

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ADRIANO DA SILVA MEDEIROS;)
JOSE MARCOS PALACIOS MOLINA;)
and **LUIS ORLANDO DURAND LUYO,**)
) Petitioners-Plaintiffs,)
) v.)
) **DANIEL W. MARTIN,** Warden,)
Donald W. Wyatt Detention Facility;)
CENTRAL FALLS DETENTION)
FACILITY CORPORATION;)
MATTHEW ALBENCE, Acting Director,)
U.S. Immigration and Customs)
Enforcement; and **TODD LYONS,**)
Acting Field Office Director,)
U.S. Immigration and Customs)
Enforcement,)
) Respondents-Defendants.¹)

Civ. No. _____

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

ORAL ARGUMENT REQUESTED

1. This urgent petition for a writ of habeas corpus and complaint for declaratory and injunctive relief seeks the release of three civil immigration detainees held at the Donald W. Wyatt Detention Facility (“Wyatt”) in Central Falls, Rhode Island. Plaintiffs-Petitioners (hereinafter “Petitioners”) suffer from preexisting health conditions—including heart disease, asthma, decreased lung capacity, and diabetes—that put them at high risk of severe illness or death from COVID-19. Due to the impossibility of adequate social distancing within Wyatt and the regular cycling of facility staff and guards into and out of a Rhode Island community with

¹ This action is subject to the Court’s April 16, 2020 General Order Directing the Warden of the Donald W. Wyatt Detention Facility to File Status Reports.

rising rates of infection, Petitioners are virtually certain to become infected with COVID-19 if they remain detained. In light of the extremely high risk of infection and the exceptional threat to life and health that these Petitioners face, Petitioners' continued detention constitutes unreasonable and punitive civil detention in violation of their Fifth Amendment rights to substantive due process. To remedy this constitutional violation, the Court can and should order Petitioners' immediate release.

2. Petitioner Adriano da Silva Medeiros ("Mr. Medeiros") is 55 years old and has coronary artery disease, a serious heart condition the Centers for Disease Control and Prevention ("CDC") have identified as placing individuals at high risk for severe illness or death from COVID-19. He has had two stents placed in his main heart artery. He carries emergency medicine (nitroglycerin tablets) with him at all times in case of a heart attack. At the time he was detained on approximately February 25, 2020, Mr. Medeiros was scheduled to have heart surgery for post-incisional ventral hernia, to help protect him against the threat of a heart attack. Mr. Medeiros has also had multiple bouts of cancer. In 2016, he had surgery to remove his left kidney due to cancer, and in 2018 he had surgery to remove his left thyroid due to cancer. Additionally, Mr. Medeiros has been diagnosed as pre-diabetic. He takes several medications daily to address these health problems. Declaration of Adriano da Silva Medeiros ("Medeiros Decl.") ¶¶ 1, 6-11; Declaration of Elizabeth Toll, M.D. ("Toll Decl.") ¶¶ 6(a), 7(a).

3. Petitioner Jose Marcos Palacios Molina ("Mr. Palacios") is 43 years old and has type-2 diabetes, a condition the CDC has identified as placing individuals at high risk for severe illness or death from COVID-19. He receives a daily injection of insulin and he also takes Metformin, a diabetes medication. Since his detention, Mr. Palacios has suffered from dizziness,

blurred vision, headaches, and has lost 16 pounds. Declaration of Jose Marcos Palacios Molina (“Palacios Decl.”) ¶¶ 1, 5-6; Toll Decl. ¶¶ 6(c), 7(c).

4. Petitioner Luis Orlando Durand Luyo (“Mr. Durand”) is 40 years old and suffers from severe asthma, a condition the CDC has identified as placing individuals at high risk for severe illness or death from COVID-19. He takes the asthma medicine albuterol twice daily using an inhaler. His last asthma attack was in January 2020. Mr. Durand’s lung function may be further impaired by a stab wound he suffered at about the age of 15, which was surgically repaired. Declaration of Luis Orlando Durand Luyo (“Durand Decl.”) ¶¶ 1, 4-5; Toll Decl. ¶¶ 6(b), 7(b).

5. Petitioners are not safe within Wyatt. Their medical conditions put them at high risk of severe illness and death from COVID-19. The only known measures to mitigate the rapid spread of the virus—“social distancing” (also referred to as “physical distancing”) and scrupulous hand hygiene—are impossible within Wyatt.

6. In the face of a global pandemic that threatens the health and life of Petitioners, Respondents have carried on with business as usual at Wyatt. Correctional officers and other Wyatt staff rotate regularly in and out of the facility, each potentially carrying infection from the outside world or other parts of the facility. Every day, officers wearing neither masks nor gloves enter Petitioners’ cells and handle all of their belongings. Detainees continue to be housed with cellmates in small cells measuring approximately five feet by nine feet. Petitioners spend significant portions of their days in close quarters in common areas, and are required to line up close together to receive their meals. As before the pandemic, Petitioners must eat their meals within arm’s reach of each other at chairs fixed to small tables. They exercise together and watch

television together. Medeiros Decl. ¶¶ 17-29; Palacios Decl. ¶¶ 16-19; Durand Decl. ¶¶ 8-10; Declaration of Karina N. Valencia (“Valencia Decl.”) ¶ 4(d).

7. In addition to the fact that Petitioners cannot protect themselves through social distancing, unhygienic conditions at Wyatt increase the threats to Petitioners. Hand sanitizer is not available to the detainees. The surfaces in the common areas are cleaned infrequently. The shared showers are not cleaned between uses, and mold is growing there. No disinfectant is available to clean the shared telephones that provide the detainees their only means to stay in contact with loved ones. In desperation to protect themselves, detainees have put their socks over the phones in hope of protecting themselves. Medeiros Decl. ¶¶ 15-16, 19, 23-29; Palacios Decl. ¶¶ 10-16; Durand Decl. ¶¶ 9-17.

8. The close quarters in which Petitioners live and the lack of proper hygiene allow the virus to spread rapidly, just as it has spread rapidly in other prisons and detention centers. Some of the largest known concentrations of coronavirus cases in the United States are in jails and detention facilities.² In the Cook County Jail outside Chicago, at least 276 detainees and 172 staff members have tested positive for coronavirus. As of April 9, two detainees who tested positive for the virus have died, and more than 20 have been hospitalized.³ In Rikers Island jail

² As of April 14, nearly 75 percent of Rhode Islanders who have died from COVID-19 deaths Rhode Island lived in another communal setting—nursing homes. *COVID-19: Nearly 75 Percent of Rhode Island’s Fatalities Linked to Nursing Homes*, NBC 10 NEWS (Apr. 14, 2020), <https://turnto10.com/news/local/casualties-at-two-ri-nursing-homes-almost-half-of-states-covid-19-deaths>.

³ Holly Yan, *Prisons and Jails Across the U.S. Are Turning Into ‘Petri Dishes’ for Coronavirus. Deputies Are Falling Ill, Too*, CNN (Apr. 10, 2020), <https://www.cnn.com/2020/04/09/us/coronavirus-jails-prisons/index.html>.

complex in New York City, more than 300 inmates and 500 prison staffers had tested positive for the virus by April 10, and two have died.⁴

9. The outbreak of COVID-19 in prisons and detention centers is increasing at an alarming rate. As the City of New York Board of Correction has explained: “Given the nature of jails (e.g. dense housing areas and structural barriers to social distancing, hygiene, and sanitation), the number of patients diagnosed with COVID-19 is certain to rise exponentially.”⁵ Similarly, as Franklin County Sheriff Christopher Donelan said of the Franklin County House of Correction in Massachusetts, “This jail is like an incubator. If the coronavirus were to show up here, the spread would be fast and furious.”⁶ The rates of spread in detention facilities—including among staff and detainees at ICE facilities—illustrates the dangers of the conditions to those detained and the broader community. Declaration of Joseph J. Amon, Ph.D., MSPH (“Amon Decl.”) ¶ 33.

10. It is inevitable that COVID-19 will spread through Wyatt. As of April 17, nearly 700,000 people in the United States have tested positive for the virus, and more than 32,000 have

⁴ Rebecca Rosenberg, *Second Rikers Island Inmate Dead From Coronavirus After Failed Release*, N.Y. POST (Apr. 14, 2020), <https://nypost.com/2020/04/14/second-rikers-island-inmate-dead-from-coronavirus/>.

⁵ Letter from Jacqueline Sherman, Interim Chair of New York City Board of Corrections, to New York City Criminal Justice Officials, at 2 (Mar. 21, 2020) <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf>.

⁶ Domenic Poli, *Sheriff Announces Temporary Limitations on Jail, TRIAD Office*, GREENFIELD RECORDER (Mar. 12, 2020), <https://www.recorder.com/Franklin-County-jail-on-lockdown-33292786>. See also David Montgomery, *Prisons Are Bacteria Factories*; *Elderly Most at Risk*, PEW CHARITABLE TRUSTS STATELINE (Mar. 25, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/03/25/prisons-are-bacteria-factories-elderly-most-at-risk> (quoting consultant and former executive director of Colorado Department of Corrections: “These prisons are bacteria factories. I don’t think people understand the gravity of what’s going to happen if this runs in a prison, and I believe it’s inevitable. You’re going to see devastation that’s unbelievable.”).

died.⁷ More than 4,000 Rhode Island residents have tested positive for the virus, and 118 people have died.⁸ By the time this Court reads this Petition, these numbers undoubtedly will have grown significantly, which should illustrate the growing threat to Petitioners.

11. Rhode Island may be especially vulnerable to the spread of the virus. On April 15, Dr. Deborah Birx, Response Coordinator for the White House Coronavirus Task Force, singled out Rhode Island—and specifically the Providence area—as uniquely concerning because it is “caught between two incredible [coronavirus] hot spots in the country”: this area first “had increasing cases from the New York City area, and now [it] ha[s] increasing cases from the Boston area.”⁹

12. Rhode Island has seen an exponential increase in cases and deaths, with the number of infected people growing by an average of 20 percent each day, putting it in the top 10 states as to number of cases per 1 million people. The state already has “widespread” community transmission, and further increases in cases will strain Rhode Island’s limited medical infrastructure. Amon Decl. ¶¶ 5, 38.

13. The virus is already spreading in Rhode Island prisons. As of April 12, at least four corrections officers working in Rhode Island’s Adult Correctional Institutions have tested positive for the virus.¹⁰

⁷ *COVID-19 Dashboard*, CENTER FOR SYSTEMS SCIENCE AND ENGINEERING, JOHNS HOPKINS UNIVERSITY (last accessed Apr. 17, 2020), <https://www.arcgis.com/apps/opdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>.

⁸ *Rhode Island COVID-19 Response Data*, RHODE ISLAND DEPARTMENT OF HEALTH (last accessed Apr. 17, 2020) <https://health.ri.gov/data/covid-19/>.

⁹ Betsy Klein, *Birx Concerned Rhode Island Reemerging as Covid-19 Hotspot*, CNN (Apr. 15, 2020), https://www.cnn.com/asia/live-news/coronavirus-pandemic-intl-04-15-20/h_af7368925ea3d84fd67369e9e6ac0559.

¹⁰ *Rhode Island Department of Corrections Announces Four Total COVID-19 Employee Cases*, NBC 10 NEWS (Apr. 12, 2020), <https://turnto10.com/news/local/rhode-island-department-of-corrections-announces-four-total-covid-19-employee-cases>.

14. The virus is spreading through ICE facilities. As of April 17, 2020, there are 105 confirmed cases of COVID-19 among those detained in ICE detention facilities, and 118 ICE employees have tested positive for the virus.¹¹

15. Petitioners have heard rumors that a Wyatt detainee has tested positive for coronavirus. Medeiros Decl. ¶ 7; Palacios Decl. ¶ 9; Durand Decl. ¶ 8. On April 7, Wyatt officials acknowledged that a detainee displayed symptoms consistent with COVID-19 and had been quarantined while they awaited test results.¹²

16. Under these circumstances, release is the only way to prevent further unconstitutional endangerment of Petitioners' health and lives.

17. To protect their health and lives, Petitioners seek immediate release so that they may self-isolate at home for the duration of the COVID-19 outbreak. Their release can be subject to any conditions that the Court deems appropriate.

PARTIES

18. Petitioner Adriano da Silva Medeiros ("Mr. Medeiros") is a citizen of Portugal. He has been living in the United States since 1975. All of his family members live in the United States and are all United States citizens or lawful permanent residents. He has six children who are all United States citizens. Before being detained by ICE, he lived in Pawtucket, Rhode Island. He has been detained at Wyatt since February 25, 2020. Medeiros Decl. ¶¶ 1-6.

19. Petitioner Jose Marcos Palacios Molina ("Mr. Palacios") is a citizen of Mexico. He has been living in the United States since 1993. He has four children and one step-child who

¹¹ *ICE Guidance on COVID-19*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT (last accessed Apr. 17, 2020), <https://www.ice.gov/coronavirus> (follow "Confirmed Cases" link).

¹² *7 Local Coronavirus Developments—Possible Case at Wyatt Detention*, GO LOCAL NEWS (Apr. 9, 2020), <https://www.golocalprov.com/news/7-major-coronavirus-developments-possible-case-at-wyatt-detention-thursday>.

are United States citizens. He has been detained at Wyatt since November 2019. Palacios Decl. ¶¶ 1-4.

20. Petitioner Luis Orlando Durand Luyo (“Mr. Durand”) is a citizen of Peru. He has lived in the United States since 1993. He has two children who are both United States citizens. He has been detained at Wyatt since February 4, 2020. Durand Decl. ¶¶ 1-3.

21. Respondent Daniel W. Martin is the Warden of the Donald W. Wyatt Detention Facility. In his capacity as warden, Respondent Martin has physical custody of Petitioners. Martin is named as a Respondent in his official capacity.

22. Respondent Central Falls Detention Facility Corporation (CFDFC) is a municipal corporation governed by a five-member Board of Directors appointed by the Mayor of Central Falls. *See* R.I. Gen. Laws § 45-54-1. The Board, in turn, appoints the warden, who is responsible for overseeing the management and overall operation of the corporation and Wyatt. Wyatt is a maximum-security facility that can house up to 770 detainees.¹³ Respondent CFDFC has contracts with the United States Marshals Service, under which it houses detainees who are in the custody of the Federal Bureau of Prisons, U.S. Immigration and Customs Enforcement (ICE), the United States Navy, and the Mashantucket Pequot Tribe.¹⁴

23. Respondent Matthew Albence is the Acting Director of ICE, the agency in charge of Petitioners’ detention. He is named as a Respondent in his official capacity and is a legal custodian of Petitioners.

24. Respondent Todd Lyons is the Acting Field Office Director for the Boston Field Office of ICE Enforcement and Removal Operations (ERO), located in Burlington,

¹³ *See generally About the Facility, DONALD W. WYATT DETENTION FACILITY* ([last accessed Apr. 17](http://www.wyattdetention.com/)), <http://www.wyattdetention.com/>.

¹⁴ *See generally id.*

Massachusetts. The Boston Field Office is responsible for and has authority over ICE's apprehension, detention, and removal operations in Massachusetts, New Hampshire, Connecticut, Rhode Island, Maine, and Vermont. He is named as a Respondent in his official capacity and is a legal custodian of Petitioners.

JURISDICTION AND VENUE

25. This action arises under the Due Process Clause of the Fifth Amendment to the United States Constitution.

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

27. Federal district courts have jurisdiction pursuant to 28 U.S.C. § 2241 to adjudicate habeas claims by noncitizens challenging the lawfulness of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 517 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *see also Boumediene v. Bush*, 553 U.S. 723, 739 (2008) (“The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom.”); *Hernandez v. Gonzales*, 424 F.3d 42, 42 (1st Cir. 2005) (holding that the jurisdiction-stripping provisions of the Real ID Act do not apply to noncitizens challenging their detention).

28. Venue is proper in the District of Rhode Island pursuant to 28 U.S.C. § 2241(d) and 28 U.S.C. § 1391(b) and (e) because Petitioners are detained in Rhode Island.

FACTS

A. COVID-19 Poses a Grave Risk of Serious Illness and Death.

29. The novel coronavirus responsible for the illness COVID-19 has led to a global pandemic. As of April 15, 2020, more than 2 million people worldwide have been diagnosed with COVID-19, including almost 700,000 people in the United States. Over 150,000 people have died as a result of COVID-19 worldwide, including more than 32,000 in the United States.¹⁵

30. The rates of infection are exponential, not linear, meaning that, for each person infected one day, the next day we should expect to see not one, but many more infections.

31. The virus is transmitted through droplets and on contaminated surfaces, and possibly also airborne transmission. The average incubation period (time from infection to symptoms) has generally been reported to be around five days, but in some cases an infected individual may never show symptoms. Both symptomatic and asymptomatic people can transmit the virus. Declaration of Dr. Jonathan Louis Golob (“Golob Decl.”) ¶ 6.

32. Outcomes from COVID-19 vary from asymptomatic infection to death. In the highest risk populations, the fatality rate is about 15 percent—meaning about one out of every seven people in this group who contract the illness will die. An even higher percentage will suffer serious illness. Golob Decl. ¶¶ 4, 6.

33. Those who do not die may experience long-term harm. COVID-19 can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases can cause a permanent loss of respiratory capacity. Golob Decl. ¶¶ 4, 9.

¹⁵ *COVID-19 Dashboard*, *supra* note 7 (last accessed Apr. 17, 2020).

34. There is no approved and available vaccine to prevent COVID-19. There is no known cure or anti-viral treatment for COVID-19 at this time. The only way to protect vulnerable people from serious health outcomes, including death, is to prevent them from being infected with the coronavirus. Golob Decl. ¶ 10.

35. Consequently, preventing infection currently requires “social distancing” (also referred to as “physical distancing”) by remaining physically separated from other people by at least six feet; avoiding the use of shared objects and surfaces; and vigilant hand hygiene by frequently washing the hands with soap and warm water or sanitizing the hands with alcohol-based hand sanitizer. In order to be effective, social distancing must occur *before* individuals display symptoms, as they may be contagious before they are symptomatic. Golob Decl. ¶¶ 6, 10.

36. To reduce the spread of infection, state and federal governments have undertaken extraordinary measures to separate people and limit their interactions. In Rhode Island, for example, the Governor has declared a state of emergency, ordered the closure of all non-essential businesses, and prohibited gatherings of more than 5 people. The Governor also ordered all residents to stay home and avoid all unnecessary travel and activities.¹⁶

B. Petitioners Are Particularly Vulnerable to Serious Illness or Death from COVID-19.

37. The CDC has determined that people over the age of 65 and those with certain medical conditions face elevated risk of severe illness and death from COVID-19. The medical conditions that increase the risk of serious COVID-19 disease include lung disease (including asthma), heart disease, diabetes, chronic liver or kidney disease, epilepsy, hypertension,

¹⁶ *Rhode Island COVID-19 Information*, RHODE ISLAND DEPARTMENT OF HEALTH ([last accessed Apr. 17, 2020](https://health.ri.gov/covid/)), <https://health.ri.gov/covid/>.

compromised immune systems, blood disorders, inherited metabolic disorders, stroke, developmental delay, and pregnancy. Amon Decl. ¶ 8.

38. Petitioners are particularly vulnerable to serious illness or death if infected by COVID-19.

39. Petitioner Medeiros is 55 years old, has suffered from coronary artery disease, a serious heart condition identified by the CDC as a high-risk condition for severe complications from COVID-19. He has had two stents placed in his main heart artery to keep open the blood vessels to his heart. For his coronary heart disease, he takes aspirin and Plavix, both of which are blood thinners used to keep the stents open and prevent a future heart attack. He carries emergency medicine (nitroglycerin tablets) with him at all times in case of a heart attack. At the time he was detained on about February 25, 2020, Mr. Medeiros was scheduled to have surgery on a post-incisional ventral hernia, to help protect him against the threat of a heart attack. He also has had cancer twice. In 2016, he had surgery to remove his left kidney due to cancer, and in 2018 he had surgery to remove his left thyroid due to cancer. Mr. Medeiros has also been diagnosed as pre-diabetic. Medeiros Decl. ¶¶ 1, 8-11; Toll Decl. ¶¶ 6(a), 7(a).

40. Petitioner Palacios has type-2 diabetes, for which he takes a daily injection of insulin and an oral dose of Metformin, a diabetes medication. Type-2 diabetes has been identified by the CDC as a condition that increases the risk of complications from COVID-19, including serious illness and death. Since his detention, Mr. Palacios has suffered from dizziness, blurred vision, headaches, and has lost 16 pounds. Palacios Decl. ¶¶ 5-6; Toll Decl. ¶¶ 6(c), 7(c). “His 16-pound weight loss, dizziness, frequent headaches, and blurred vision since arriving at Wyatt are . . . possible signs of very high blood sugars.” Toll Decl. ¶ 7(c).

41. Petitioner Durand suffers from severe asthma, a condition that the CDC has identified as putting individuals at heightened risk for complications from COVID-19, including severe illness and death. He takes the asthma medicine albuterol twice daily using an inhaler. His last asthma attack was in January 2020. Durand Decl. ¶ 4; Toll Decl. ¶¶ 6(b), 7(b). Mr. Durand’s “lung function may also be affected by a stab wound he suffered at about the age of 15, which was surgically repaired.” Toll Decl. ¶ 7(b); *see* Durand Decl. ¶ 5.

C. The Close Quarters and Unhygienic Conditions at Wyatt Put Petitioners’ Lives at Grave Risk.

42. People incarcerated at Wyatt live in close quarters and rely on shared spaces to eat, sleep, shower, and use the bathroom. They cannot achieve the physical distancing needed to prevent the spread of COVID-19. Similarly, the intensive hygiene practices necessary to prevent the spread of COVID-19 are impossible at Wyatt. Moreover, Wyatt has continued business-as-usual operations, under which Petitioners have no way to avoid sharing confined spaces with corrections officers, Wyatt staff, and other detainees, under conditions that are far from hygienic.

43. Based on the conditions described more fully below, Wyatt currently has numerous vectors of COVID-19 infection, including: crowding and inability to practice social distancing, potential exposure due to a large number of people sharing facilities and objects not properly disinfected, lack of protective measures in food preparation, and insufficient access to hygiene products. Even if ICE were implementing its own guidance—which it is not—it will not prevent the spread of COVID-19 at Wyatt. These conditions will lead to unnecessary illness, and even death, for vulnerable individuals like Petitioners. Amon Decl. ¶¶ 22, 31, 40-41.

a. Petitioners Are Housed in Cells with No Means to Protect Themselves from COVID-19.

44. All three Petitioners are currently detained in the same housing unit or “pod” within Wyatt. Most immigration detainees at Wyatt are housed in small double-occupancy cells with a cellmate. Both Petitioner Medeiros and Petitioner Palacios share with cellmates their small cells, which are roughly 5 feet by 9 feet in size. They sleep on bunk beds. New cellmates are introduced frequently. For instance, Petitioner Medeiros’ current cellmate arrived approximately two weeks before this filing, while Petitioner Palacios’ current cellmate arrived approximately one week before this filing. Neither of these Petitioners’ new cellmates were quarantined before being placed in the cells with Petitioners. Medeiros Decl. ¶¶ 17, 20; Palacios Decl. ¶¶ 18-19; Durand Decl. ¶ 8.

45. Detainees regularly rotate in and out of the facility as they are arrested, released, or deported, or are transported for health care and legal proceedings outside the facility. Each new arrival increases the risk of infection from the outside world. Medeiros Decl. ¶ 20; Palacios Decl. ¶¶ 19-20; Durand Decl. ¶ 8.

46. Correctional officers and staff also rotate regularly in and out of the unit, each potentially carrying infection from the outside world or other parts of the facility. Wyatt guards enter Petitioners’ cells every day to check for contraband. During these daily searches, the officers touch all of Petitioners’ belongings, including their food, clothing, and bedding, with their bare hands, and do not sanitize their hands between cells or searches. Medeiros Decl. ¶ 29; Palacios Decl. ¶ 17; Durand Decl. ¶ 9.

47. Before April 15, Wyatt corrections officers did not have masks. In fact, on or about April 9, Petitioner Medeiros observed a senior corrections officer order another officer to remove a mask he was wearing. Medeiros Decl. ¶ 28.

48. Although the guards were issued masks on April 15, Petitioners were alarmed to observe that all the guards took off their masks once they entered the pod, defeating the purpose of wearing masks. Medeiros Decl ¶ 16, 28; Palacios Decl. ¶ 16; Durand Decl. ¶ 7.

49. Petitioners have no effective means to disinfect themselves or their cells. Petitioners are each issued one bar of soap per week. They have been given no hand sanitizer. When they request it, Petitioners are sometimes given what they believe is Windex to clean their cells but no paper towels. Instead, they must use their towels to wipe the cells, but they are only issued one clean towel per week. Medeiros Decl. ¶¶ 23-25; Durand Decl. ¶ 16.

50. Contrary to ICE's guidance, Petitioners have not been tested for COVID-19, even though they are people with high risk factors. Nor is Wyatt likely able to conduct the screening necessary to prevent the spread of COVID-19, despite Petitioners' ongoing interactions with new detainees and guards entering and exiting the facility. As a result, ICE may not detect COVID-19 in Petitioners until it is too late, and they are critically ill. Amon Decl. ¶¶ 24-26.

b. Petitioners Share Unsanitary Sinks, Showers, and Other Bathroom Facilities.

51. Detainees in Petitioners' housing pod share a communal bathroom, which includes 5 showers shared by approximately 60 detainees. The showers are not cleaned between uses but instead are just washed down with water once a day. Detainees have no disinfectant with which they can clean the shower between uses. Medeiros Decl. ¶ 26; Palacios Decl. ¶ 14; Durand Decl. ¶ 11.

52. Petitioner Palacios is paid \$6 per week to clean the showers once a day in the pod. For this task, he is given a bucket of water and a broom, but he usually is given no cleaning products. He is not allowed to replace the water during the cleaning. Occasionally he has been provided with what he believes is Windex to spray the shower walls, but he is given no brush or

rag to help him and he can only use the broom for this work. The absence of any effective disinfectant treatment in the showers is obvious to all Petitioners from the mold growing on the showers. Medeiros Decl. ¶ 26. Palacios Decl. ¶¶ 14-15; Durand Decl. ¶ 11.

53. Shared bathroom facilities that lack adequate surface disinfection between users are sites for the virus to spread. Amon Decl. ¶ 17.

c. Petitioners Share Common Spaces That Are Not Effectively Disinfected.

54. Petitioners spend significant amounts of time each day in the common area of the pod, Medeiros Decl. ¶ 22, where social distancing is impossible and which is not effectively disinfected.

55. Petitioners are required to line up in close proximity to other detainees for meals three times a day. Medeiros Decl. ¶ 21; Palacios Decl. ¶ 12; Durand Decl. ¶ 10.

56. Petitioner Palacios is one of the detainees assigned to serve food to his fellow detainees, and must hand each detainee their tray. He is not provided a mask for this task. Palacios Decl. ¶¶ 11-12.

57. After receiving their food, detainees eat together at small round tables 3 to 4 feet in diameter that seat four detainees at fixed chairs less than an arm's length apart. The tables are wiped down after each meal, but no one cleans the tables throughout the day when detainees continue to sit at the tables and socialize. Medeiros Decl. ¶ 21; Palacios Decl. ¶¶ 12-13; Durand Decl. ¶ 11; Valencia Decl. ¶ 4(d).

58. Petitioners cannot effectively disinfect their hands while they are in the common area, and have no access to hand sanitizer. Medeiros Decl. ¶ 15; Palacios Decl. ¶ 16; Durand Decl. ¶¶ 10, 12.

59. Because visitations have been suspended, the only way for Petitioners to stay in touch with their families is through the telephones in the common area. Rather than being disinfected after each use, these phones are cleaned once a day. The detainees have been provided no means to disinfect them. Out of desperation, some detainees have sought to protect themselves by placing a sock over the phone, in hopes that this might prevent exposure to the virus. Palacios Decl. ¶ 13; Durand Decl. ¶ 17.

60. The shared close quarters and unhygienic conditions at Wyatt increase the likelihood that COVID-19 will spread rapidly across the facility. Amon Decl. ¶¶ 17, 23, 29-30; *see also* Valencia Decl. ¶ 4.

61. These conditions also conflict in every conceivable way with the precautions that are recommended, even mandatory, for Rhode Islanders outside Wyatt. While the Rhode Island Governor's orders mandate social distancing, Petitioners have been forced to share crowded spaces with corrections officers, Wyatt staff, and fellow detainees. While Rhode Island has prohibited all gatherings of five persons or more, Petitioners and other immigration detainees at Wyatt spend most of their days in a common area with over fifty other detainees and in which Wyatt employees come and go frequently. Although the CDC has recommended that all Americans wear masks in public, neither Wyatt officers nor the detainees regularly wear masks.

D. Wyatt Has Responded to the Global Pandemic by Continuing Business-As-Usual Operations and Has Punished Detainees for Seeking Information About Protective Measures

62. As discussed above, Wyatt has taken no steps to make possible social distancing to prevent the spread of the virus. Indeed, ICE has conceded that “strict social distancing may not

be possible in congregate settings such as detention facilities.”¹⁷ Moreover, as discussed above, no measures have been taken to make Wyatt a more hygienic setting that would prevent to some extent the spread of the virus through common surfaces.

63. After hearing news reports about the coronavirus pandemic in early March, Petitioners and other Wyatt detainees became increasingly alarmed about the threat to their health posed by the virus. Yet Wyatt continued business-as-usual operations.

64. For weeks, detainees repeatedly asked for information about what was being done to protect them and what precautions they could take to protect themselves. Medeiros Decl. ¶ 12; Palacios Decl. ¶ 22.

65. On April 4, after ICE had not responded to their requests for information about the coronavirus, the immigrant detainees at Wyatt launched a hunger strike to try to convince ICE to provide some information. Medeiros Decl. ¶ 13; Palacios Decl. ¶ 22.

66. On April 6, an ICE official at Wyatt told the detainees that they were safer inside the facility than they would be if they were released, but otherwise did not provide any information about what measures were being taken to protect them from COVID-19. Medeiros Decl. ¶ 13; Palacios Decl. ¶ 22; Durand Decl. ¶ 15.

67. Rather than address the significant health concerns that gave rise to the hunger strike, Wyatt officials threatened that they would impose a lockdown if the hunger strike continued. Medeiros Decl. ¶ 14; Palacios Decl. ¶ 23; Durand Decl. ¶ 15.

¹⁷ *COVID-19 Pandemic Response Requirements*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, at 13 (Apr. 10, 2020), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

68. Two detainees were removed from the pod as punishment for instigating the hunger strike, and Petitioners believe they may have been placed in solitary confinement.

Medeiros Decl. ¶ 14; Palacios Decl. ¶ 23; Durand Decl. ¶ 14.

69. For two weeks following the start of the hunger strike, there was no hot water in the pod, and Petitioners suspect that it was shut off in retaliation for the strike. Medeiros Decl. ¶ 18; Palacios Decl. ¶ 23; Durand Decl. ¶ 13.

70. Neither Wyatt nor ICE officials have provided Petitioners any information about COVID-19, measures Wyatt is taking to protect them from the virus, or measures detainees can take to protect themselves. No signs explaining anything about the virus have been posted for the detainees to read. Palacios Decl. ¶ 22; Durand Decl. ¶ 7. There have been no changes in cleaning and sanitation protocols.

71. On April 14, Rhode Island Governor Gina Raimondo issued an executive order requiring that masks be worn by workers in most Rhode Island businesses that remain open during the pandemic.¹⁸ Perhaps in response to the Governor's order, Wyatt officers thereafter tossed into each cell a baggy containing one bar of soap, one disposable mask, and one pair of disposable gloves. They offered no explanation or instructions on when detainees should wear masks and gloves, and few of the detainees are wearing them. Medeiros Decl. ¶ 15; Palacios Decl. ¶ 8; Durand Decl. ¶ 7.

72. The following day, on April 15, Wyatt officers were issued masks. But they too are not actually wearing them. Medeiros Decl. ¶ 16; Palacios Decl. ¶ 16; Durand Decl. ¶ 7.

¹⁸ Brian Amaral & Paul Edward Parker, *Seven More Die in Rhode Island From Coronavirus; Governor Orders Workers to Wear Masks*, PROVIDENCE JOURNAL (Apr. 14, 2020), <https://www.providencejournal.com/news/20200414/seven-more-die-in-ri-from-coronavirus-governor-orders-workers-to-wear-masks>.

73. Face masks are not effective if people are not wearing them, do not have instructions to use them properly, do not combine their use with frequent hand cleaning, and do not have adequate replacements. Crucially, the CDC has recognized that masks are not a substitute for social distancing. Amon Decl. ¶ 30.

E. Petitioners Must Be Released from ICE Detention to Protect Their Health and Lives.

74. Because risk mitigation is the only known strategy that can protect people from COVID-19, public health experts with experience in immigration detention and correctional settings have recommended the release of detainees from custody, particularly including those most vulnerable to the infection.

75. For example, Dr. Jonathan Louis Golob, an expert in infectious diseases and immunocompromised patients, has stated that social distancing and hygiene are the “only known effective measures to reduce the risk for a vulnerable person from injury or death from COVID-19.” He has further advised that it is reasonable to expect that COVID-19 will “readily spread in detention centers such as prisons and jails, particularly when residents cannot engage in social distancing measures, cannot practice proper hygiene, and cannot isolate themselves from infected residents or staff.” Therefore, he has concluded, vulnerable people in such facilities “are at grave risk of severe illness and death from COVID-19.” Golob Decl. ¶¶ 10, 13-14.

76. Recognizing these grave risks, many courts have issued orders requiring or urging the release of incarcerated people:

- The U.S. Court of the Appeals for the Ninth Circuit ordered the release of an immigrant from ICE detention in light of the dangers posed by the COVID-19 crisis. *Xochihua-Jaimes v. Barr*, 798 Fed. Appx. 52, 52 (9th Cir. 2020) (Order) (“In light of the rapidly escalating public health crisis, which public health authorities predict will

especially impact immigration detention centers, the court *sua sponte* orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court.”).

- The U.S. District Court for the District of Massachusetts ordered that an immigration detainee be released based on the “extraordinary circumstances” arising from the coronavirus pandemic. *See* Memorandum and Order, *Calderon Jimenez v. Cronen*, No. 1:18-10225, Dkt. 507 (D. Mass. Mar. 25, 2020).
- Many U.S. District Courts have issued orders requiring that immigration detainees at high risk for coronavirus be released in light of the pandemic. *See, e.g., Hope v. Doll*, No. 1:20-cv-00562, Dkt. 22 (M.D. Pa. Apr. 10, 2020) (denying motion for reconsideration of TRO grant and ordering immediate release of 15 medically vulnerable immigrant detainees); *Bent v. Barr*, No. 4:19-cv-06123, Dkt. 26 (N.D. Cal. Apr. 9, 2020) (granting TRO releasing medically vulnerable immigrant detainee because of the risk of COVID-19); *Malam v. Adducci*, No. 5:20-cv-10829, Dkts. 23, 29 (E.D. Mich. Apr. 9 and 23, 2020) (same for two detainees); *Rafael L.O. v. Tsoukaris*, No. 2:20-cv-03481, Dkt. 24 (D.N.J. Apr. 9, 2020) (same for three detainees); *Bahena Ortuno v. Jennings*, No. 3:20-cv-02064, Dkt. 38 (N.D. Cal. Apr. 8, 2020) (same for four detainees); *Thakker v. Doll*, No. 1:20-cv-480, 2020 WL 1671563, at *1 (M.D. Pa. Mar. 31, 2020) (same for eleven detainees); *Basank v. Decker*, No. 20-cv-2518, 2020 WL 1481503, at *3 (S.D.N.Y. Mar. 26, 2020) (same, because “[t]he nature of detention facilities makes exposure and spread of the [coronavirus] particularly harmful”); *Coronel v. Decker*, No. 20-cv-2472, 2020 WL 1487274, at *1, *9-10 (S.D.N.Y. Mar. 27, 2020) (same for four detainees); *Robles*

Rodriguez v. Wolf, No. 5:20-cv-00627, Dkts. 32, 35-39 (C.D. Cal. Apr. 2, 2020)
(same for six detainees).

LEGAL FRAMEWORK

77. 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 County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As a result, the government must provide those in its custody with “food, clothing, shelter, medical care, and reasonable safety.” *Id.* at 200.

78. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment’s prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. The Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which is ‘reasonable safety.’” *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (quoting *DeShaney*, 489 U.S. at 200). Accordingly, “[i]t 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.*

79. The Supreme Court has explicitly recognized that the risk of contracting a communicable disease may constitute such an “unsafe, life-threatening condition” that threatens “reasonable safety.” *Id.*

80. These principles also apply in the context of immigration detention. Immigrant detainees, even those with prior criminal convictions, are *civil detainees* held pursuant to civil immigration laws. *Zadvydas*, 533 U.S. at 690.

81. Because detained immigrants are civil detainees, their constitutional protections while in custody are derived from the Fifth Amendment, which provides protections even greater than the Eighth Amendment. *See Calderon-Ortiz v. LaBoy-Alvarado*, 300 F.3d 60, 64 (1st Cir. 2002). The Eighth Amendment, which applies to persons convicted of criminal offenses, allows punishment as long as it is not cruel and unusual. But the Fifth Amendment’s due process protections do not permit punitive conditions *at all* for detainees not serving criminal sentences. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”).

82. Civil detainees, like Petitioners, are entitled to conditions of confinement that are superior to those of convicted prisoners. *Alves v. Murphy*, 530 F. Supp. 2d 381, 387 (D. Mass. 2008); *see Savino v. Souza*, No. 20-cv-10617, 2020 WL 1703844, at *6 (D. Mass. Apr. 8, 2020) (“Courts generally apply the same standard for civil immigration detainees as for pre-trial detainees.”); *see also King v. County of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018).

83. The Due Process Clause protects detainees, like Petitioners, not only from conduct amounting to deliberate indifference, but also from objectively unreasonable conduct that creates a risk to their safety. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472-73 (2015); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Gordon v. County of Orange*, 888 F.3d 1118, 1120, 1122-25 (9th Cir. 2018). Under *Kingsley*, a pre-trial detainee need only prove that, “from an objective viewpoint,” the conduct was “not rationally related to a legitimate governmental objective or that it [was] excessive in relation to that purpose.” *Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64, 70 (1st Cir. 2016) (quoting *Kingsley*, 135 S. Ct. at 2473-74). The language of *Kingsley* is broad, applying not only to use of excessive force by the government, but to government action generally, including actions involving medical treatment. *See Gordon*,

888 F.3d at 1124; *see also Couchon v. Cousins*, 2018 WL 4189694, at *6 (D. Mass. Aug. 31, 2018) (noting that there is “much to be said” for the reasoning that extends *Kingsley* to conditions of confinement cases).

84. Moreover, because civil detention is governed by the Fifth Amendment rather than the Eighth Amendment, a condition of confinement for a civil immigration detainee violates the Constitution if it fails to “reasonably relate[] to a legitimate governmental objective.” *Bell*, 441 U.S. at 539 (1979); *accord Lyons v. Powell*, 838 F.2d 28, 29 (1st Cir. 1988).

A. Release Is the Only Relief that Can Adequately Protect Petitioners.

85. COVID-19 poses a serious risk to Petitioners. It is highly contagious and can cause severe illness and death. Petitioners are at a heightened risk because of their health conditions.

86. The risk that COVID-19 poses to Petitioners is known to Respondents.

87. Petitioners’ continued detention in the absence of appropriate or sufficient care and protection constitutes deliberate indifference and is objectively unreasonable.

88. Department of Homeland Security (“DHS”) medical experts have also identified the risk of COVID-19 spreading to ICE detention centers. As early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts to DHS, shared concerns with the agency about the specific risk to DHS immigration detainees as a result of COVID-19. These experts warned of the danger of rapid spread of COVID-19 in immigration detention facilities. In a letter to Congress, Dr. Allen and Dr. Rich recommended that “[m]inimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic

diseases.” They concluded that “acting immediately . . . will save lives not of only those detained, but also detention staff and their families, and the community-at-large.”¹⁹

89. John Sandweg, a former acting director of ICE, has written publicly about the need to release detainees because ICE detention centers “are extremely susceptible to outbreaks of infectious diseases” and “preventing the virus from being introduced into these facilities is impossible.”²⁰

90. As a court in this Circuit recently explained, “the virus is gravely dangerous to all of us,” and that harm is “more serious for some petitioners than for others.” *Savino*, 2020 WL 1703844, at *7.

91. Even where there are not current confirmed cases of COVID-19 in Wyatt, it can be reasonably assumed that it will inevitably be introduced from staff exposed in the community, based on the current local transmission in Rhode Island. Amon Decl. ¶ 35.

92. The circumstances of this case make clear that release is the only means to ensure compliance with Petitioners’ due process rights. Public health information makes clear that the only way to prevent infection is through social distancing and increased hygiene, and that these measures are most imperative to protect individuals with underlying medical conditions. The only course of action that can remedy these unlawful conditions is release from the detention centers where risk mitigation is impossible.

¹⁹ Letter from Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH to House and Senate Committees on Homeland Security, at 5-6 (Mar. 19, 2020), available at <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>.

²⁰ 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/>.

B. This Court Has the Authority to Order Release.

93. “[H]abeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and “[f]ederal courts possess whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights.” *Stone v. City & Cty. of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992). As a result, “[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011); *see also* 28 U.S.C. § 2243; *Boumediene*, 553 U.S. at 779-80, 787 (explaining that “common-law habeas corpus was, above all an adaptable remedy,” that the “habeas court’s role was most extensive in cases of pretrial and noncriminal detention,” and that “when the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority . . . to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner’s release”).

94. Courts “must not shrink from their obligation to enforce the constitutional rights of all persons, including prisoners [and] . . . may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.” *Brown*, 563 U.S. at 511 (internal citations and quotations omitted).

95. Courts have regularly exercised this authority to remedy constitutional violations caused by overcrowding. *See, e.g., Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

96. The same principle applies here. As the constitutional principles and public health experts make clear, releasing Petitioners is the only viable remedy to ensure their safety. The Court may condition that release on any conditions it considers appropriate.

CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

97. Petitioners repeat and reallege the foregoing paragraphs as if set forth fully herein.

98. The Fifth Amendment of the Constitution guarantees 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.

99. Petitioners' confinement subjects them to a heightened and unacceptable risk of contracting COVID-19, for which there is no vaccine or cure. Because of Petitioners' particular vulnerabilities due to their preexisting medical conditions, they are at elevated risk of serious illness and death if infected with COVID-19. Respondents, acting unreasonably and with deliberate indifference, are subjecting Petitioners to a substantial risk of serious harm, in violation of their rights under the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE Petitioners request that the Court immediately grant the following relief:

- a. Order Respondents not to transfer Petitioners to another detention facility outside of this Court's jurisdiction while this action is pending;
- b. Issue a Writ of Habeas Corpus or other suitable order for injunctive relief and order Petitioners' immediate release, with appropriate conditions and precautionary public health measures;
- c. In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioners, with appropriate precautionary public health measures;
- d. Issue a declaration that Respondents' continued detention in civil immigration custody of individuals at increased risk for severe illness, including older individuals and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;

- e. Award Petitioners their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- f. Grant any other and further relief that this Court may deem fit and proper.

REQUEST FOR ORAL ARGUMENT

In accordance with Local Rule 7.1(d), counsel respectfully requests oral argument on an expedited basis in light of health concerns due to the COVID-19 outbreak.

Dated: April 17, 2020

Respectfully submitted,

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