Elizabeth Detention Center, <https://bit.ly/2YYqrwj>.

⁵⁷ Hamed Aleaziz, *A Secret Memo Revealed How a Transgender Immigrant Bleeding from Her Rectum Waited 13 Days for Care While Jailed b ICE*, BuzzFeed (March 4, 2020), <https://bit.ly/3fLJxvg>; José Olivares, *How Solitary Confinement Kills: Torture and Stunning Neglect End in Suicide at Privately Run ICE Prison*, The Intercept (Aug. 29, 2019), <https://bit.ly/2Lqp9Cd>.

⁵⁸ Monsy Alvarado et al., *Deaths in custody. Sexual violence. Hunger strikes. What we uncovered in ICE facilities across the US*, USA Today (Dec. 22, 2019), <https://bit.ly/3cu7VQ2> (at one CoreCivic-run detention center, federal inspectors noted 35 sexual assault or abuse allegations, 41 use of force incidents, 881 grievances, and one death).

understaffing, and overcrowding.⁶⁰

63. In 2016, the Bureau of Prisons decided to phase out its contracts with private prison corporations like CoreCivic after a Justice Department study found that people in private prisons experienced a significantly higher rate of abuse than people in federally-run facilities.⁶¹ The Homeland Security Advisory Council adopted a similar recommendation for the immigration detention system after its own study.⁶² The Trump Administration rescinded these decisions, permitting private prison corporations like CoreCivic to expand their operations. The vast majority of the people who have died in immigration custody since 2017 have died in facilities operated by private prison companies like CoreCivic.⁶³
64. CoreCivic has historically sought to operate in secrecy. This includes attempts to stifle dissent among those in confinement. For example, detained people at a CoreCivic-run detention center in Georgia went on a hunger strike in 2017 to protest their detention; CoreCivic retaliated by locking them in solitary confinement.⁶⁴

⁵⁹ Amanda Holpuch, *Private prison companies served with lawsuits over using detainee labor*, The Guardian (Nov. 25, 2018), <https://bit.ly/3fOETgd>.

⁶⁰ Caleb Bauer, *CoreCivic has history of complaints, violations*, South Bend Tribune (Jan. 17, 2018), <https://bit.ly/2Wp5Z60> (discussing complaints of overcrowding, medical neglect, and sexual assault); Grassroots Leadership, *The Dirty Thirty: Nothing to Celebrate about 30 Years of Corrections Corporation of America*, <https://bit.ly/2WTP4HN> (detailing decades of abuses); ECF 2, Ex. H, Keller Dec. ¶¶ 113, 116-119.

⁶¹ Office of the Inspector General, U.S. Department of Justice, *Review of the Bureau of Prisons Monitoring of Contract Prisons* (2016), <https://oig.justice.gov/reports/2016/e1606.pdf>.

⁶² Homeland Security Advisory Council, *Report on the Subcommittee on Privatized Immigration Detention facilities* (2016), <https://bit.ly/3fPjiEv>.

⁶³ Hauwa Ahmed, *How Private Prisons Are Profiting Under the Trump Administration*, Center for American Progress (Aug. 30, 2019), <https://ampr.gs/2T8hZH0>.

⁶⁴ Spencer Woodman, *Exclusive: ICE Put Detained Immigrants in Solitary Confinement for Hunger Striking*, The Verge (Feb. 27, 2017), <https://bit.ly/3fCjzKK>.

65. With the COVID-19 pandemic spreading rapidly in the immigration detention system, people held in ICE custody in CoreCivic facilities across the country began to report receiving inadequate medical attention, inedible or rationed food, and a lack of supplies for personal hygiene.⁶⁵
66. With growing public scrutiny of detention conditions during the COVID-19 pandemic, CoreCivic has once again turned to stifling dissent through abusive and violent tactics. At a Georgia detention center, CoreCivic has already used force twice against detained persons protesting for medical attention and adequate food during the pandemic.⁶⁶ Afterward, the officers bragged about it on social media; in one post, an officer said he was in “call of duty mode” shooting everyone in sight with pepper-ball ammunition, while another celebrated using pepper spray against a man in a wheelchair.⁶⁷ In another CoreCivic-run detention center, when detained people protested being required to sign a contract to “hold [CoreCivic] harmless” in order to receive a protective facemask, they were threatened with pepper-spray.⁶⁸

⁶⁵ ECF 2, Ex. G, Mattos Dec. ¶¶ 7-12.

⁶⁶ José Olivares, *ICE’s Immigration Detainees Protested Lack of Coronavirus Precautions – And Swat-Like Private-Prison Guards Pepper-Sprayed Them*, The Intercept (May 5, 2020), <https://bit.ly/361DSwY>.

⁶⁷ *Id.*

⁶⁸ Kate Morrissey, *Detainees at Otay Mesa Detention Center were offered masks, but only if they signed contracts*, The San Diego Tribune (Apr. 10, 2020), <https://bit.ly/35UF0SK>; see also Jeff Proctor, *Inmates: Waivers required to receive masks, ‘a lot of unrest’ inside private Cibola County lockup*, New Mexico In Depth (May 13, 2020), <https://bit.ly/3cDdzQe> (describing similar practice of requiring waivers to receive masks at different CoreCivic facility).

67. Carlos Escobar Mejia, the first person known to die of COVID-19 in immigration detention spent his final days before being hospitalized subject to solitary confinement in a CoreCivic-run facility in retaliation for participating in a hunger strike.⁶⁹
68. CoreCivic has been sued by current and former employees for providing an unsafe work environment during the COVID-19 pandemic, specifically failing to provide face masks and prohibiting employees from wearing their own masks.⁷⁰
69. CoreCivic relies heavily on people in its custody to clean, under threat of solitary confinement, common areas of their prisons. It is being sued by people currently or formerly in its custody for forced labor. They have raised alarms about how this practice endangers people during the pandemic.⁷¹

COVID-19 Outbreak within Elizabeth Detention Center and Defendants' Response to Lawsuits and Community Advocacy

70. New Jersey ICE contract facilities, including EDC, represent the epicenter of the COVID-19 outbreak among those held in civil immigration confinement. The first reported COVID-19 case of ICE personnel in the country occurred at EDC on March 19, 2020. Since that time, COVID-19 has spread rapidly through ICE contract jails,

⁶⁹ Kate Morrissey, *First ICE detainee dies from COVID-19 after being hospitalized from Otay Mesa Detention Center*, The San Diego Tribune (May 6, 2020), <https://bit.ly/3dD6kHY>; Tatiana Sanchez, *'This is a cry for help': ICE detainees beg California lawmakers to intervene after coronavirus death*, San Francisco Chronicle (May 13, 2020), <https://bit.ly/2y38TE9>.

⁷⁰ Morgan Cook and Kate Morrissey, *Guards sue CoreCivic over allegedly dangerous workplace amid COVID-19*, The San Diego Tribune (Apr. 30, 2020), <https://bit.ly/2LkJCbB>.

⁷¹ *Owino v. CoreCivic, Inc.*, No. 17-CV-1112 JLS (NLS), 2020 WL 1550218, at *18 (S.D. Cal. Apr. 1, 2020) (certifying a national class representing CoreCivic detainees subjected to forced labor in light of CoreCivic's "standardized policies concerning the cleaning of common areas under threat of discipline.").

outpacing the rate of spread in the surrounding geographic areas. Multiple medical staff at New Jersey jails have already died from COVID-19.⁷²

71. To date, in EDC, eighteen people in confinement and two ICE personnel have tested positive for COVID-19.⁷³ On May 14, 2020, it was reported that one CoreCivic guard at EDC died after contracting COVID-19; he had worked at EDC as recently as April 20, 2020.⁷⁴ ICE has not released the number of EDC staff who have tested positive for COVID-19, since they work for the private contractor CoreCivic.⁷⁵ Following a lawsuit, ICE acknowledged that a number of non-ICE employees in privately contracted facilities have contracted COVID-19, and some have died from the virus.⁷⁶
72. People held at EDC are at heightened risk of contracting COVID-19, and suffering serious complications and death, than people free from confinement. EDC has failed to meet the basic safety, health care, sanitation, and hygiene needs of all of those whom they confine in several respects.
73. First, EDC has failed to suspend new admissions and enforce screening protocols that would mitigate the entry of COVID-19 into the facility. EDC continues to accept new individuals for confinement,⁷⁷ and staff and vendors circulate in and out of the prison. It continues to transfer people in and out of the prison from other ICE facilities. Defendants do not require COVID-19 testing of individuals, staff, and vendors who come into the

⁷² Monsy Alvarado, *Hudson County jail: Two nurses dead and more than 60 people positive for coronavirus*, NorthJersey.com (Apr. 6, 2020), <https://njersy.co/2LdCv4F>.

⁷³ *Id.*

⁷⁴ Emily Kassie (@emilykassie), Twitter (May 14, 2020, 5:43 PM), <https://bit.ly/3bF5zwQ>.

⁷⁵ ECF 2, Ex. Q, Declaration of Russell Hott ¶ 7, *Fraihat v. U.S. Immigration and Customs Enforcement*, No. 5:19-cv-01546, ECF 125-1 (C.D. Cal. Apr. 15, 2020).

⁷⁶ *Id.*

⁷⁷ ECF 2, Ex. F, Rodriguez Dec. ¶¶ 31-21.

prison. Instead, they screen individuals for symptoms, which inevitably permits asymptomatic individuals who have COVID-19 to enter the prison.⁷⁸

74. In practice, EDC considers individuals entering or within the prison symptomatic if they have a fever. Individuals who have other symptoms of COVID-19 are not treated as symptomatic if they do not have a fever.
75. According to Defendants, when a person in confinement is symptomatic, they are housed in isolation and tested, given a daily “sick call” and temperature check. Asymptomatic individuals will be permitted to enter the general population unless they have “confirmed exposure” to COVID-19.⁷⁹ The general population stays in dormitory-style rooms and share a common kitchen and bathroom.⁸⁰ These are not negative pressure rooms, meaning that air circulates throughout the space and in and out of other portions of the facility.
76. Asymptomatic individuals with confirmed exposure are cohorted together but only tested for COVID-19 if they subsequently start showing symptoms, if they are tested at all.⁸¹ Because an individual with COVID-19 may be able to transmit the disease for several days before symptoms appear,⁸² these practices expose individuals without COVID-19 to asymptomatic individuals with COVID-19.⁸³ Moreover, like the rest of the facility, upon

⁷⁸ ECF 2, Ex. H, Keller Dec. ¶ 55; Ex. I, Singer Dec. ¶ 54; Ex. I, Supp. Singer Dec. ¶ 4.

⁷⁹ ECF 2, Ex. I, Supp. Singer Dec. ¶ 4.

⁸⁰ ECF 2, Ex. A, Aganan Dec. ¶ 10; Ex. B, Boamong Dec. ¶¶ 5-6; Ex. C, García Mendoza Dec. ¶¶ 6-9; Ex. D, Nsimba Dec. ¶¶ 5, 9, 10.

⁸¹ ECF 2, Ex. I, Supp. Singer Dec. ¶ 4; Ex. H, Keller Dec. ¶ 70.

⁸² ECF 2, Ex. H, Keller Dec. ¶ 33.

⁸³ ECF 2, Ex. H, Keller Dec. ¶¶ 68-69.

information and belief, these are not negative pressure rooms, meaning that air circulates through the space and in and out of other portions of the facility.⁸⁴

77. Second, EDC has failed to enforce protocols that would mitigate the spread of COVID-19 within the facility. EDC does not permit individuals to maintain social distancing.⁸⁵ EDC is a converted industrial warehouse.⁸⁶ Plaintiffs sleep in dorms that contain up to 40 beds or cots in one room, clustered closely to each other.⁸⁷ There is one bathroom per room, which everyone confined to that room shares.⁸⁸ Each room contains tables and chairs, bolted to the floor, where people eat their meals and socialize.⁸⁹ There are no windows in EDC and no outdoor recreational space.⁹⁰ There is one law library and one recreational room with a hole in the ceiling for everyone to share.⁹¹
78. Prison personnel who prepare and deliver food, commissary supplies, and escort people within the facility are not able to maintain social distancing during these interactions. Defendants have deprived Plaintiffs of any control over who comes into close contact with them.⁹²
79. Even personal hygiene is often outside a person's control. Defendants control who receives sanitary and hygienic supplies, the nature of those supplies, and how often those supplies are replenished. Plaintiffs frequently run out of supplies and must wait until the

⁸⁴ ECF 2, Ex. I, Supp. Singer Dec. ¶ 15.

⁸⁵ *Supra* n. 79.

⁸⁶ ECF 2, Ex. E, Santana Dec. ¶ 7; Ex. H, Keller Dec. ¶ 59.

⁸⁷ ECF 2, Ex. E, Santana Dec. ¶ 7; Ex. A, Aganan Dec. ¶ 10; Ex. B, Boamong Dec. ¶¶ 5-6; Ex. C, García Mendoza Dec. ¶¶ 6-8; Ex. D, Nsimba Dec. ¶ 5.

⁸⁸ ECF 2, Ex. E, Santana Dec. ¶ 7; Ex. B, Boamong Dec. ¶ 6; Ex. C, García Mendoza Dec. ¶ 15.

⁸⁹ ECF 2, Ex. E, Santana Dec. ¶ 7.

⁹⁰ ECF 2, Ex. E, Santana Dec. ¶ 8; Ex. H, Keller Dec. ¶ 62; Ex. B, Boamong Dec. ¶ 17; Ex. C, García Mendoza Dec. ¶ 6.

⁹¹ ECF 2, Ex. E, Santana Dec. ¶ 8.

⁹² ECF 2, Ex. C, García Mendoza Dec. ¶ 15; Ex. D, Nsimba Dec. ¶ 7.

prison chooses to provide additional supplies or attempt to purchase them using commissary funds, if available, which generally have required people to go to the prison in person to place money onto a person's account. The lack of adequate hygiene supplies prevents individuals from frequently washing their hands with soap and keeping their own spaces clean.⁹³ Because EDC has stopped its payment and cleaning assignments without a substitute protocol, detained individuals must clean common areas of the prison on an ad hoc basis, often with inadequate supplies.⁹⁴ EDC has also failed to provide Plaintiffs with adequate personal protective equipment.⁹⁵

80. Third, EDC has affirmatively adopted some protocols that are likely to increase the chances that COVID-19 will spread through the prison. For example, Defendants cohort individuals with suspected but unconfirmed cases together in one area,⁹⁶ despite CDC guidelines discouraging this practice since it will likely cause those with the infection to spread it to those who were, prior to cohorting, not infected.⁹⁷ Defendants continue to transfer individuals to and from other prisons, a practice also discouraged by the CDC.⁹⁸

81. Fourth, EDC has failed to enforce protocols that would effectively treat those who are suspected or confirmed to have COVID-19. EDC lacks a medical infirmary.⁹⁹ As a whole EDC lacks sufficient staff, resources, oversight, and basic competency to respond to the COVID-19 pandemic. Plaintiffs report delayed responses to requests for medical

⁹³ ECF 2, Ex. B, Boamong Dec. ¶ 12; Ex. C, García Mendoza Dec. ¶ 11.

⁹⁴ ECF 2, Ex. A, Aganan Dec. ¶ 12; Ex. C, García Mendoza Dec. ¶ 10; Ex. D, Nsimba Dec. ¶ 13.

⁹⁵ ECF 2, Ex. A, Aganan Dec. ¶ 11; Ex. C, García Mendoza Dec. ¶ 12; Ex. D, Nsimba Dec. ¶ 6.

⁹⁶ ECF 2, Ex. I, Supp. Singer Dec. ¶ 19; Ex. H, Keller Dec. ¶¶ 68-69.

⁹⁷ Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, at 15-16 (Mar. 23, 2020) <https://bit.ly/2WBpbfH>.

⁹⁸ ECF 2, Ex. J, Schiro Dec. ¶ 22(d).

⁹⁹ ECF 2, Ex. H, Keller Dec. ¶ 102.

attention and inadequate treatment.¹⁰⁰ Fears of being cohorted with suspected cases discourage some from seeking medical attention for COVID-19-like symptoms. The ICE Health Service Corps, which provides medical care at EDC, has been under internal and Congressional investigation for allegations that it “has systematically provided inadequate medical and mental health care and oversight to immigration detainees in facilities throughout the U.S.”¹⁰¹

82. Plaintiffs report that nutrition and food quality is lacking at EDC.¹⁰² Even before the COVID-19 pandemic, detained individuals regularly complained about inadequate or inedible food.¹⁰³
83. EDC is subject to the 2011 Performance-Based National Detention Standards (“PBNDS”). The PBNDS specify that “Centers for Disease Control and Prevention (CDC) guidelines for the prevention and control of infectious and communicable diseases shall be followed.”¹⁰⁴ Yet ICE’s recent Pandemic Response Requirements contradict CDC guidelines in several respects, including with respect to CDC guidelines on social distancing, transfers, treatment of individuals with suspected and confirmed cases in quarantine, screening requirements, and numerous other CDC recommendations for jails

¹⁰⁰ ECF 2, Ex. A, Aganan Dec. ¶¶ 21-26; Ex. C, García Mendoza Dec. ¶ 21; Ex. D, Nsimba Dec. ¶¶ 14-15.

¹⁰¹ See Memorandum from Cameron P. Quinn and March Pachon to Ronald Vitiello and Michael P. Davis, U.S. Dep’t of Homeland Security (Mar. 20, 2019), <https://bit.ly/2Z4ZyXp>; Letter from House Subcommittee on Civil Rights and Civil Liberties Chairman Jamie Raskin to Cameron Quinn, U.S. Dep’t of Homeland Security Office of Civil Rights and Civil Liberties (Dec. 23, 2019), <https://bit.ly/2T4XCdH>.

¹⁰² ECF 2, Ex. A, Aganan Dec. ¶¶ 28, 32; Ex. D, Nsimba Dec. ¶ 12.

¹⁰³ ECF 2, Ex. E, Santana Dec. ¶ 10.

¹⁰⁴ U.S. Immigration and Customs Enforcement, *Performance-Based National Detention Standards* § 4.3(II)(10) at 248-97, 253 (2011) (PBNDS 2011), <https://bit.ly/3bwVoKE>.

and prisons. Thus, even if EDC followed ICE's Pandemic Response Requirements, it would still fall short of CDC requirements.

84. Moreover, ICE is not abiding by many of its Pandemic Response Requirements within EDC, including through the deficiencies described above. Defendants are aware that compliance will be haphazard at best, since EDC has had a long history of failing to abide by ICE's own standards, and ICE does not enforce them.¹⁰⁵ ICE facilities should be abiding by CDC guidelines, as the PBNDS already specify that, "Centers for Disease Control and Prevention (CDC) guidelines for the prevention and control of infectious and communicable diseases shall be followed."¹⁰⁶
85. Moreover, the Pandemic Response Requirements contradict CDC guidelines in several respects, including with respect to CDC guidelines on social distancing, transfers, treatment of individuals with suspected and confirmed cases in quarantine, screening requirements, and numerous other CDC recommendations for jails and prisons.¹⁰⁷ Thus, even if EDC followed ICE's Pandemic Response Requirements, it would still fall short of CDC requirements.

Defendants' Denial of Fair and Prompt Custody Reviews for Plaintiffs

86. Defendants continue to arrest new individuals, pursue ongoing removal proceedings, and execute removal orders despite the pandemic.

¹⁰⁵ See Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-18-67, ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, at 4 (June 26, 2018), <https://bit.ly/2A2cliP>; Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-19-18: ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, at 5 (Jan. 29, 2019), <https://bit.ly/35I26MI>.

¹⁰⁶ U.S. Immigration and Customs Enforcement, *Performance-Based National Detention Standards* § 4.3(II)(10) at 248-97, 253 (2011) (PBNDS 2011), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹⁰⁷ ECF 2, Ex. J, Schriro Dec. ¶ 22(a)-(e).

87. All Plaintiffs face a risk of contracting COVID-19 and of serious complications or death if they contract COVID-19. All Plaintiffs are entitled to a prompt review of their custody, including but not limited to consideration for humanitarian parole, supervised release, and other forms of release.
88. Defendants have directed field offices to identify and conduct custody reviews for individuals who may be particularly vulnerable to COVID-19 after advocates raised concerns and courts began ordering releases. Specifically, ICE directed all field offices to re-assess the custody of all individuals who are not subject to a mandatory detention, if they have a specific set of risk factors for serious illness from COVID-19.¹⁰⁸
89. These reviews have not solicited the participation of the individuals whose lives are at stake. Instead, these reviews have been conducted in secrecy and without a neutral arbitrator or appeal rights. Defendants have ignored or issued perfunctory denials of numerous requests for humanitarian parole or other forms of release.¹⁰⁹
90. As of April 17, 2020, ICE stated that it has released everyone it planned to release under its directive.¹¹⁰
91. Notwithstanding a continuing spread of COVID-19 within EDC and other detention facilities across the nation, ICE has suspended custody reviews in order to prevent “giv[ing] the impression that the Administration is ‘not enforcing our immigration laws,’ which would be a ‘huge pull factor’ and create a ‘rush at the borders.’”¹¹¹

¹⁰⁸ ECF 2, Ex. P, Peter B. Berg, Memorandum to Field Office Directors and deputy Field Office Directors, *COVID-19 Detained Docket Review* (Apr. 4, 2020).

¹⁰⁹ ECF 2, Ex. B, Boampong Dec. ¶¶ 18-19; Ex. D, Nsimba Dec. ¶¶ 23-24.

¹¹⁰ House Comm. on Oversight and Reform, DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus (Apr. 17, 2020), <https://bit.ly/3dsMcIt>.

¹¹¹ *Id.*; see also ECF 2, Ex. J, Schriro Dec. ¶ 29.

92. ICE has not, and does not intend to, conduct any custody review for individuals under the age of 60 who do not have pre-existing documentation of a narrow set of high-risk medical conditions.
93. ICE has not, and does not intend to, conduct any custody review for individuals who are detained pursuant to mandatory detention statutes, 8 U.S.C. §§ 1226(c) or 1231(a)(2), even if they are elderly or have pre-existing documentation of high-risk medical conditions.
94. ICE will not release individuals who they deem to be a danger to persons “or property” even if they are elderly or have pre-existing documentation of high-risk medical conditions.
95. While some Plaintiffs are eligible for a bond hearing before the immigration judge, Defendants have deprived them of any meaningful access to the immigration court.
96. From late March to mid-April Elizabeth Immigration Court, housed in the same building as EDC, closed or cancelled hearings numerous times without notice. Although the Elizabeth Immigration Court re-opened on April 13, 2020, scheduling of hearings has been erratic and unpredictable, and judges are often absent without notice. Individuals and attorneys appearing at the court continue to experience significant backlogs and delays in the adjudication of their pleadings.¹¹²
97. Attorneys representing clients before the Elizabeth Immigration Court face numerous barriers. Even when hearings proceed as scheduled, the detained individual appears via videoconferencing, while lawyers must appear in person or seek leave to appear telephonically. At no point are lawyers able to see their clients, even though lawyers for

¹¹² ECF 2, Ex. F, Rodriguez Dec. ¶¶ 9-14.

the Department of Homeland Security are permitted to appear by videoconference. The poor quality of the audio connection also makes it difficult for attorneys appearing telephonically.¹¹³

98. Defendants have failed to provide detained individuals with information and records they need in order to seek release,¹¹⁴ all the while significantly restricting their access to attorneys or any form of legal assistance. As a result, detained individuals are unable to seek meaningful custody reviews before the Elizabeth Immigration Court or before ICE.
99. Defendants have eliminated all in-person attorney visitation to EDC, and EDC does not permit an attorney to register for more than a single one-hour confidential phone call each day.¹¹⁵ The ability to communicate with legal counsel is critical not only for an individual's removal proceedings, but also any bond hearings or custody review requests to ICE.
100. Defendants have also eliminated all in-person visitations by nonprofit organizations that provide legal assistance through the Legal Orientation Program, a program funded by the Executive Office for Immigration Review to provide information to pro se individuals. As a result, many unrepresented individuals are unable to seek critical help for their cases, such as assistance with filling out forms or translating documents.¹¹⁶
101. Defendants have shut down a free hotline operated by First Friends, a nonprofit program that supports individuals who are confined in EDC and other immigration detention facilities in the region. First Friends operated the hotline for eight years prior to its shutdown in EDC in February 2020, routinely providing detained individuals with their

¹¹³ ECF 2, Ex. F, Rodriguez Dec. ¶ 22.

¹¹⁴ ECF 2, Ex. B, Boamong Dec. ¶ 18; Ex. C, García Mendoza Dec. ¶ 22.

¹¹⁵ ECF 2, Ex. F, Rodriguez Dec. ¶ 26; Ex. A, Aganan Dec. ¶¶ 29-30; Ex. D, Nsimba Dec. ¶ 25.

¹¹⁶ ECF 2, Ex. F, Rodriguez Dec. ¶ 29.

requests or release from detention. In the weeks prior to the shutdown, First Friends received approximately 40-50 calls from people confined in EDC each week.¹¹⁷

102. Defendants have also closed EDC's law library, beginning in late March, depriving detained individuals of access to legal research materials or to a printer. As a consequence, there is no way to print and complete forms for submission to the immigration court. Even though an individual may need to present physical evidence like identity documents, marriage and birth certificates, proof of employment, tax history, school records, letters of support, and medical records, they cannot make copies of documents unless they hand the materials to a CoreCivic staff member. Moreover, individuals must also purchase stamps and mail their filings to the Elizabeth Immigration Court, even though they are in the same building.¹¹⁸
103. As a result of such practices and policies, Defendants have failed to ensure a prompt and fair system for conducting constitutionally adequate custody reviews.

NAMED PLAINTIFFS' ALLEGATIONS

104. Each Plaintiffs' individual experiences underscore the dire and devastating conditions at EDC during the COVID-19 pandemic, and the detrimental impact of confinement on all those detained.
105. Plaintiff **Rizza Jane Guanao Aganan** is a 30-year-old mother of two who entered the United States in October 2014 through a J-1 work-and-study visa program based in Texas.¹¹⁹ Ms. Aganan suffered exploitative treatment at the hands of her program sponsor

¹¹⁷ ECF 2, Ex. E, Santana Dec. ¶¶ 4-5, 13-14; Ex. G, Mattos Dec. ¶ 4.

¹¹⁸ ECF 2, Ex. F, Rodriguez Dec. ¶¶ 9-14; Ex. A, Aganan Dec. ¶ 31.

¹¹⁹ ECF 2, Ex. A, Aganan Dec. ¶¶ 1, 4.

and subsequently became ineligible to renew her visa.¹²⁰ At the same time, she did not have the means to return to the Philippines.¹²¹ She found herself feeling lost and pressured to begin using drugs by those around her.¹²² In February 2020, Ms. Aganan was arrested in Jersey City, New Jersey, and charged with drug offenses.¹²³ She was released on her own recognizance but subsequently detained by ICE.¹²⁴

106. Ms. Aganan describes conditions at EDC as “unsanitary” and “horrendous.”¹²⁵ ICE and CoreCivic have “done virtually nothing” to protect her and the women with whom she is housed during the pandemic, denying them accurate information about the virus and permitting “rumors, inaccurate information, and panic [to] spread through the facility.”¹²⁶ Ms. Aganan has been particularly horrified by the “dirty” medical unit stocked with inadequate equipment, and staffed by uncaring and insensitive personnel.¹²⁷ Medical care is so deficient, Ms. Aganan reports, that many detainees fear seeking treatment.¹²⁸ Herself a sufferer of a rare hereditary condition called glucose-6-phosphate dehydrogenase deficiency, Ms. Aganan has encountered indifference from CoreCivic staff, who have refused to accommodate the restricted diet she must maintain to remain healthy.¹²⁹

¹²⁰ *Id.* ¶ 4.

¹²¹ *Id.* ¶ 5.

¹²² *Id.*

¹²³ *Id.* ¶ 6.

¹²⁴ *Id.*

¹²⁵ *Id.* ¶ 8.

¹²⁶ *Id.* ¶¶ 8, 13.

¹²⁷ *Id.* ¶¶ 21–26.

¹²⁸ *Id.* ¶ 26.

¹²⁹ *Id.* ¶¶ 27–28.

107. Ms. Aganan fears that she, and the women detained alongside her, will die while detained at EDC.¹³⁰ Indeed, the stress of the pandemic combined with the isolation and monotony of confinement without visits or recreation has already exacted an intolerable psychological toll on her dorm-mates.¹³¹ One was hospitalized recently after attempting suicide.¹³² For Ms. Aganan and the others, their “mental and physical health is deteriorating rapidly with each day that passes.”¹³³ Ms. Aganan longs not only to achieve her freedom but also to merely “enjoy being treated with basic humanity once again.”¹³⁴
108. Plaintiff **Albert Boampong** is a 35-year-old citizen of Ghana and father of two children.¹³⁵ Mr. Boampong had to flee his home and his family, including his then-pregnant fiancée, after facing threats and violent attacks.¹³⁶ Mr. Boampong is seeking protection in the United States in the form of asylum and related relief.¹³⁷ After Mr. Boampong was detained, his second daughter was born by C-section on May 10, 2020.¹³⁸ During his fiancée’s operation, Mr. Boampong was terrified for her health, as well as that of his infant daughter.¹³⁹ He remains heartbroken that he is not able to support his fiancée and care for his children at this critical time.¹⁴⁰
109. Mr. Boampong eats, sleeps, and passes every day in close quarters with other detained

¹³⁰ *Id.* ¶ 32.

¹³¹ *Id.* ¶¶ 19–20.

¹³² *Id.* ¶ 20.

¹³³ *Id.* ¶ 32.

¹³⁴ *Id.*

¹³⁵ ECF 2, Ex. B, Boampong Dec. ¶ 4.

¹³⁶ *Id.* ¶ 2.

¹³⁷ *Id.*

¹³⁸ *Id.* ¶ 4.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

men, some of who are sick and coughing.¹⁴¹ The facilities he shares are dirty, and fellow detainees consistently receive no more than Tylenol from the medical unit, no matter their symptoms.¹⁴² The coronavirus-related restrictions at EDC have also made it difficult for Mr. Boampong to communicate with his attorney and prepare to present his case to the immigration court.¹⁴³ These circumstances forced him to seek a continuance of his asylum hearing, originally scheduled for April 21, 2020—thus prolonging his detention in the midst of the pandemic.¹⁴⁴ Mr. Boampong has twice requested that ICE release him from detention on humanitarian grounds, and the agency has twice refused.¹⁴⁵

110. Mr. Boampong is terrified to die from COVID-19 before having the opportunity to meet his infant daughter.¹⁴⁶ In response to conditions at EDC during the pandemic, Mr. Boampong has initiated a hunger strike to challenge the government’s indifference toward his safety and that of other detained noncitizens.¹⁴⁷ He explains the motivation behind his ongoing protest this way: “I am very frustrated, sad, and depressed by what I am experiencing in this facility. I still don’t understand why the government is continuing to detain me and putting my life at risk, even though they know that COVID-19 is present in the facility and will continue to spread.”¹⁴⁸ With every passing day, Mr. Boampong’s fear of illness and death grows.¹⁴⁹

¹⁴¹ *Id.* ¶¶ 6, 10–11.

¹⁴² *Id.* ¶¶ 10–12, 15.

¹⁴³ *Id.* ¶ 20.

¹⁴⁴ *See id.*

¹⁴⁵ *Id.* ¶¶ 18–19.

¹⁴⁶ *Id.* ¶ 13.

¹⁴⁷ *Id.* ¶¶ 16–17.

¹⁴⁸ *Id.* ¶ 17.

¹⁴⁹ *See id.* ¶ 13.

111. Plaintiff **Héctor García Mendoza** is a 30-year-old citizen of Mexico who has lived in the United States for a decade.¹⁵⁰ Violence and instability drove him to leave his country of origin, and he has no family to return to in Mexico.¹⁵¹ For Mr. García Mendoza, New Jersey is home.¹⁵² Over the past ten years, he has made a living in construction and landscaping.¹⁵³ He shares an apartment with friends in Monmouth County and found a spiritual home at a Catholic church in Freehold, New Jersey.¹⁵⁴ Mr. García Mendoza has been detained at EDC since March 2020.¹⁵⁵

112. At EDC, Mr. García Mendoza is surrounded constantly by dozens of other men, with social distancing a practical impossibility because they are separated by just a few feet while eating and sleeping.¹⁵⁶ Necessities are often lacking, and Mr. García Mendoza and his dorm-mates sometimes have to wash their hands “just with hot water because there is no soap.”¹⁵⁷ He describes the facility as “filthy.”¹⁵⁸ An asthma sufferer, Mr. García Mendoza has experienced chest pain and shortness of breath while detained, but the medical staff have refused him adequate treatment.¹⁵⁹ Mr. García Mendoza notes with irony that EDC posted placards regarding the coronavirus that contain a link to the CDC

¹⁵⁰ ECF 2, Ex. C, García Mendoza Dec. ¶¶ 1–3.

¹⁵¹ *Id.* ¶ 3.

¹⁵² *Id.*

¹⁵³ *Id.* ¶ 4.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* ¶¶ 6–8.

¹⁵⁷ *Id.* ¶ 11.

¹⁵⁸ *Id.* ¶ 15.

¹⁵⁹ *Id.* ¶ 19.

website—but there is currently no way for detainees to access the Internet if they wish to access more information.¹⁶⁰

113. Mr. García Mendoza is “very worried about the virus and getting infected.”¹⁶¹ He knows that men with whom he was previously detained have taken ill, tested positive, and been moved to isolation.¹⁶² Compounding his anguish, Mr. García Mendoza has been unable to defend himself in court because he lacks the assistance of an immigration lawyer and has no access to the law library or a printer.¹⁶³ Since detainees no longer see a judge in person and cannot hand-deliver documents to the court, they must buy stamps and envelopes and send submissions through external, postal mail.¹⁶⁴ These barriers, combined with a lack of accessible information on court procedures, contributed to an immigration judge entering an order of removal against Mr. García Mendoza last week at just his second hearing before the immigration court.¹⁶⁵

114. Plaintiff **Bob Lupini Nsimba** is a 28-year-old man born in the Democratic Republic of the Congo who has been detained at EDC since August 2019.¹⁶⁶ A lifelong activist, Mr. Nsimba founded an opposition political organization dedicated to denouncing fraudulent elections, police brutality, and government corruption in his country of origin.¹⁶⁷ After Congolese police officers went to Mr. Nsimba’s house in August 2019 seeking to arrest

¹⁶⁰ *Id.* ¶ 13.

¹⁶¹ *Id.* ¶ 15.

¹⁶² *Id.* ¶ 14.

¹⁶³ *Id.* ¶¶ 22–23, 26.

¹⁶⁴ *Id.* ¶ 27.

¹⁶⁵ *Id.* ¶ 25.

¹⁶⁶ ECF 2, Ex. D, Nsimba Dec. ¶ 1.

¹⁶⁷ *Id.* ¶ 3.

him for his political activities, he fled the country.¹⁶⁸ Once in the United States, Mr. Nsimba applied for asylum, which the immigration judge denied in a decision issued earlier this month.¹⁶⁹ Determined to keep fighting for refuge from persecution and torture, Mr. Nsimba is currently appealing his case.¹⁷⁰

115. Mr. Nsimba lives in a dorm with about 25 other men.¹⁷¹ They share one bathroom, the same toilets, and the same phones.¹⁷² They are given food at the same time and eat communally, with four people at each table sitting close together.¹⁷³ Detainees wear the same uniforms for weeks on end and are not given hand sanitizer.¹⁷⁴ Mr. Nsimba has seen dorm-mates show symptoms of COVID-19, including coughs, sore throats, fevers, and difficulty breathing.¹⁷⁵ Some of them have gone to the medical unit and pleaded for help, but the staff simply turned them away.¹⁷⁶ Others with symptoms did not seek medical care because they knew that they would not receive treatment.¹⁷⁷
116. During his detention, Mr. Nsimba has experienced insomnia and constant sadness.¹⁷⁸ He worries persistently about his family and about himself.¹⁷⁹ Mr. Nsimba has begun to suffer from symptoms of trauma exposure, including intrusive thoughts about events in

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* ¶ 4.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* ¶ 5.

¹⁷² *Id.* ¶ 9.

¹⁷³ *Id.* ¶ 10.

¹⁷⁴ *Id.* ¶ 9.

¹⁷⁵ *Id.* ¶ 15.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* ¶ 20.

¹⁷⁹ *Id.*

the DRC.¹⁸⁰ He is “completely depressed,” a feeling he had never experienced before being detained.¹⁸¹ Despite his background as an opposition activist in the DRC, where the police and military routinely torture political dissidents, Mr. Nsimba speaks of his detention during the coronavirus pandemic in categorical terms: “I never imagined I would end up in circumstances like this and be in this much danger.”¹⁸² He is desperate to achieve release from custody.¹⁸³

CLASS ACTION AND REPRESENTATIVE HABEAS ALLEGATIONS

117. All individuals civilly confined by Defendants in EDC are subject to the same disregard for health and safety and are subject to the same policies of confinement and hygiene.
118. Ms. Aganan, Mr. Boamong, Mr. García Mendoza, and Mr. Nsimba bring this action on behalf of themselves and all others who are similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), and as a representative habeas class. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (recognizing that a (b)(2) habeas class of individuals in civil immigration detention may be certified if Rule 23’s prerequisites are satisfied); *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 404 (1980) (holding that class representative could appeal denial of certification of habeas and declaratory judgment claims); *see also United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125-27 (2d Cir. 1974) (allowing a habeas action to proceed as “a multi-party proceeding similar to the class action authorized by the Rules of Civil Procedure”).

¹⁸⁰ *Id.*

¹⁸¹ *Id.* ¶ 21.

¹⁸² *Id.* ¶ 22.

¹⁸³ *Id.* ¶ 23.

119. The named Plaintiffs seek to represent the following class: All individuals who, between commencement of this action and the entry of final judgment, are or have been held in civil immigration detention at Elizabeth Detention Center.
120. The proposed class satisfies all of the requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy—as well as those of Rule 23(b)(2).
121. The proposed representative class is sufficiently numerous as to make joinder impracticable. Upon information and belief, there are over 140 people held in civil immigration confinement at EDC.
122. The proposed representative class presents common questions of law and fact, including (1) whether civil immigration confinement at EDC in the face of the COVID-19 pandemic subjects class members to life-threatening infection and thus violates substantive due process; (2) whether Defendants have failed to provide a meaningful custody review procedure in light of the pandemic, in violation of class members' procedural due process rights; (3) whether ICE's April 4, 2020 directive is contrary to constitutional right; and (4) whether Defendants have failed to comply with their own guidance and standards to mitigate the risks posed by COVID-19.
123. The named Plaintiffs' claims are typical of the representative class they seek to represent. Like all class members, Ms. Aganan, Mr. Boampong, Mr. García Mendoza, and Mr. Nsimba are currently (1) civilly detained by ICE at EDC; (2) subject to the close confinement and lack of hygiene that characterize immigration detention at EDC; and are (3) subject to infection, illness, and death from COVID-19 were it to spread.
124. Plaintiffs are able to fairly and adequately protect the interests of the proposed representative class. Plaintiffs are represented by counsel from the Immigrant Rights

Clinic at the New York University School of Law, American Friends Service Committee, and Immigrant Defense Project, who have extensive experience litigating complex immigration-related cases in federal court, including lawsuits on behalf of noncitizens in immigration detention.

125. The proposed class satisfies Rule 23(b)(2) because Defendants have acted or refused to act on grounds that apply generally to the class. Members of the proposed representative class all seek the same relief, and this relief is appropriate respecting the class as a whole to ensure that all members of the proposed class are given consistent relief and to satisfy the health and safety standards at the core of their challenge.
126. Plaintiffs and members of the proposed class seek a writ of habeas corpus to remedy their unconstitutional detention in life-threatening conditions at EDC.

CLAIMS FOR RELIEF

COUNT I

(Violation of Fifth Amendment Right to Substantive Due Process—Unlawful Punishment; Unreasonable Risk to Health and Safety; Deliberate Indifference or Reckless Disregard; State-Created Danger)

127. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
128. The Fifth Amendment to the U.S. Constitution guarantees individuals in civil immigration confinement the right to be free from punishment. The Government violates this guarantee when conditions of confinement lack a reasonable relationship to any legitimate governmental purpose, i.e., when a custodian's actions are excessive in relation to their purpose.
129. Defendants' continued detention of Plaintiffs during the COVID-19 pandemic is excessive in relation to any legitimate governmental purpose. Less harsh measures are

available to satisfy any governmental interest in continuing to detain Plaintiffs, including release on recognizance or under reasonable conditions. Under these circumstances, Defendants' detention of Plaintiffs amounts to impermissible punishment.

130. The conditions of confinement for individuals in immigration detention also violate the Fifth Amendment when the Government fails to safeguard the health and safety of those in custody.
131. Defendants have subjected Plaintiffs to conditions of confinement that create a substantial risk of contracting a serious case of COVID-19, for which there is no known vaccine or cure. Defendants know or should be aware of the fact that their continued detention of Plaintiffs render them especially vulnerable to severe illness or even death. Defendants are therefore knowingly or recklessly subjecting Plaintiffs to an unreasonable risk of serious harm in violation of substantive due process.
132. The Fifth Amendment also protects individuals in civil immigration confinement from state-created danger. When the state creates or increases a danger posed to individuals, particularly where it deprives those individuals of the means to protect themselves, it violates the Fifth Amendment.
133. Despite having the authority to release Plaintiffs, Defendants have chosen to keep Plaintiffs in physical confinement and have adopted practices that create heightened risk of exposure to a deadly and debilitating disease, such as cohorting individuals without testing. It has deprived Plaintiffs of the means of protecting themselves through social distancing and protective equipment, in an environment with insufficient medical resources, and increased the likelihood that Plaintiffs will suffer serious illness or death.

134. In addition, ICE has continued to book individuals into custody at EDC and to transfer individuals between detention facilities without notice or adequate protocols—including social distancing and testing—to safeguard their health during transport. These actions endanger Plaintiffs’ health and increase the likelihood that they will suffer serious illness or death.
135. For these reasons, Defendants’ ongoing civil immigration confinement of Plaintiffs violates the Fifth Amendment’s guarantee of substantive due process.

COUNT II

(Violation of the Fifth Amendment Right to Procedural Due Process—Denial of Constitutionally Adequate Custody Review)

136. Plaintiffs reallege and repeat each and every allegation contained in the preceding paragraphs as if set forth fully herein.
137. The Fifth Amendment to the U.S. Constitution guarantees individuals in civil immigration confinement the right to adequate procedural protections to ensure that the government’s asserted justification for the detention outweighs the individual’s constitutionally protected interest in avoiding physical restraint.
138. Due process requires a consideration of the impact of the COVID-19 pandemic on evaluating the individual’s constitutionally protected interest and the government’s justification for detention.
139. In the face of an outbreak of COVID-19 at EDC, all Plaintiffs have a significant liberty interest in securing release from unsafe conditions. In contrast, the government’s interest in physical confinement is diminished.
140. The Due Process Clause thus requires all Plaintiffs to a prompt custody review that guarantees meaningful notice and opportunity to be heard before a neutral decisionmaker.

141. Defendants have failed to provide Plaintiffs with prompt and constitutionally adequate custody reviews.
142. Defendants have conducted, and concluded, custody reviews for a limited number of individuals in their custody under ICE's April 4, 2020 directive. The directive orders field offices to consider of a limited subset of individuals with high risk factors and prohibits consideration of any individual detained under 8 U.S.C. §§ 1226(c) or 1231(a)(2).
143. Pursuant to the April 4, 2020 directive, Defendants have detained Plaintiffs at EDC without any consideration of flight risk or danger to the community, the risk Plaintiffs face upon continued detention, or the public health benefits of releasing individuals from EDC.
144. Defendants have also interfered with Plaintiffs' access to meaningful custody reviews by holding reviews without notice to individuals or an opportunity to be heard, delaying or ignoring requests for medical records, delaying or ignoring requests for confidential legal calls, closing courts or cancelling hearings, and taking other measures that deprive Plaintiffs of their ability to obtain evidence and support for their custody review requests.
145. Weighed against the significant liberty interests at stake for Plaintiffs and the exponentially heightened threat posed by COVID-19, Defendants' failure to provide Plaintiffs with prompt and constitutionally adequate custody review with all attendant rights to counsel and courts violates the Fifth Amendment.
146. The Due Process Clause requires that Plaintiffs receive adequate procedural protections to assert their interest, including a neutral decisionmaker, notice and opportunity to be heard, and a requirement that the government bear the burden of justifying any continued

detention by clear and convincing evidence. As a consequence of Defendants' practices at EDC, Plaintiffs will continue to suffer a violation of their procedural due process rights absent custody reviews by this Court.

COUNT III

(Continued Detention in Violation of the *Accardi* Doctrine and the Fifth Amendment)

147. Plaintiffs reallege and repeat each and every allegation contained in the preceding paragraphs as if set forth fully herein.
148. The CDC have issued guidance to all prisons and jails, specifying measures to mitigate the risks associated with COVID-19.
149. ICE has issued guidance to its contract jails, specifying measures to mitigate the risks associated with COVID-19, and specifying that its contract jails are subject to the relevant Performance-Based Detention Standards previously set forth by ICE, which include standards for medical care and hygiene and requires facilities to follow CDC guidelines.
150. The Fifth Amendment of the U.S. Constitution requires that agencies follow their own regulations, rules, and internal procedures where individual rights are at stake. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268 (1954). Under the *Accardi* doctrine, agency action that violates its own rules must be declared null and void.
151. Defendants have failed to follow their own regulations, rules, and internal procedures designed to safeguard the health and wellbeing of individuals in their custody. Because these regulations, rules, and internal procedures are designed with the right to life and liberty in mind, and because Plaintiffs have been exposed to a heightened risk of serious

illness or death as a result, Defendants' actions in continuing to detain Plaintiffs despite the agency's inability to safeguard their health violate the *Accardi* doctrine.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Certify Plaintiffs and all individuals who, between commencement of this action and the entry of final judgment, are or have been held in civil immigration detention at Elizabeth Detention Center;
- c. Issue a Writ of Habeas Corpus ordering Defendants to release Plaintiffs and class members immediately on their own recognizance or under reasonable conditions of supervision;
- d. Declare that Defendants' detention of Plaintiffs and class members is unlawful in violation of the Fifth Amendment and the *Accardi* doctrine;
- e. Order Defendants to implement protocols designed to ensure prompt custody review measures that comport with due process;
- f. Order Defendants to cease any new admissions of individuals into immigration confinement at EDC;
- g. Pending adjudication of this Petition, order Defendants to immediately release Plaintiffs and putative class members, or in the alternative, conduct bail hearings for Plaintiffs and putative class members on an expedited basis;
- h. Pending adjudication of this Petition, order Defendants to refrain from (1) unilaterally transferring Plaintiffs and putative class members to another detention facility and (2) admitting new individuals into immigration confinement at EDC;

- i. Award Petitioners their costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statutes; and
- j. Grant such further relief as the Court deems just and proper.

Respectfully submitted this 15th day of May, 2020.

/s/ Matthew A. Johnson

Matthew A. Johnson
Lauren Major*
AMERICAN FRIENDS SERVICE
COMMITTEE
570 Broad Street, Suite 1001
Newark, NJ 07102
mjohnson@afsc.org
lmajor@afsc.org

Alina Das*
Jessica Rofé*
NYU IMMIGRANT RIGHTS CLINIC
Washington Square Legal Services
245 Sullivan Street, 5th Fl.
New York, NY 10014
dasa@mercury.law.nyu.edu
rofej@mercury.law.nyu.edu

Leila Kang*
Patrick Baker*
Brittany Castle
IMMIGRANT DEFENSE PROJECT
40 W. 39th Street, 5th Fl.
New York, NY 10018
leila@immdefense.org
patrick@immdefense.org
brittany@immdefense.org

**Motion for pro hac vice admission forthcoming*

Attorneys for Petitioners-Plaintiffs

VERIFICATION

I am submitting this verification on behalf of the Petitioners-Plaintiffs because I am one of the Petitioners' attorneys, and I have discussed the claims with Petitioners' legal team. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Verified Petition are true and correct to the best of my knowledge.

Dated: May 15, 2020

By: /s/ Matthew Johnson

CIVIL COVER SHEET

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
Rizza Jane Guanao AGANAN, Albert BOAMPONG, Hector GARCIA MENDOZA, and Bob Lupini NSIMBA
(b) County of Residence of First Listed Plaintiff Union
(c) Attorneys (Firm Name, Address, and Telephone Number)
Matthew A. Johnson, American Friends Service Committee, 570 Broad Street, Suite 1001, Newark, NJ 07102; (973) 705-7329; MJohnson@afsc.org;

DEFENDANTS
See addendum
County of Residence of First Listed Defendant Union
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
U.S. Attorney's Office - Civil Division, 970 Broad Street, 7th Floor, Newark, NJ 07102; (973) 645-2700

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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
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)
Table with columns: 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:
Unlawful detention by U.S. Immigration and Customs Enforcement

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 05/15/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew A. Johnson

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Addendum to Civil Cover Sheet - *Rizza Jane Guanao AGANAN, et. al., v. Orlando RODRIGUEZ et. al.*

RESPONDENTS:

- (1) Orlando RODRIGUEZ, in his official capacity as Warden of Elizabeth Detention Center;
- (2) John TSOUKARIS, in his official capacity as Newark Field Office Director for U.S. Immigration and Customs Enforcement;
- (3) Matthew T. ALBENCE, in his official capacity as acting Deputy Director and Senior Official Performing the Duties of Director of U.S. Immigration and Customs Enforcement;
- (4) Chad F. WOLF, in his official capacity as acting Secretary of the U.S. Department of Homeland Security; and
- (5) William P. BARR, in his official capacity as Attorney General of the United States.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Rizza Jane Guanao AGANAN, et al.,

Petitioners-Plaintiffs,

v.

Orlando RODRIGUEZ, et al.,

Respondents-Defendants.

Case no. 2:20-cv-5922

CERTIFICATION OF SERVICE

I, Matthew Johnson, hereby certify as follows:

1. I am an attorney admitted to the District Court of New Jersey and work at the legal non-profit organization the American Friends Service Committee.
2. On May 15, 2020, I caused copies of the (i) Petitioners-Plaintiffs' Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory or Injunctive Relief; (ii) Civil Cover Sheet; and (iii) this Certification of Service to be served on all counsel of record via electronic case filing.

Dated: May 15, 2020
Newark, NJ

By: /s/ Matthew Johnson
Matthew A. Johnson, Esq.
American Friends Services Committee
570 Broad Street, Suite 1001
Newark, NJ 07102
(973) 705-7329
MJohnson@afsc.org

Counsel for Petitioners-Plaintiffs