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***Application for admission pro hac vice forthcoming*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

O.M.G. and H.G.M., a minor;¹ C.L. and J.A., a minor;
M.C. and G.L.C., a minor; A.H.R. and J.H.R., a
minor; N.V. and Z.F., a minor; R.S.J. and S.A., a
minor; A.L.M. and A.M.M., a minor; G.A.Q. and
minors N.N.A. and A.A.Q.; N.M.L. and A.R.M., a
minor; M.R.A. and L.C.R., a minor; J.S.P. and
M.A.S., a minor; K.N.E. and E.A.N., a minor; K.P.P.
and minors M.P.P. and I.P.P.; M.C.M. and S.M.C., a
minor; C.C.G. and E.C.G., a minor; B.C.A. and
G.S.C., a minor; S.J.A. and W.A.A., a minor; O.T.G.
and T.T.G., a minor; M.J.P. and minors A.M.P.,
A.P.P. and C.P.P.; J.C. and Y.C., a minor; C.R.R. and
minors V.G.R. and I.G.R.; A.C.O. and J.S.O., a minor;
M.A.M. and G.M.A., a minor; J.M.R. and C.G.M., a
minor; R.P.F. and J.F.P., a minor; M.R.C. and M.E.C.,
a minor; B.G.C. and S.M.G., a minor; C.A.M. and
A.P.A., a minor; M.A.H. and I.M.A., a minor; and

Physical Address:

South Texas Family Residential Center
300 El Rancho Way
Dilley, TX 78017; and

Case No. 1:20-cv00786

**EMERGENCY VERIFIED
PETITION FOR A WRIT OF
MANDAMUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

¹ This Petition is concurrently filed with a Motion to Proceed Under Pseudonyms due to the fact that all Plaintiffs are seeking protection from persecution and torture in their home countries.

M.B.G., M.H.H. and A.B.H., a minor; C.V.S., S.V.S., and minors J.B.S., R.B.V., J.V.V.-1, J.V.V.-2. and N.V.V.; B.P., K.G.D. and E.P.G., a minor; and

Physical Address:

Berks County Residential Center
1040 Berks Rd
Leesport, PA 19533;

R.M. and V.P., a minor; A.R., T.F. and minors B.F.R. and D.F.R.; A.G.V., A.M.G. and minors A.G.M.-1, A.G.M.-2, and A.G.M.-3; G.R.D., B.N.P., and minors M.R.N., I.R.N., and N.R.N.; A.A.G., L.M.V., and S.A.M, a minor,

Physical Address:

Karnes County Family Residential Center
409 FM1144
Karnes City, TX 78118

Petitioners,

v.

Chad WOLF, in his official capacity as the acting Secretary of the U.S. Department of Homeland Security; and

Physical Address:

Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528;

William BARR, in his official capacity as the Attorney General of the United States,

Physical Address:

Office of the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Washington,
D.C. 20530-0001,

Respondents.

PRELIMINARY STATEMENT

1. This case presents the question of whether the government can recklessly expose Petitioners – non-citizen parents and their children detained in purported civil immigration family detention – to conscious shocking risk of exposure to contracting the deadly COVID-19

virus in the midst of a global pandemic by failing to take the mostly minimally precautions to prepare for the all too foreseeable catastrophe in crowded family detention. The answer is no.

2. The novel coronavirus that causes COVID-19 has led to a global pandemic. In only a few months, 306,677 people worldwide have been diagnosed with COVID-19 and over 13,017 have died. Despite repeated, advanced and continued warnings about COVID-19,² Respondents have failed to minimally prepare for and provide for the health and safety of Petitioners – non-citizen parents and children detained in the three Immigration and Customs Enforcement (“ICE”) detention facilities exclusively holding migrant family units in the United States: Berks County Residential Center in Leesport, Pennsylvania; South Texas Family Residential Center in Dilley, Texas; Karnes County Family Residential Center in Karnes City, Texas (collectively, “FRCs”).

3. The Petitioners (the “families”) in this matter are mothers, fathers and minor children who have been placed in purportedly civil detention in a family residential center, a communal space for families seeking asylum in the United States. They are unfortunately in this placement as a pandemic spreads around them. The families are trapped and at risk of serious irreparable physical harm. Their placement in family detention has created a dangerous situation that imminently threatens their lives, the lives of those in the surrounding communities, and the general public should a COVID-19 crisis spark within family detention.

4. Families in FRCs are scared and concerned for their lives. Their legal services providers share the families’ concerns. No minimally sufficient measures have been taken by the Respondents to ensure their care and safety, if that is even possible in the context of the FRCs.

² As of March 21, 2020 at 7:06 p.m. EST. See *COVID-19 CORONAVIRUS PANDEMIC*, WORLDOMETER (Mar. 21, 2020), <https://www.worldometers.info/coronavirus/>.

5. The only known effective measures to reduce the risk of COVID-19 are education, social distancing and improved hygiene. *See* Exh. 12, Declaration of Dr. Ronald Waldman at ¶ 7 (“There is no specific cure or medical countermeasure for COVID-19. Only non-pharmaceutical interventions are available to slow its spread and to mitigate the serious consequences that result from it. The most important of these is commonly termed “social distancing.”); Exh. 14, Letter to Congress Profs. Allen and Rich at 4 (“social distancing is essential to slow the spread of the coronavirus to minimize the risk of infection and to try to reduce the number of those needing medical treatment from the already-overwhelmed and inadequately prepared health care providers and facilities. However, social distancing is an oxymoron in congregate settings”); Exh. 13, Declaration of Dr. Julia DeAun Graves at ¶¶ 2 & 5. Communities have utilized concepts like “shelter in place” and household self-quarantines, which are impossible for the families. Respondents have failed to provide education to Petitioners and individuals employed at the FRCs, ensure that minimum basic necessities such as soap or hand sanitizer are provided, and ensure that is possible to achieve the critical need for social distancing. *See* Exh. 16, Declaration of O.M.G. at ¶ 11 (“The guards have not given us any information about the disease, or how we can protect ourselves from getting it. The jail has not increased our access to hand soap or hand sanitizer, and there are no new efforts to ensure everyone detained here washes their hands. I have not seen any heightened cleaning procedures. The contracted cleaners clean my dorm room once a week. Detained families are required to do the additional cleaning. However, we are not given supplies other than a broom.”); Exh. 2, Declaration of Bridget Cambria at ¶ 28 (inadequate access to soap); Exh. 4, Declaration of M.B.G. at ¶ 7; Exh. 4 (same), Declaration of Shalyn Fluharty at ¶¶ 18, 22 (70.4% of families

stated they had not been provided with additional soap or hand); Exh. 8, Declaration of Julia Valero at 8; Exh. 11, Declaration of T.F. at ¶ 7.

6. The novel coronavirus that causes COVID-19 has caused a global pandemic.³ In only a few months, more than 306,677 people worldwide have received confirmed diagnoses of COVID-19, and over 13,017 of those people have died.⁴ In the United States alone, 25,896 cases of infection have been reported and 316 people have died.⁵ The disease itself does not discriminate between the old and young, and people of all ages, with and without preexisting conditions, have died.⁶ All 50 states have reported cases of COVID-19 infection.⁷ There is no vaccine against COVID-19, and there is no known cure. No one and no place is immune.

7. The Centers for Disease Control and Prevention (“CDC”) reports that “[t]he best way to prevent illness is to avoid being exposed to this virus.”⁸ The CDC advises that COVID-19 is thought to spread mainly from person-to-person, between people who are in close contact with one another (within about 6 feet) and through respiratory droplets caused when someone coughs or sneezes.⁹

³ World Health Organization, Rolling updates on coronavirus disease (COVID-19) (Updated Mar. 20, 2020) <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

⁴ As of March 21, 2020 at 7:06 p.m. EST. See *COVID-19 CORONAVIRUS PANDEMIC*, WORLDOMETER (Mar. 21, 2020), <https://www.worldometers.info/coronavirus/>.

⁵ *Id.*

⁶ As of March 21, 2020 at 3:10p.m. EST. See *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020*, CDC COVID-19 Response Team (Mar. 18, 2020) https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm?s_cid=mm6912e2_w; As of March 21, 2020 at 3:18 p.m. EST. See *34-Year-Old Man Who Died After Getting Coronavirus Had Visited Disney World*, Rachel Olding (Mar. 19, 2020) <https://www.thedailybeast.com/california-man-age-34-who-died-after-contracting-coronavirus-had-visited-disney-world-and-universal-studios>.

⁷ As of March 21, 2020 at 3:20 p.m. EST. See *Situation Summary* (Mar. 18, 2020) https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fsummary.html.

⁸ As of March 21, 2020 at 3:20 p.m. EST. See *How to Protect Yourself* (Mar, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

⁹ *Id.*

8. States have taken extraordinary and unprecedented measures to ensure that their citizens practice “social distancing” in order to halt the spread of COVID-19. On March 19, 2020, Governor Gavin Newsom of California ordered 40 million Californians to stay in their houses or their places of residence; on March 20, 2020, Governor J.B. Pritzker issued a similar order for the State of Illinois.¹⁰ New York, New Jersey and Connecticut have banned gatherings of more than 50 people, closed gyms and casinos, and restaurants and bars are only allowed to provide take-out or delivery services.¹¹ On March 19, 2020, Governor Tom Wolf on Pennsylvania issued a sweeping shutdown order to tens of thousands of “non-life-sustaining” businesses.¹² Numerous states have closed schools for at least one month, and Kansas has ordered that schools will not reopen for the remainder of the 2019-2020 school year.¹³

9. The criminal detention facilities in San Antonio, Texas and Berks, Pennsylvania have released prisoners out of concerns for their well-being and to decrease the spread of COVID-19.¹⁴

10. The consensus in the medical community is that the COVID-19 epidemic will escalate dramatically in the coming months. Hospitals around the country are already running

¹⁰ As of March 21, 2020 at 3:28 p.m. EST. See Coronavirus (COVID-19) in California. California Coronavirus (COVID-19) Response. (Mar. 2020). <https://covid19.ca.gov/>; As of March 21, 2020 at 3:31 p.m. EST. See Executive Order in Response to COVID-19. State of Illinois. March 20, 2020. <https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-10.pdf>.

¹¹ As of March 21, 2020 at 3:33 p.m. EST. See *10 States With the Most Aggressive Response to COVID-19*. U.S. News and World Report. (March 17, 2020). <https://www.usnews.com/news/best-states/articles/2020-03-17/10-states-with-the-most-aggressive-response-to-coronavirus>

¹² As of March 21, 2020 at 3:38 p.m. EST. See Gov. Wolf delays enforcement of order closing 'non-life-sustaining' businesses amid COVID-19 <https://6abc.com/health/gov-wolf-orders-1000s-of-businesses-to-shut-down-over-virus/6031024/>.

¹³ As of March 21, 2020 at 3:39 p.m. EST. See Some schools closed for coronavirus in US are not going back for the rest of the academic year. CNN. (March 18, 2020). <https://www.cnn.com/2020/03/18/us/coronavirus-schools-not-going-back-year/index.html>.

¹⁴ See <https://www.expressnews.com/news/local/article/Sheriff-quarantines-11-deputies-releases-more-15144847.php> and https://www.wfmz.com/health/coronavirus/berks-jail-freeing-some-inmates-in-effort-to-avoid-virus/article_7d3229c8-69ea-11ea-a960-8b97f5a94d08.html

out of medical supplies.¹⁵ The projections for those who contract the virus and those who succumb to the illness are startling and grave. The CDC suggested that between 160 million and 210 million Americans could contract the disease over as long as a year. Based on mortality data and current hospital capacity, the number of deaths under the CDC's scenarios ranged from 200,000 to as many as 1.7 million...It found as many as 21 million people might need hospitalization, a daunting figure in a nation with just about 925,000 hospital beds."¹⁶

11. Despite the directives from the CDC, the extraordinary measures being taken by the States to ensure social distancing, and the lack of adequate medical supplies, Respondents have failed to protect one of the most vulnerable populations in their charge: noncitizen asylum-seeking families in family detention.

12. Notably, on March 19, 2020, both ICE and the Office of Refugee Resettlement ("ORR") reported their first cases of COVID-19 in detention centers they run: a member of the medical staff of an ICE adult detention facility, and a staff member of an ORR detention center for unaccompanied minors. ¹⁷ Currently, thousands of non-citizen parents and minor children are being detained in the three FRCs. Many mothers, fathers and children have been detained well prior to the start of the pandemic and many have recently been detained. All of the families are at risk at present, and their situation presents a grave situation, a tinderbox, that once sparked

¹⁵ As of March 21, 2020 at 3:39 p.m. EST. *See* Hospital Workers Make Masks From Office Supplies Amid U.S. Shortage. Bloomberg News. (March 17, 2020). <https://www.bloomberg.com/news/articles/2020-03-18/hospital-makes-face-masks-covid-19-shields-from-office-supplies>

¹⁶ As of March 21, 2020 at 3:42 p.m. EST *See* Worst-case coronavirus models show massive US toll. The Hill. (March 13, 2020). <https://thehill.com/homenews/state-watch/487489-worst-case-coronavirus-models-show-massive-us-toll>

¹⁷ As of March 21, 2020 at 3:45 p.m. EST *See* ICE medical staff member tests positive for COVID-19. The Hill. (March 19, 2020). <https://thehill.com/policy/healthcare/488568-ice-medical-staff-tests-positive-for-covid-19>; As of March 21, 2020 at 3:45 p.m. EST *See* A Staff Member At A Facility Housing Unaccompanied Immigrant Children Has Tested Positive For The Coronavirus. BuzzFeed News. Hamed Aleaziz. (March 19, 2020) <https://www.buzzfeednews.com/article/hamedaleaziz/staff-member-coronavirus-diagnosis-unaccompanied-immigrant>

will create a crisis that threatens the lives of the women, men and children who are detained in family residential centers. *See e.g.* Exhs. 2 (Declaration of Bridget Cambria), 4 (Declaration of Shalyn Fluharty), 7 (Declaration of Andrea Meza).

13. FRCs are congregate environments, in which the families live, eat, and sleep in close proximity. *See* Exh. 2, Declaration of Bridget Cambria at ¶¶ 9-18; Exh. 4, Declaration of Shalyn Fluharty at ¶¶ 6-18; Exh. 7, Declaration of Andrea Meza at ¶ 35. Thus, detainees in FRCs face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships and nursing homes. *Id.* For that reason, “Doctors, lawyers, asylum-seekers and former officials are urging the Trump administration to release thousands of immigrants from detention to avoid a potentially deadly corona virus outbreak in scores of facilities across the country.”¹⁸ “‘It’s a vulnerable situation,’ John Sandweg, an acting head of ICE during the Obama administration, told CBS News. ‘You have the exact situation everyone is cautioning against. You have a bunch of people contained in a very small environment.’...‘[c]an you imagine if you get an outbreak in these detention facilities? It’s going to spread like wildfire,’ Sandweg added.”¹⁹

14. Family Residential Centers are reserved for those asylum-seeking families who are not in criminal proceedings, do not pose a danger to the community, and are simply civil detainees. For that reason, residential centers, different from conventional high security prisons, encourage comingling of all detainees regardless of age, genders, or other vulnerable trait.

15. The three primary legal service providers that give legal assistance to the detainees in the FRCs—the Refugee and Immigrant Center for Education and Legal Services

¹⁸ As of March 21, 2020 at 3:48 p.m. EST *See* “Powder kegs”: Calls grow for ICE to release immigrants to avoid coronavirus outbreak. CBS News. (March 19, 2020).<https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>

¹⁹ *Id.*

(“RAICES”), The Dilley Pro Bono Project (“DPBB”), and ALDEA - The People’s Justice Center (“ALDEA”)—all report that in their visits to the FRCs in the past week, they have observed and learned that the FRCs are not following CDC guidelines to prevent the spread of COVID-19:

- Social distancing—keeping a distance of 6 feet—is impossible, as detainees are surrounded by tens to hundreds of other detainees at any given time, sharing bedrooms, bathrooms, and communal spaces;
- The FRCs do not have instructions on how to maintain hygiene (wash hands, sanitize hands, stay 6 feet apart);
- The detainees are not provided hand sanitizer;
- Detainees do not have consistent access to soap, and are often required to purchase soap themselves;
- Detainees are not provided protective masks or gloves;
- Guards and staff working at the FRCs, in the common areas and cafeteria, do not use masks or gloves, do not abide by the 6 feet social distancing rule, and still shake hands, and;
- Hundreds of families in the FRCs are exhibiting symptoms of COVID-19, including coughs, fever, shortness of breath, but are not being tested for COVID-19, or getting adequate medicine to address these symptoms.

See Exhs. 2, Declaration of Bridget Cambria; Exh. 3, Declaration of M.B.G.; Exh. 4, Declaration of Shalyn Fluharty; Exh. 5, Declaration of Allison Herre; Exh. 6, Declaration of Stephanie Alvarez-Jones; Exh. 7, Declaration of Andrea Meza; Exh. 8, Declaration of Julia Valero; Exh. 9, Declaration of Laila Ayub; Exh.10, Declaration of R.P.; Exh. 11, Declaration of T.F.; Exh. 16, Declaration of O.M.G.; Exh. 17, Declaration of C.L.

16. Numerous experts in the field of infectious disease and public health warn that to contain the unchecked spread of the COVID-19 virus, Respondents must relocate as many people as possible out of these institutional settings. *See e.g.* Exh. 12, Declaration of Dr. Ronald

Waldman at ¶¶ 7-11; Exh. 13, Declaration of Dr. Julia DeAun Graves at ¶ 5-12; Exh. 14, Letter to Congress Profs. Allen and Rich; Exh. 15, Declaration of Dr. Jaimie Meyer at ¶¶ 7-35.

17. Upon information and belief, although Respondents have begun to release some families—those that include pregnant women or people who suffer from asthma—at the Karnes and Dilley FRCs, the remaining families continue to suffer from Respondents continued failures. If Respondents do not take immediate and drastic steps to protect their detainees, utilize applicable policies and laws, require social distancing for each and every family, to provide every individual sanitizers and soap, to ensure adequate medical capability and resources for all detained families, FRCs will become sites of massive numbers of COVID-19 cases placing both people held there, as well as those who work there and the public at large, at high risk of infection and death. *See id.*

18. The FRCs have failed to implement adequate protocols to protect Petitioners and all migrant family detainees from COVID-19. *See* Exhs. 2, Declaration of Bridget Cambria; Exh. 4, Declaration of Shalyn Fluharty; Exh. 5, Declaration of Allison Herre; Exh. 6, Declaration of Stephanie Alvarez-Jones; Exh. 7, Declaration of Andrea Meza; Exh. 8, Declaration of Julia Valero; Exh. 9, Declaration of Laila Ayub. Their failures risk the lives of the families Respondents have chosen to detain, and those failures threaten the general public as well.

19. If even one detainee were to contract COVID-19, a spread throughout the facility would be impossible to contain and would threaten the lives and general welfare of the detained family population and the public at large. The residential centers cannot sustain the risk, the surrounding communities cannot sustain the risk, and the threat to the health systems in areas with FRCs is unimaginable. *See* Exh. 14, Letter to Congress Profs. Allen and Rich at p. 4 (“This then creates an enormous public health risk, not only because disease can spread so quickly, but

because those who contract COVID-19 with symptoms that require medical intervention will need to be treated at local hospitals, thus increasing the risk of infection to the public at large and overwhelming treatment facilities.”)

PARTIES

20. Petitioners O.M.G. (a mother), and H.G.M. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

21. Petitioners C.L. (a mother) from Haiti and J.A. (a child) from Brazil are in civil immigration detention as a family unit at the South Texas Family Residential Center.

22. Petitioners M.C. (a mother) from Haiti and G.L.C. (a child) from Chile are in civil immigration detention as a family unit at the South Texas Family Residential Center.

23. Petitioners A.H.R. (a mother) and J.H.R. (a child) from Guatemala are in civil immigration detention as a family unit at the South Texas Family Residential Center.

24. Petitioners N.V. (a mother) from Haiti and Z.F. (a child) from Brazil are in civil immigration detention as a family unit at the South Texas Family Residential Center.

25. Petitioners R.S.J. (a mother) and S.A. (a child) from Haiti are in civil immigration detention as a family unit at the South Texas Family Residential Center.

26. Petitioners A.L.M. (a mother) and A.M.M. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

27. Petitioners G.A.Q. (a mother) and children N.N.A. and A.A.Q. from El Salvador are in civil immigration detention as a family unit at the South Texas Family Residential Center.

28. Petitioners N.M.L. (a mother) and A.R.M. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

29. Petitioners M.R.A. (a mother) and L.C.R. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

30. Petitioners J.S.P. (a mother) and M.A.S. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

31. Petitioners K.N.E. (a mother) and E.A.N. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

32. Petitioners K.P.P. (a mother) and children M.P.P. and I.P.P. from Ecuador are in civil immigration detention as a family unit at the South Texas Family Residential Center.

33. Petitioners M.C.M. (a mother) and S.M.C. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

34. Petitioners C.C.G. (a mother) and E.C.G. (a child) from El Salvador are in civil immigration detention as a family unit at the South Texas Family Residential Center.

35. Petitioners B.C.A. (a mother) and G.S.C. (a child) from Ecuador are in civil immigration detention as a family unit at the South Texas Family Residential Center.

36. Petitioners S.J.A. (a mother) and W.A.A. (a child) from Guatemala are in civil immigration detention as a family unit at the South Texas Family Residential Center.

37. Petitioners O.T.G. (a mother) and T.T.G. (a child) from Guatemala are in civil immigration detention as a family unit at the South Texas Family Residential Center.

38. Petitioners M.J.P. (a mother) and children A.M.P., A.P.P. and C.P.P. from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

39. Petitioners J.C. (a mother) and Y.C. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

40. Petitioners C.R.R. (a mother) and children V.G.R. and I.G.R. from Mexico are in civil immigration detention as a family unit at the South Texas Family Residential Center.

41. Petitioners A.C.O. (a mother) and J.S.O. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

42. Petitioners M.A.M. (a mother) and G.M.A. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

43. Petitioners J.M.R. (a mother) and C.G.M. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

44. Petitioners R.P.F. (a mother) and J.F.P. (a child) from El Salvador are in civil immigration detention as a family unit at the South Texas Family Residential Center.

45. Petitioners M.R.C. (a mother) and M.E.C. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

46. Petitioners B.G.C. (a mother) and S.M.G. (a child) from Guatemala are in civil immigration detention as a family unit at the South Texas Family Residential Center.

47. Petitioners C.A.M. (a mother) and A.P.A. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

48. Petitioners M.A.H. (a mother) and I.M.A. (a child) from Honduras are in civil immigration detention as a family unit at the South Texas Family Residential Center.

49. Petitioners M.B.G. (a father), M.H.H. (a mother), and A.B.H. (a child) from El Salvador are in civil immigration detention as a family unit at the Berks County Residential Center.

50. Petitioners C.V.S. (a father), S.V.S. (a mother), and children J.B.S., R.B.V., J.V.V.-1, J.V.V.-2 and N.V.V. from El Salvador are in civil immigration detention as a family unit at the Berks County Residential Center.

51. Petitioners B.P. (a father), K.G.D. (a mother) and E.P.G. (a child) from Mexico are in civil immigration detention as a family unit at the Berks County Residential Center.

52. Petitioners R.P. (a father), R.M. (a mother) and V.P. (a child) from Haiti are in civil immigration detention as a family unit at the Karnes County Family Residential Center.

53. Petitioners A.R. (a father), T.F. (a mother) from Haiti, and their two children B.F.R. and D.F.R. from Brazil are in civil immigration detention as a family unit at the Karnes County Family Residential Center.

54. Petitioners A.G.V (a father), A.M.G (a mother), and their three children A.G.M.-1, A.G.M.-2, and A.G.M.-3 from Mexico are in civil immigration detention as a family unit at the Karnes County Family Residential Center.

55. Petitioners G.R.D. (a father), B.N.P. (a mother), and their three children M.R.N., I.R.N., and N.R.N from Mexico are in civil immigration detention as a family unit at the Karnes County Family Residential Center.

56. Petitioners A.A.G (a father), L.M.V. (a mother), and S.A.M from Mexico are in civil immigration detention as a family unit at the Karnes County Family Residential Center.

57. Respondent, Chad Wolf, is named in his official capacity as the acting Secretary of the U.S. Department of Homeland Security. Respondent Wolf is responsible for enforcing federal laws concerning, for example, border control and immigration, including the INA provisions at issue in this case. Respondent Wolf has direct authority over the Immigration and Customs Enforcement (“ICE”) agency which is responsible for the civil detention of immigrants in the United States. Respondent Wolf routinely transacts business in the District of Columbia, and maintains offices in this judicial district. Respondent Wolf’s address is: U.S. Department of Homeland Security, Washington, DC 20528.

58. Respondent, William Barr, is named in his official capacity as the Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review. Respondent Barr routinely transacts business in the District of Columbia. Respondent Barr's address is: Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

VENUE

59. Venue in the District Court for the District of Columbia is proper under 28 U.S.C. § 1391(b) because Respondents reside in this District.

JURISDICTION

60. Respondents reside within the jurisdiction of this Court.

61. This case arises under the United States Constitution; the Administrative Procedure Act ("APA"), the Flores Settlement Agreement ("FSA"), a consent decree which is effectively a contract to which the United States government is a party and of which the minor Petitioners are protected class members, and federal common law.

62. This Court has jurisdiction pursuant to The All Writs Act, 28 U.S.C. § 1651(a).

63. This Court has jurisdiction pursuant to 28 U.S. Code § 1331 (Federal Question), 28 U.S. Code § 1361 (Action to compel an officer of the United States to perform his duty) and 28 U.S.C. § 2201(a), (Federal Declaratory Judgement Act).

FACTS

I. The COVID-19 Global Pandemic

64. COVID-19 is a highly infectious and deadly coronavirus that, according to the World Health Organization, is a global pandemic. *See* Exh. 13, Declaration of Dr. Julia DeAun Graves at ¶ 2.

65. There is currently no vaccine to prevent (COVID-19) from infecting an individual. *See* Exh. 12, Declaration of Dr. Ronald Waldman at ¶ 7.

66. The CDC states that “[t]he best way to prevent illness is to avoid being exposed to this virus.”

67. COVID-19 appears to be spreading easily and sustainably in the community (“community spread”) in some affected geographic areas.

68. Currently, all 50 states are reporting COVID-19 cases.

69. The CDC advises that COVID-19 is thought to spread mainly from person-to-person, between people who are in close contact with one another (within about 6 feet). *See* Exh. 12, Declaration of Dr. Ronald Waldman at ¶ 7.

70. It spreads through respiratory droplets produced when an infected person coughs or sneezes. *See* Exh. 13, Declaration of Dr. Julia DeAun Graves at ¶ 6.

71. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

72. Per the CDC, people are thought to be most contagious when they are most symptomatic (the sickest) and spread might be possible before people show symptoms.

73. The CDC states that it may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes.

74. It had initially been reported that people over the age of fifty, pregnant women, and those with certain medical conditions face a greater chance of serious illness or death from COVID-19.

75. However, in a CDC report dated March 18, 2020, it was noted that while the oldest patients had the greatest likelihood of dying and of being hospitalized, 38 percent of the 508 hospitalized patients were notably younger—between 20 and 54. *See Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020* (Mar. 18. 2020)

https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm?s_cid=mm6912e2_w.

76. Medical conditions that increase the risk of serious COVID-19 disease for people of any age include: lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, and developmental delay. *See* Exh. 13, Declaration of Dr. Julia DeAun Graves at ¶ 3.

77. Nearly half of the 121 patients who were admitted to intensive care units were adults under 65. *See Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020* (Mar. 18. 2020)

https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm?s_cid=mm6912e2_w.

78. As noted above, there is no vaccine against COVID-19, and there is no known cure. The COVID-19 virus can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage tissues in other vital organs including the heart and liver.

79. Patients with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care, while patients who do not die from serious cases of COVID-19 may face prolonged

recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity. *See* Exh. 15, Declaration of Dr. Jaimie Meyer at ¶ 22.

80. The only known effective measures to reduce the risk for vulnerable people of serious illness or death caused by COVID-19 are social distancing and improved hygiene, which have led to unprecedented public health measures around the world. According to preliminary data from China, 20 percent of people in high risk categories who contracted COVID-19 there died. *See* Exh. 12, Declaration of Dr. Ronald Waldman at ¶ 7.

81. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships and nursing homes. *See* Exh. 14, Letter to Congress Profs. Allen and Rich at 4.

82. People who are confined in prisons, jails, and detention centers will find it virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, even with the best-laid plans. *Id.*

83. For this reason, correctional public health experts have recommended the release from custody of people most vulnerable to COVID-19. *Id.* at p. 5 (“Finally, regarding the need to implement immediate social distancing to reduce the likelihood of exposure to detainees, facility personnel, and the general public, it is essential to consider releasing all detainees who do not pose an immediate risk to public safety.”)

84. As of the date of this Petition, a member of the medical staff at Elizabeth Detention Center in New Jersey had tested positive for coronavirus, the first case confirmed by Immigration and Customs Enforcement of an employee contracting the virus. On information and belief, there are a number of presumptive positive cases of detainees in civil ICE detention.

II. Grave Risks of Contracting COVID-19 in Family Detention Centers

85. Immigration detention facilities are “congregate environments,” or places where people live and sleep in close proximity. Infectious diseases that are communicated by air or touch are more likely to spread in these environments. This presents an increased danger for the spread of COVID-19 if and when it is introduced into a facility. *See id.* at pp. 3-4.

86. Family detention centers are unique centers in the immigration system. It is limited to three locations in the United States: Leesport, Pennsylvania, Karnes City, Texas and Dilley, Texas. These are rural and medically underserved areas of the country. However, they possess the entire family residential structure in the Immigration System. In family residential centers, dozens to hundreds of families congregate every moment of every day, and live, eat and play in small structured environments which make the necessary precautions against the spread of COVID-19 impossible.

87. Other group-like environments, like cruise ships or nursing homes, have become the sites for the most severe outbreaks of COVID-19. The highest known person-to-person transmission rate for COVID-19 took place in a skilled nursing home facility in Kirkland, Washington, and on afflicted cruise ships in Japan and off the coast of California. Family detention is certain akin to a cruise ship – as the detained families are not permitted to leave the facility or grounds. Family detention is also like a nursing home – in fact, the Berks facility is housed in a single building formerly used as a nursing home.

88. The conditions of the family residential centers pose a heightened public health risk for the spread of COVID-19 that is even greater than in non-carceral institutions.

89. Immigration detention facilities have even greater risk of infectious spread because of crowding, the proportion of vulnerable people detained, and often scant medical resources. In fact, it is impossible to ignore that seven children in the Respondent’s care have

perished in immigration detention: they are Sixteen-year-old J.L.G., 7-year-old J.C.M., 8-year-old F.G.A., 2-year-old W.J.R.V., and 16-year-old C.H.V. Another 20-month-old girl, Mariee Juárez, died shortly after being held at the South Texas Family Residential Center at Dilley, TX.²⁰

90. In family residential centers, detained mothers, fathers and children are forced to live and sleep in close quarters and required to congregate and as a result, cannot achieve the “social distancing” needed to effectively prevent the spread of COVID-19. Even in their beds they cannot even sleep or receive the required distance necessary to protect themselves.

91. Families at FRCs are unable to maintain the recommended distance of 6 feet from others and often share or touch objects used by others.

92. In FRCs toilets, sinks, and showers are shared, without disinfection between each use and are used constantly by large numbers of people.

93. Food preparation and service is communal with little opportunity for surface disinfection. Families are required to eat together and only at certain times of the day. The areas where they eat create dangerous situations for the spread of COVID-19.

94. Detention facility staff, ICE staff, medical staff arrive and leave on a shift basis, and there is limited ability to adequately screen staff for new, asymptomatic infection. The ebb and flow of people from family residential centers are constant and wide ranging. Families are transported into the facility from all over the country, ICE staff have contacts with those not only within the facility but multiple detention centers, medical staff contact an innumerable number of

²⁰ As of March 21, 2019 at 3:50p.m. EST. *See* Opinion: Seven Children Have Died In Immigration Custody. Remember Their Names. BuzzFeed News. (September 30, 2019) <https://www.buzzfeednews.com/article/jessmoralesrocketto/remember-their-names>

detained families, and employees come and go from their home and their communities. The risk is great.

95. Family residential centers lack adequate medical infrastructure to address the spread of infectious disease and treatment of people most vulnerable to illness in detention. They are ill prepared to deal with the tragic situation which is likely to unfold. Even DHS medical professionals describe the immigration detention system as a “tinderbox.” Exh. 14 Letter to Congress Profs. Allen and Rich at ¶¶ 4 & 6.

96. All three FRCs rely on the detained civil population as their cleaning staff for the detainee residential areas pursuant to a “voluntary” work program paying \$1 per day and there has been no change to this policy in light of the recent pandemic. This is a huge and genuine risk to the families and children detained, whom are not provided the security of a sanitary living environment to protect from the spread of infection of this highly contagious disease.

97. At some if not all of the FRCs, detained families report that they lack adequate cleaning supplies.

98. During the H1N1 influenza epidemic in 2009, jails and prisons were sites of severe outbreaks. It is impossible to ignore that the majority of the detainees at issue here are children. Children notoriously carry and spread diseases more frequently, given their vulnerability and the nature of children generally. Illnesses spread through family detention centers like wildfires. It is a lack of common sense to believe the COVID-19 pandemic will be any different.

99. Rather it is almost certain to expect COVID-19 to infect and spread rapidly in family residential centers, especially when people cannot engage in proper hygiene or isolate themselves from infected or asymptomatic residents or staff.

100. Indeed, the FRCs are not educating detainees about COVID-19 at all and have failed to implement protocols recommended by the CDC to prevent transmission of COVID-19. Families are relegated to learning about COVID-19 from the news, they are not provided extra necessities to protect themselves, and they are simply awaiting the worst. Family's have expressed terror that they will become sick, will potentially die and will not be able to protect themselves. It is an unacceptable environment and an unnecessary risk. *See e.g.* Exhs. 2 (Declaration of Bridget Cambria), 4 (Declaration of Shalyn Fluharty), 7 (Declaration of Andrea Meza).

A. Berks County Residential Center

101. The detainees at Berks County Residential Center ("Berks Center") have not been briefed on COVID-19 by the staff, by ICE or any other operator of Berks Center, either about the fact that there is global pandemic or what precautions they should be taking to prevent the spread of the virus. *See* Exh. 2, Declaration of Bridget Cambria at ¶ 27; Exh. 3, Declaration of M.B.G. at ¶¶ 8 & 10.

102. Petitioners are aware of COVID-19 only from the news on the television. *See* Exh. 3, Declaration of M.B.G. at ¶ 8.

103. There is a note posted on the outside of the facility that misidentifies the COVID-19 pandemic as the "flu" to the general public and those who enter the building.

104. There is only one sign in Berks Center that instructs detainees in Spanish to wash their hands. The other signs have been seen by legal service providers concerning COVID-19 but are in English.

105. Detainees report that there are new detainees entering the facility and that employees come and go daily, but they have not witnessed any precautions being taken to screen for COVID-19, except that incoming detainees have their temperature taken.

106. New families who have arrived in the past week are coming into the facility being transferred in and many of them have children who are ill with congestion, cough, sore throat and fever. They also demonstrate lethargy, lack of appetite and inability to sleep.

107. Detainees report that numerous parents and children in the facility are sick with cold-like symptoms, such as coughs, congestion and fever.

108. Detainees have observed that numerous staff members are exhibiting similar cold-like symptoms.

109. Despite this fact, when detainees request medicine for their children they are not provided medicine.

110. One mother asked her attorney to ask the staff to provide medicine to her child who had been sick for 4 days without treatment. When the attorney's legal assistant requested cough medicine from a staff member, the staff member replied, "what is cough syrup." When the legal assistant asked the staff member to make a resident request to the facility for cough medicine, the staff member replied that there is no resident request form. To the contrary, the Berks Center handbook contains a section on resident requests, as well as a grievance process for denials of requests. *See* Exh. 2, Declaration of Bridget Cambria at ¶ 32.

111. While the staff is wearing gloves, detainees are not provided gloves unless they participate in a voluntary work program to clean the facility or are cleaning their rooms. *Id.* at ¶ 29.

112. Indeed, the Petitioners at Berks Center observe that it is only cleaned by detainees and shelter care counselors.

113. Neither Petitioners nor the staff have been provided with masks and requests for this protection has been refused. *Id.* at ¶ 29.

114. Petitioners also report concerns with the cleanliness of Berks Center. For example, while the detainees at Berks Center are witnessing the staff wiping down sofas, they describe the staff as spraying bleach water into the air or over tables. Detainees also report that the children's toys are simply sprayed on the top with bleach. When the children play with the toys, they are putting the toys in their mouths.

115. Detainees also report that there are broken soap dispensers in their rooms that have not been fixed despite their requests. *Id.* at ¶ 28.

116. Hand sanitizer is only freely provided in the lobby and legal visitation room at Berks Center -two areas that detainees are not permitted to access. *Id.*

117. Detainees are housed in shared rooms and cannot remain 6 feet apart for social distancing within the constraints of detention. Sleeping quarters are very cramped. *Id.* at ¶¶ 15-18.

118. Detainees report that they are forced to remain in close contact with each other when eating together in the shared cafeteria and when in their shared bedrooms. *Id.*

119. The entire detained population at Berks as well as the staff (approximately 60 people or more) eat at the same time in the cafeteria during mealtime. *Id.* at ¶ 18.

120. The facility continues to receive new families. The operation of the facility remains unchanged. *Id.* at ¶ 31.

B. South Texas Family Residential Center

121. The South Texas Family Residential Center ("Dilley") is an ICE detention facility with capacity to detain up to 2,400 mothers and their minor children at any given time. Approximately 1,000 mothers and children are currently detained in Dilley. *See* Exh. 4, Declaration of Shalyn Fluharty, ¶ 2.

122. Detainees in Dilley have not been provided with COVID-19 education by facility staff, ICE or any other operator at Dilley. Detainees have questions regarding the pandemic, what precautions they can take to keep themselves safe, and what protocols the facility is implementing to prevent the spread of the disease. *See* Exh. 4, Declaration of Shalyn Fluharty; Exh. 16, Declaration of O.M.G.; Exh. 17, Declaration of C.L.

123. Detainees have not been advised they should sneeze or cough into a tissue, or provided with any other hygiene education. Exh. 4, ¶ 22.

124. Detainees are housed in shared trailers, and at any given time are required to share bedrooms, bathrooms, and other communal spaces with unrelated detainees.

125. In order to participate in court proceedings, education, asylum interviews, medical appointments, and attorney meetings, detainees must sit next to other detainees while waiting to be seen. Exh. 4, ¶ 16. Common areas - such as cafeterias, auditoriums for mandatory meetings, and waiting areas to obtain prescribed medication - regularly hold over one hundred people with no possibility of social distancing. *Id.*

126. Despite Texas Governor Abbott ordering all schools to close until April 3, 2020 to limit the spread of coronavirus, children detained in Dilley continue attending school.²¹

127. Dilley staff do not appear to be making any changes to regular, insufficient, cleaning procedures. *See* Exhibit 5, Declaration of Allison Herre, ¶ 11. Detainees report that bathrooms are dirty. Although dormitories are cleaned once a week by janitorial staff, detainees are expected to clean their dormitory throughout the week. Detainees however are not provided with cleaning supplies other than paper towels and a broom, and are deprived of protective gear such as gloves and masks. When detainees request access to additional cleaning supplies, they

²¹ As of March 21, 2020 at 3:13 p.m. *See* Dilley Independent School District, <http://www.dilleyisd.net/>

are told cleaning supplies are in short supply and being rationed. Exh. 4, ¶ 19, 20. Furthermore, while toys are purportedly sanitized three times per day, many detainees reported that this is inconsistent, and is denied when specifically requested.

128. Hand sanitizer is not provided to detainees. Many detainees report that soap dispensers are broken or are simply out of soap. Despite multiple attempts to report these errors, access to soap remains insufficient. Exh. 4, ¶ 18. Exh. 16, ¶ .

129. Facemasks, gloves, and other protective gear are generally not provided to families detained in Dilley. Exh. 4, ¶ 21. Detainees report observing staff coughing without using masks, and that at least one CoreCivic or ICE employee states they returned to work after being diagnosed with COVID-19. *See* Exh. 4, ¶ 21; Exh. 6, ¶ 6; Exh. 16.

130. Medical care is inadequate, with many detainees suffering from asthma, children reporting fevers, pregnant women receiving insufficient prenatal care, and detainees being denied evaluation for undiagnosed medical symptoms and treatment for known pre-existing conditions. Exh. 4, ¶ 24-33. Families report having to wait up until 8 hours to access medical care, and regularly waiting in lines for two to three hours to see a doctor. *Id.*

131. At least one child has died subsequent to release from Dilley after developing an infection that went untreated while in detention. Exh. 4, ¶ 23. Individuals with known pre-existing conditions are not provided any additional measures to protect them COVID-19 infection, such as being isolated or distanced from others detained in the facility. Exh. 4, ¶ 25. Currently there are individuals detained in Dilley with diabetes, thyroiditis, hyper-thyroidism, tooth infections, vitiligo, epilepsy, gastric liver damage, tachycardia, eye infection, chronic gastritis, and seizure disorder, heart palpitations, heart murmurs, deteriorating vision, undiagnosed lumps with accompanying pain and swelling, kidney inflammation and

complications, continued vomiting, severe migraines, numbness in limbs, tumors and ovarian cysts. In addition, there is a child who recently survived a severe skull fracture, a child who is a cancer survivor, and a mother who recently required surgery while detained. *Id.* 33.

132. Large volumes of detainees in Dilley report having a cough or high fever and observing other detainees and facility staff with a cough or high fever. Detainees report they have not been tested for COVID-19, and are unaware of other detainees being tested. Exh. 4, ¶¶ 22, 24.

133. Medical specialists are generally not available on-site in Dilley. Detainees who require specialty or urgent care must be transported to a hospital in San Antonio, Texas – which is approximately one and half hours away from the facility in Dilley. Exh. 4, ¶ 34.

134. Screening for lawyers and legal visitors has not changed—lawyers entering Dilley have not been asked about travel, have not had their temperatures checked, and have not been advised to wash their hands or provided hand sanitizer. Exh. 6, Declaration of Stephanie Alvarez Jones. Although a notice regarding COVID-19 has been posted; it recommends that people with cough or fever not enter Dilley. *Id.*

135. Testing of detainees for COVID-19 has not been made available, with no plans to do so. ICE leadership states that medical screening procedures for families detained in Dilley have not changed in response to the COVID-19 outbreak. Exh. 5, Declaration of Allison Herre, ¶¶ 5-6.

C. Karnes County Residential Center

136. The detainees at Karnes County Residential Center (“Karnes”) have not been briefed on COVID-19 by the staff, by ICE or any other operator of Karnes, either about the fact that there is global pandemic or what precautions they should be taking to prevent the spread of

the virus. Exh. 7, Declaration of Andrea Meza at ¶22; Exh. 10, Declaration of Richard Paquiot at ¶ 2.

137. Officials running Karnes do not have access to COVID-19 tests. Exh. 7, at ¶18.

138. Detainees have recently been asked to sign a “form about coronavirus” but the contents of the form were not explained to them. Exh. 9, Declaration of Laila Ayub at ¶20; Exh. 8, Declaration of Julia Valero at ¶15.

139. Detainees report that they do not have access to hand sanitizer, protective masks, or gloves. Exh. 11, Declaration of T.F. at ¶7; Exh. 8, at ¶7. Detainees have reported that there are no posters or notices on the walls in a language they can understand explaining how they can protect themselves from COVID-19. Exh. 11, at ¶9.

140. Many detainees report that they do not have access to soap to clean their rooms. Exh. 8, at ¶8. The only handwashing stations available to detainees are in their cells or common restrooms, and not in or near the cafeteria. Exh. 7, at ¶22.p.

141. Detainees are housed in shared rooms and cannot remain 6 feet apart for social distancing within the constraints of detention. Exh. 8, at ¶9. In the legal visitation area, for example, detainees’ chairs are very close to one another, definitely less than 6 feet apart. Exh. 9, at ¶¶13-18.

142. Detainees report that they are forced to remain in close contact with each other when eating together in the shared cafeteria, when in line for the cafeteria and the medical center, and when in their shared bedrooms. *Id.*; Exh. 11, at ¶7. One family estimated that approximately 120 people fit into the cafeteria during mealtime, and the cafeteria fills to capacity as people wait outside in line to be able to eat. Exh. 8, at ¶9.

143. Children at Karnes continue attending school within the detention center, and continue being placed in daycare. *Id.*; Exh. 7, ¶¶22.q; 32.

144. In the legal visitation area, children's toys do not appear to be cleaned or sanitized after used by a child. Exh. 9, at ¶¶13-18. Telephones that are used by detainees in legal visitation rooms are not wiped down between uses. *Id.* GEO guards that check detainees in for their legal visits do not wear gloves when they are handling detainee IDs, pens, or clipboards. *Id.*; Exh. 11, at ¶8.

145. Karnes staff does not follow basic CDC guidelines for preventing the spread of the coronavirus. Exh. 9, at ¶9. While legal visitors now have their temperature taken, and are asked to answer a questionnaire, no other apparent precautions are being taken. *Id.* Staff that process legal visitors and handle materials such as driver's licenses or visitors' badges do not wear gloves or wipe down surfaces regularly accessed by visitors. Exh. 9, at ¶9. The guards shake hands, do not abide by 6 feet of social distancing in line to clock in or clock out, and do not wear gloves or a protective mask. Exh. 8, at ¶10.

146. Detained fathers have been tasked with cleaning high traffic restrooms, tables, doors, and windows but only given gloves and no other protective gear to protect them. Exh. 9, at ¶10; Exh. 11, at ¶7.

147. Poor medical care is a routine complaint by nearly all families. Exh. 7, at ¶9. Multiple families have expressed concerns that their children are not eating and losing significant amounts of weight and that Karnes medical staff fails to take any action, stating simply that it is "normal" for young children to not eat or gain weight. Exh. 9, at ¶¶ 2-3; Exh. 11, at ¶3. Many families similarly report that Karnes' medical staff fail to adequately treat children with vomiting and diarrhea. *Id.* at ¶22. Pregnant detainees have been told by medical staff that they are too busy

to attend to the detainee's needs. Exh. 10, Declaration of Richard Paquiot at ¶ 3. Karnes' medical care is not adequate for basic medical needs such as headaches and the common cold. Exh. 8, at ¶6.

D. All Detainees Should Be Released from ICE Detention.

148. Because risk mitigation is the only known strategy that can protect vulnerable groups from COVID-19, public health experts with experience in immigration detention and correctional settings have recommended the release of vulnerable detainees from custody.

149.

LEGAL FRAMEWORK

I. Violation of Constitutional Rights and the Administrative Procedure Act

150. "Federal courts possess whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights." *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992).

151. 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).

152. When the government detains or incarcerates a person, it has an affirmative duty to guarantee conditions of reasonable health and safety: "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).

153. As a result, the government must provide those in its custody with "food, clothing, shelter, medical care, and reasonable safety." *Id.* at 200.

154. The Supreme Court has found that the Eighth Amendment protects against future harm to inmates, as “it would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

155. The Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which is ‘reasonable safety.’” *Helling*, 509 U.S. at 33 (quoting *DeShaney*, 489 U.S. at 200).

156. The Supreme Court in *Helling* recognized that the risk of contracting a communicable disease may constitute such an “unsafe, life-threatening condition” that threatens “reasonably safety.” *Id.*

157. These Constitutional protections also apply in the context of immigration detention because immigrant detainees, even those with prior criminal convictions, are civil detainees held pursuant to civil immigration laws. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

158. Because detained immigrants are civil detainees, they are entitled to rights derived from the Fifth Amendment, and the due process protections derived from Fifth Amendment’s due process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”).

159. Because civil detention is governed by the Fifth Amendment rather than the Eighth Amendment, the “deliberate indifference” standard required to establish a constitutional violation in the latter context does not apply to civil detainees like Petitioners. *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004), cert. denied, 546 U.S. 820 (2005).

160. A condition of confinement for a civil immigration detainee violates the Constitution “if it imposes some harm to the detainee that significantly exceeds or is independent

of the inherent discomforts of confinement and is not reasonably related to a legitimate governmental objective or is excessive in relation to the legitimate governmental objective.”

Unknown Parties v. Johnson, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016), *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017).

161. The Supreme Court declares “that the Due Process Clause protects individuals against two types of government action.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). Thus, “the touchstone of due process is protection of the individual against arbitrary action of government...whether the fault lies in the denial of fundamental due process fairness [procedural due process],...or in the exercise of power without any reasonable justification in the service of a legitimate government objective [substantive due process]...” *City of Sacramento v. Lewis*, 523 U.S. 833 (1998) (citations and internal quotations omitted). “‘Substantive due process’ prevents the government from engaging in conduct that ‘shocks the conscience,’... or interferes with rights ‘implicit in the concept of ordered liberty.’” *Salerno*, 481 U.S. at 746. (internal citations omitted).

162. When the government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes and in areas of the law, such that agencies must follow their own “existing valid regulations,” even where government officers have broad discretion, such as in the area of immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954) (reversing in immigration case after review of warrant for deportation); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“[I]t is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required.”); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005)

(“*Accardi* has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others.”).

163. Breaches of *Accardi*’s rule constitute violations of both the Fifth Amendment’s Due Process Clause and the APA. *See also, Rowe v. United States AG*, 545 F. App’x 888, 890 (11th Cir. 013) (Recognizing the *Accardi* doctrine holds that to ensure due process an agency is required to follow its own regulations when exercising discretion and issuing a decision); *Mayers v. United States INS*, 175 F.3d 1289, 1300 (11th Cir. 1999) (Recognizing that a review of statutory questions implicates due process and that *Accardi* found using habeas to ensure that due process and that the “crucial question” is whether the Attorney General’s conducted deprived an individual the rights guaranteed under a statute or regulation.) (internal citations omitted).

164. In *Damus v. Nielsen*, 313 F. Supp. 3d 317 (D.D.C. 2018), he Court explained “that ‘agencies cannot relax or modify regulations that provide the only safeguard individuals have against unlimited agency discretion[.]’” citing *Lopez v. FAA*, 318 F.3d 242, 247 (D.C. Cir. 2003) *as amended* (Feb. 11, 2003).

165. Courts have regularly exercised this authority to remedy to remedy constitutional violations caused by overcrowding. *Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), cert. denied, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

166. In the face of this great threat, social distancing and hygiene measures are Petitioners’ only defense against COVID-19.

167. On March 18, 2019, ICE issued a statement on enforcement during the COVID-19 crisis:

OPERATIONAL

03/18/2020

Updated ICE statement on COVID-19

Statement attributable U.S. Immigration and Customs Enforcement

To ensure the welfare and safety of the general public as well as officers and agents in light of the ongoing COVID-19 pandemic response, U.S. Immigration and Customs Enforcement (ICE) will temporarily adjust its enforcement posture beginning today, March 18, 2020. ICE's highest priorities are to promote life-saving and public safety activities.

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

Homeland Security Investigations will continue to carry out mission critical criminal investigations and enforcement operations as determined necessary to maintain public safety and national security. Examples include investigations into child exploitation, gangs, narcotics trafficking, human trafficking, human smuggling, and continued participation on the Joint Terrorism Task Force. This work will be conducted based on ability to coordinate and work with prosecutors from the Department of Justice and intake at both the U.S. Marshals Service and Bureau of Prisons.

Consistent with its sensitive locations policy, during the COVID-19 crisis, ICE will not carry out enforcement operations at or near health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities, except in the most extraordinary of circumstances. Individuals should not avoid seeking medical care because they fear civil immigration enforcement.

Last Reviewed/Updated: 03/18/2020

<https://www.ice.gov/news/releases/updated-ice-statement-covid-19>.

168. In the statement, ICE states that as a result of the COVID-19 epidemic, “ICE Enforcement and Removal Operations (ERO) will focus enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds. For those individuals who do not fall into those categories, ERO will exercise discretion to delay enforcement actions until after the crisis or utilize alternatives to detention, as appropriate.” *Id.*

169. In *R.I.L.R. v. Johnson*, this Court held that immigration deterrence is and insufficient basis upon which to detain asylum-seeking families who were plaintiffs in that case. *R.I.L.R. v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015) (citing *Kansas v. Crane*, 534 U.S. 407,

412, 122 S. Ct. 867 (2002) (warning that civil detention may not "become a 'mechanism for retribution or general deterrence' — functions properly those of criminal law, not civil commitment") (quoting *Kansas v. Hendricks*, 521 U.S. 346, 372-74 (1997) (Kennedy, J., concurring) (“[W]hile incapacitation is a goal common to both the criminal and civil systems of confinement retribution and general deterrence are reserved for the criminal system alone.”)).

170. The Court in *R.I.L.R.* based its decision, in part, on *Zadvydas*, which grounded its analysis of immigration detention in principles derived from the wider civil-commitment context. *See* 533 U.S. at 690 (citing *Hendricks*, 521 U.S. 346 at 356 and *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

171. Section 212(d)(5)(A) of the Immigration and Nationality Act permits the Attorney General, at his or her discretion, to “parole” any noncitizen into the United States “temporarily under such conditions as [she or] he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”

172. 8 C.F.R. § 235.3(b)(1)(iii) vests the Attorney General with the discretion to parole detained aliens with negative credible/reasonable fear findings in expedited removal as required “to meet a medical emergency or is necessary for a legitimate law enforcement objective.”

173. 8 C.F.R. § 235.3(b)(4)(ii) vests the Attorney General with the discretion to parole detainees who have not yet had a credible fear interview in expedited removal as required “to meet a medical emergency or is necessary for a legitimate law enforcement objective.”

174. 8 C.F.R. § 241.4 provides the Secretary of DHS with the discretion to release detainees with final removal orders on orders of supervision based on consideration of factors such as whether the detainee is presently non-violent, whether the detainee is not likely to pose harm to

the community, and whether there are concerns regarding a detainee's mental health. 8 CFR 241.4(e) & (f).”

175.

176. Responding to the current pandemic appropriately by releasing civil immigration detainees who are not a threat to public safety meets all three standards: a medical emergency, a legitimate law enforcement objective and is the very definition of a “significant public benefit.”

177. In addition, the regulations governing ICE's release authority state that individual serious medical conditions are a reason to parole an individual, as “continued detention would not be appropriate” in such cases. 8 C.F.R. § 212.5(b)(1).

A. The Flores Settlement Agreement

178. The United States government is responsible for the care of minors in its custody and, also, is contractually to provide minors in their care special consideration and contractually obligated to process and care for minors consistent with the Flores Settlement Agreement (“FSA”)

179. On January 28, 1997, a class-wide settlement agreement was reached in a case that is presently captioned *Flores v. Sessions*, CV-85-4544 (C.D. Cal.). That agreement unequivocally remains in force today. Individuals may seek redress under the settlement. *See E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, No. 19-2927, 2020 U.S. App. LEXIS 4628 at *1 (3d Cir. Feb. 13, 2020) (“This case raises the age-old question: ‘If not now, when?’ Mishnah, Pirkei Avot 1:14. For aliens who are challenging their removal from the United States, the answer is usually ‘later.’ But not always. And not here.”)

180. According to the stipulation of the parties in that settlement agreement, the terms of the FSA are in effect and remain in effect until the 45th day “following Respondents’ publication of final regulations implementing” the FSA itself.

181. On August 23, 2019, the Departments of Homeland Security and Health and Human Services published final regulations in the Federal Register on the “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children.” Those regulations have been enjoined by Judge Dolly M. Gee, and as a result, the FSA remains in effect.

182. Each federal government Respondent is subject to compliance under the FSA.

183. The FSA applies to “[a]ll minors who are detained in the legal custody of the INS” regardless of whether the child is apprehended unaccompanied or accompanying her parent or family. See *Flores v. Lynch*, 828 F.3d 898, 905-6 (9th Cir. 2016).

184. A “minor” is “any person under the age of eighteen (18) years who is detained in the legal custody of the INS.”

185. The FSA “sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS[.]”

186. The immigration authorities must treat “all minors in [their] custody with dignity, respect and special concern for their particular vulnerability as minors.”

187. Under the FSA the Respondents have an affirmative obligation to provide for the well-being of immigrant children in the custody of the government. Failing to secure the best interests of minor Petitioners who are detained (as well as all similarly-situated minors in immigration detention) or ensuring their release so that guardians can protect them during a pandemic places their health and their lives at risk. Such action serves no legitimate government interest and is contrary to numerous provisions of the FSA, including but not limited to paragraphs 11, 12A, 14, 24A and 24B and the standards set out in Exhibit 18, FSA.

188. The Flores Settlement Agreement has several provisions which are applicable in the instant matter and which have not been applied to the Petitioners, nor to the remaining asylum-seeking families detained in FRCs, nor the general public.

189. Even in times of a pandemic, the government is obligated to follow the settlement, as the settlement contemplates what is required to protect children in custody, even in extreme instances, as well as has provisions as to the care of minors to protect *others*.

190. The FSA requires that ICE understand and at appropriately, given the fact that children in immigration detention are vulnerable. So are families. The FSA requires *all* decisions on minor's custody *must* be made taking into account the particular vulnerability of children *as well* as to protect *the minor's well being and that of others*. See *id.* at ¶ 11.

191. The FSA requires *safe and sanitary conditions* for children and that they be processed expeditiously. The FSA requires a detention determination *without unnecessary delay* and that the determination be made to *not only* ensure appearance in court, *but to ensure the safety of minors or others*. See *id.* at ¶¶ 12 & 14.

192. Further, if the DHS desires to continue to detain the child due to a concern for safety, they are *obligated to immediately provide a bond hearing before an immigration judge, in every case*. Paragraph 24A. See *id.* at ¶ 24. Further, in the case of detained children, in consideration of bond, *simultaneous release of the detained parent pursuant to 8 C.F.R. 1236.3(2) must be considered*.

CLAIMS FOR RELIEF

Count I

(Violation of Fifth Amendment Right to Due Process--Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement)

193. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

194. The Fifth Amendment to the U.S. 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 treatment and conditions of confinement that amount to punishment or does not ensure those detainees' safety and health.

195. Respondents' conditions of confinement subject Petitioners to heightened risk of contracting COVID-19, for which there is no vaccine, known treatment, or cure.

196. Respondents are subjecting Petitioners to a substantial risk of serious harm, in violation of Petitioners' rights under the Due Process Clause.

197. As public health experts in correctional medical care and infectious disease agree, families in immigration detention are at grave risk of COVID-19 infection.

198. Accordingly, Respondents are subjecting Petitioners to detention conditions that amount to punishment and that fail to ensure their safety and health.

199. For these reasons, Respondents' ongoing detention of Petitioners violates the Due Process Clause.

Count II

(Violation of the Administrative Procedure Act as to All Respondents)

1. All the foregoing allegations are repeated and re-alleged as though fully set forth herein.

2. Respondents failure to act in a timely manner to protect Petitioners interferes with the rights of Petitioners in an arbitrary and capricious manner and is without justification.

3. The continued refusal to establish and implement policies and procedures designed to prevent the transmission of COVID-19 is contrary to Petitioners' constitutional rights as it violates their substantive and procedural due process rights, as outlined above.

4. By failing to establish and implement policies and procedures to protect to prevent Petitioners from the transmission of COVID-19 in the FRCs, Respondents have enacted a final decision.

5. This decision is constituting final agency action and is reviewable by this Court.

6. When a government agency detains individuals for civil immigration purposes during a pandemic crisis and fails to adhere to the most basis and minimally adequate "arbitrary, capricious, an abuse of discretion, [and] not in accordance with law." 5 U.S.C. § 706(2)(A).

7. Here, by detaining Petitioners without a minimally adequate plan or procedures is arbitrary and capricious and an abuse of discretion. The failures to comply with Respondents' own policies and procedures is not in accordance with law – in violations of the Administrative Procedure Act.

Count III

(Violation of Flores Settlement Agreement—Minor Petitioners Only)

8. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

9. The Flores Settlement Agreement requires the Respondents to safeguard and protect immigrant children in their custody, including: treating them with care appropriate to their inherent vulnerability as minors; holding minors in facilities that are safe and sanitary consistent with that concern and as laid out in Exhibit 1 to the FSA; releasing minors from

custody “without unnecessary delay” in order to ensure the minors’ safety or that of others; affording them and their parents an immediate bond hearing before an immigration judge “in every case” in which they fail to meet any of these requirements. *See* Exh. 18, FSA at p. 25.

10. Further, the Flores Settlement Agreement requires the government to render custody determinations without unnecessary delay and to consider not only the vulnerability of minors but also the concern or safety of others.

11. Pursuant to Paragraph 24B of the FSA, the minor Petitioners assert that their placement does not comply with the *Flores* standards. Pursuant to Paragraph 36 of the FSA, the 24B claim does not limit the minor Petitioners rights to pursue any other relief to which they may be entitled.

12. Respondents are not in compliance with any of these requirements, have not met their obligations, and have endangered the lives of the children in detention, the families, the surrounding populations and the general public.

13. The conditions in immigration detention for the minor Petitioners , and the continued failure to provide them with appropriate necessary and critical medical care to prevent COVID-19 transmission lacks any justification and violates the rights of minors under the Flores Settlement Agreement.

Count IV

(Writ of Mandamus)

All the foregoing allegations are repeated and re-alleged as though fully set forth herein.

14. As set forth above, Respondents are in violation of the Flores Settlement Agreement, federal statutes and regulations and the U.S. Constitution.

15. These legal obligations for care of individuals held in civil immigration detention create affirmative duties to act, which Respondents have failed to respect.

16. Petitioners accordingly seek a writ of mandamus to require the Respondents to act immediately in accordance with their legal obligations to protect Petitioners and to follow their own parole guidelines and directives.

17. Petitioners are contemporaneously filing a motion for a temporary restraining order.

Count V

(Declaratory Judgment Act)

18. All the foregoing allegations are repeated and re-alleged as though fully set forth herein.

19. The Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, provides that “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

20. There is an actual controversy between the parties because Respondents are failing to implement adequate protocols to prevent the transmission of COVID-19 in the FRCs.

21. The Court should exercise its authority under the Declaratory Judgment Act to declare that Respondents have no basis to refuse to implement adequate protocols to prevent the transmission of COVID-19 and should order Respondents to immediately release Petitioners and all detainees to protect them from the dangers of COVID-19 transmission.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests this Court to:

1. Assume jurisdiction over this matter;
2. Declare that the Respondents’ conduct constitutes a danger to public health and safety;

3. Order the immediate release of Petitioners and all detainees in the FRCs pending the completion of these proceedings, pursuant to the Court's inherent powers;
4. Immediately release Petitioners and all detainees in the FRCs pending the completion of these proceedings pursuant to the Court's inherent powers;
5. Immediately order Respondents to immediately implement all protocols designed to prevent the transmission of COVID-19 as indicated in the attached expert declarations or protocols of the CDC;
6. Prohibit the placement of new families or other detainees in the FRCs until all protocols designed to prevent the transmission of COVID-19 have been implemented;
7. Declare that Respondents' detention of Petitioners unconstitutional in violation of the Fifth Amendment;
8. Declare that Respondents have violated the Flores Settlement Agreement;
9. Declare that Respondents have violated the Administrative Procedures Act;
10. Award Petitioners their costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act; and

11. Grant such further relief as the Court deems just and proper.

Dated: March 21, 2020

Respectfully submitted,

By: /s/ Gregory P. Copeland

Gregory P. Copeland (D.D.C. Bar # NY0311)

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Attorneys for Petitioners

***Application for admission pro hac vice forthcoming*

VERIFICATION

I am submitting this verification on behalf of the Petitioners because I am one of the Petitioner's attorneys. I have discussed with the claims with Petitioners' legal team and the events described in this Emergency Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Emergency Verified Petition for a Writ Of Mandamus are true and correct to the best of my knowledge.

Dated: March 21, 2020

By: /s/ Gregory P. Copeland
Gregory P. Copeland (D.D.C. Bar # NY0311)

Attorney for Petitioners