

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JUAN MOROCHO SUMBA, JOSEFINA CORONEL,
RAMON GARCIA PONCE, FLORENCIO
MORISTICA, JOSE MADRID, JOSE OTERO,
MIGUEL MIRANDA,

Petitioners-Plaintiffs,

v.

THOMAS DECKER, in his official capacity as Field
Office Director, New York City Field Office, U.S.
Immigration & Customs Enforcement; CHAD WOLF,
in his official capacity as Acting Secretary, U.S.
Department of Homeland Security; WILLIAM P.
BARR, in his official capacity as Attorney General, U.S.
Department of Justice; RONALD P. EDWARDS, in his
official capacity as Director, Hudson County Jail;
STEVEN AHRENDT, in his official capacity as
Warden, Bergen County Jail; WILLIAM ANDERSON,
in his official capacity as Warden, Essex County Jail;
CARL E. DUBOIS, in his official capacity as Sheriff,
Orange County.,

Respondents-Defendants.

Civil Action No. _____

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE
RELIEF**

INTRODUCTION

1. The seven plaintiffs are civil immigration detainees who, by virtue of their serious and chronic medical conditions like congestive heart failure, diabetes, hypertension, and kidney malfunction, face imminent risk of severe illness or death if they contract COVID-19 in the county jails where they are currently held. These men and woman—all of whom have minimal criminal histories such that Immigration and Customs Enforcement (“ICE”) has the discretion to release them at any time—remain trapped in what are essentially tinderboxes on the verge of explosion as the global pandemic spreads, with much of the sharpest growth in the very areas where plaintiffs are detained. As medical experts have warned for weeks, the virus has now officially entered area jails, including at least one of the four facilities ICE is currently detaining plaintiffs, creating a risk of harm to these seven individuals that is both unconscionably high and entirely preventable.
2. Infectious diseases specialists warn that no conditions of confinement in carceral settings can adequately manage the serious risk of harm for medically-vulnerable individuals during the COVID-19 pandemic. Packed in close quarters with other detainees and correctional staff, forced to share necessities like showers, telephones, toilets and sinks with dozens of others, and deprived of basic forms of preventative hygiene, the plaintiffs are helpless to take the only risk mitigation steps known to limit transmission of the virus. And if the plaintiffs are infected, they face a heightened risk of infection, pneumonia, sepsis and death within jail systems that have a track record of failing to provide adequate medical care even outside times of crisis.
3. Medical experts agree that reducing jail populations is a necessary component of risk mitigation during widespread COVID-19 outbreak, and that officials should first focus on vulnerable populations to reduce harm to the entire population. In line with these

recommendations, jurisdictions across the country plan to release medically-vulnerable individuals. A failure to heed public health advice to reduce jail numbers will not just harm detainees, but will also have ripple effects across communities as rapid transmission of the disease in carceral setting further taxes already overburdened regional hospitals and healthcare systems.

4. Against this backdrop of extreme crisis, ICE continues to refuse to exercise its discretion to release medically-vulnerable civil detainees from its custody. Before filing suit, plaintiffs notified ICE of their medical conditions and formally requested that they be released in light of the harms they will experience if they contract COVID-19 while detained. Not only has ICE failed to respond or timely release plaintiffs despite the imminence of the harms they face, it has indicated that it has no plans to meaningfully reduce its existing detained population. Faced with a global pandemic that has already caused fundamental changes to our way of life, ICE remains willfully blind to the reality that its failure to act could well result in the serious illness or death of these seven plaintiffs and many more civil detainees in its custody.
5. Because release from custody is the only effective means to protect people with the greatest vulnerability to COVID-19, this suit seeks the immediate release of the plaintiffs from civil immigration detention. The continued imprisonment of these high-risk individuals violates their due process rights both by constituting deliberate indifference to serious medical harm and by failing to provide procedural safeguards commensurate with the serious deprivation of life and liberty that they face.

PARTIES

6. Petitioner-Plaintiff Juan Morocho Sumba is a 45-year-old man who has been incarcerated by ICE since December 2019 at Orange County Jail. He suffers from aortic valve disease, a type

of cardiovascular disease, and hypertension. He is in removal proceedings at the Varick Immigration Court in New York, NY. Because of his medical conditions, Mr. Morocho Sumba is at high risk for severe illness or death if he contracts COVID-19.

7. Petitioner-Plaintiff Josefina Coronel is a 48-year-old survivor of human trafficking who has been incarcerated by ICE since October 2019 at Hudson County Jail. She suffers from congestive heart failure, hypertension, and diabetes. She was previously in removal proceedings at the Varick Immigration Court in New York, NY until she won her case in February 2020. Because of her medical conditions, she is at high risk for severe illness or death if she contracts COVID-19.
8. Petitioner-Plaintiff Ramon Garcia Ponce is a 56-year-old man who has been incarcerated by ICE since January 2020 at Hudson County Jail. He has a history of stroke and suffers from diabetes and high blood pressure. He is in immigration proceedings at the Varick Immigration Court in New York, NY. Because of his medical conditions, Mr. Garcia Ponce is at high risk for severe illness or death if he contracts COVID-19.
9. Petitioner-Plaintiff Florencio Moristica Ochoa has been incarcerated by ICE since July 2018 at Bergen County Jail. He suffers from a severe neurocognitive disorder which impairs his ability to function or understand his surroundings. He prevailed in removal proceedings at the Varick Immigration Court in New York, NY and the government has indicated it plans to appeal the immigration judge's decision to the Board of Immigration Appeals. Because of his severe intellectual disability, Mr. Moristica Ochoa is at high risk for severe illness or death if he contracts COVID-19.
10. Petitioner-Plaintiff Jose Madrid is a 41-year-old man who has been incarcerated by ICE at Bergen County Jail since January 2020. He has type 2 diabetes, and suffers from obesity and

impaired vision as a result, and has cataracts. He is in removal proceedings at the Varick Immigration Court in New York, NY. Because of his medical conditions, Mr. Madrid is at high risk for severe illness or death if he contracts COVID-19.

11. Petitioner-Plaintiff Jose Otero is a 38-year-old man who has been incarcerated by ICE since November 2019 at Essex County Jail. He has had a nephrectomy (removal of left kidney), partial liver resection, left lung resection, and has been diagnosed with Post Traumatic Stress Disorder, major depressive disorder, and a major neurocognitive disorder. He is in removal proceedings at the Varick Immigration Court in New York, NY. Because of his medical and mental health conditions, Mr. Otero is at high risk for severe illness or death if he contracts COVID-19.

12. Petitioner-Plaintiff Miguel Miranda is a 44-year-old man who has been incarcerated by ICE since February 2020 at Bergen County Jail. He has type 2 diabetes and suffers from gastrointestinal problems. He is in removal proceedings at the Varick Immigration Court in New York, NY. Because of his medical conditions, Mr. Miranda is at high risk for severe illness or death if he contracts COVID-19.

13. Respondent-Defendant Thomas Decker is named in his official capacity as the Director of the New York Field Office for Immigration and Customs Enforcement within the Department of Homeland Security. He is responsible for the administration of immigration laws and the execution of detention and removal determinations for individuals under the jurisdiction of the New York Field Office. As such, he is the custodian of Plaintiffs.

14. Respondent-Defendant Chad F. Wolf is named in his official capacity as the Secretary of the Department of Homeland Security. He is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); routinely transacts business in the Southern District of

New York; he supervises Respondent Decker; and is legally responsible for the pursuit of non-citizens' detention and removal. As such, he is the custodian of Plaintiffs.

15. Respondent-Defendant 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, pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Southern District of New York and is legally responsible for administering removal and bond proceedings and the standards used in those proceedings. As such, he is the custodian of Plaintiffs.

16. Respondent-Defendant Ronald P. Edwards is named in his official capacity as the Director of the Hudson County Jail. In this capacity, he is the custodian of two of the Plaintiffs. His office is located at the Hudson County Jail, Kearny, NJ.

17. Respondent-Defendant Steven Ahrendt is named in his official capacity as Warden of the Bergen County Jail. In this capacity, he is the custodian of three of the Plaintiffs. His office is located at the Bergen County Jail, Hackensack, NJ.

18. Respondent-Defendant William Anderson is named in his official capacity as Warden of the Essex County Jail. In this capacity, he is the custodian of one of the Plaintiffs. His office is located at the Essex County Jail, Newark, NJ.

19. Respondent-Defendant Carl E. DuBois is named in his official capacity as Sheriff of Orange County. He is responsible for overseeing the administration of Orange County Jail. In this capacity, he is the custodian of one of the Plaintiffs. His office is located at the Orange County Jail, Goshen, NY.

JURISDICTION & VENUE

20. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (the All Writs Act);

42 U.S.C. § 1983 (Civil Rights Act); and Article I, Section 9, clause 2 of the Constitution (the Suspension Clause). Venue properly lies in this district under both 28 U.S.C. § 1391 and 28 U.S.C. § 2241.

EXHAUSTION

21. No statutory exhaustion requirement applies to Plaintiffs' claims of unlawful detention. However, the plaintiffs have each filed requests for release with ICE in light of their pre-existing medical conditions and the resulting risk of severe illness or death they face if infected with COVID-19. ICE has not responded to any of these requests; the failure to timely adjudicate them invites the very harm Plaintiffs seek to avoid.
22. The only other process that remains available to them is seeking a constitutionally-flawed bond hearing under 8 U.S.C. § 1226(a), which as the "overwhelming" majority of judges in this Circuit have found, violates detainees due process rights even under normal circumstances. *Fernandez Aguirre v. Barr*, 19-CV-7048 (VEC), 2019 WL 3889800, at *3 (S.D.N.Y. Aug. 19, 2019). Moreover, as detailed below, the current pandemic has prevented and will continue to prevent Plaintiffs from communicating with their counsel; from collecting evidence required to meet their burden of proof under existing standards in § 1226(a) bond hearings; and from accessing the Immigration Court itself. Plaintiffs are thus unable to promptly access any meaningful administrative remedy and delay will lead to irreparable injury to their health and well-being.

STATEMENT OF FACTS

The New York Metropolitan Area is an Epicenter of the Global Pandemic

23. On March 13, 2020, President Trump declared a national emergency in response to the coronavirus pandemic. At the time, there were over 1,600 confirmed cases in the United States

and at least 46 deaths. Today, one week later, exponential growth in the outbreak has caused at least 15,650 cases to be identified in the country and led to the death of at least 202 patients with the virus.

24. The New York metropolitan area is now the epicenter of the COVID-19 in the United States with over 7,800 confirmed cases in New York and New Jersey and 44 virus-related deaths.
25. Because the coronavirus that causes COVID-19 is particularly contagious, authorities are taking unprecedented precautions to manage the public health crisis and minimize the transmission of the virus by reducing the opportunity for large groups of people to congregate. Governor Andrew Cuomo of New York just today ordered all non-essential workers to stay home; New York and New Jersey recently banned all gatherings of more than 50 people; and New York City closed all schools, bars and restaurants.

The Heightened Risk of Severe Illness or Death from COVID-19 in Jails

26. Incarcerated persons have limited ability to take the precautionary steps that public health experts recommend. Jail design and operations make it impossible for the plaintiffs to engage in necessary social distancing, and they have no control over the movements of others with whom they live in close proximity and share spaces and resources.
27. According to infectious disease specialist Dr. Ranit Mishori, jails, prisons, and detention centers are settings that pose a “significantly higher” risk for the spread of infectious diseases like COVID-19 than the general community. *See* Declaration of Ranit Mishori, ¶ 16 (“Mishori Decl.”). In China, where the pandemic began, coronavirus suddenly exploded in prisons in early March, with 500 cases identified in five different facilities. Jails that hold pre-trial detainees, like the ones where Plaintiffs are currently detained by ICE, are a particularly high risk setting for contagion because of their large turnover of detainees on a daily basis.

28. The highest known person-to-person transmission rate for COVID-19 to date has taken place in settings where people are in close proximity to each other without an ability to distance themselves: in a skilled nursing home facility in Kirkland, Washington, and on cruise ships in Japan and off the coast of California.
29. The conditions of jails such as those utilized by ICE in the New York area pose an even higher risk of the spread of COVID-19 than non-carceral locations like a nursing home or cruise ship due to their closer quarters, the proportion of vulnerable people detained, and lack of medical care resources. *Id.* ¶¶ 22-23.
30. Even when family or in-person legal visitation to jails is sharply curtailed, it is impossible to seal entry and exit for staff, contractors, and vendors. Detainees within such facilities thus cannot be isolated from viruses circulating in the broader community. *Id.* ¶ 17.
31. Preventative strategies utilized by the general public, like social distancing, hand sanitizing, and proper ventilation are neither readily available nor particularly effective. As a result, rapid transmission and widespread outbreak is virtually inevitable. *Id.* ¶¶ 20- 21.
32. Once an infectious disease like COVID-19 enters a facility, there is frequently insufficient protective gear for staff and detainees, who live in close quarters and share common spaces and resources. *Id.* ¶ 19. When an outbreak occurs, jails are ill-equipped to engage in adequate containment and proper medical treatment for sick detainees. *Id.* ¶¶ 23-24.
33. Medical experts agree that reducing the number of detainees is a necessary component of risk mitigation in a pandemic as widespread and serious as the one currently spreading across the United States. “Not doing so is not only inadvisable but also reckless given the public health realities we now face in the United States.” *Id.* ¶ 45. Any reduction in detained populations

must focus on the most vulnerable detainees, *id.* ¶ 47, in order to safeguard their health and the health of other detainees and jail staff.

34. As medical staff and resources within the facility becomes overwhelmed, regional hospitals and health centers end up bearing the brunt of providing healthcare for sick detainees—who are disproportionately likely to be those with pre-existing medical vulnerabilities. The rapid spread of an infectious disease like COVID-19 within a jail ultimately results in adverse public health outcomes for the broader community and region. *Id.* ¶¶ 26.

35. As a result, reducing prison populations does not just benefit detainees and correctional staff, it also benefits the community as a whole by reducing the burden on healthcare resources that are already in high demand. *Id.* ¶ 49.

36. In the face of the current crisis, correctional systems around the country and the world, including New York City, have announced efforts to reduce their detained populations. Many of these jurisdictions are focusing their release efforts on individuals classified as high-risk. These jurisdictions include Los Angeles County, CA, Cook County, IL, a county in Ohio, Hennepin County, MN, and San Francisco, CA.

37. Despite the consensus in the medical community about the need to reduce population size to improve outcomes for public health and safety, and in sharp contrast to the efforts of jurisdictions around the United States to comply with such recommendations, ICE recently announced that it has no plans to release individuals as a COVID-19 risk mitigation strategy.

The Risks to Plaintiffs' Health are Particularly Acute in the Jails Where ICE is Detaining Them.

38. The New York-area jails where the plaintiffs are detained—Bergen County Jail, Hudson County Correctional Facility, Essex County Jail, and Orange County Jail—are especially vulnerable to rapid transmission of COVID-19 because of the unsanitary and hazardous

conditions within the facilities and their history of providing poor treatment. Mishori Decl. ¶¶ 32-43. As a result, the irreparable harm Plaintiffs will suffer once the virus reaches them is imminent.

39. Just yesterday, the Bergen County Jail reported that a staff member had tested positive for COVID-19. There is also a confirmed case of a staff member in the medical unit contracting COVID-19 in at the Elizabeth Detention Center, another ICE detention facility in New Jersey. And other non-immigration facilities in the New York area, including Rikers Island, are reporting confirmed COVID-19 cases among both staff and detainees.
40. ICE detainees at all four jails have also reported that conditions have deteriorated in recent days as the facilities take ad hoc, medically inadvisable and insufficient measures to try to contain the likelihood of transmission, including by widespread and arbitrary use of solitary confinement at Hudson, Orange and Bergen County Jails.
41. Detainees currently held at the facilities also describe insufficient hand soap, no hand sanitizer, and no access to cleaning supplies, and previously reported at times being deprived of toilet paper. Some detainees also report that jail officials have forbidden them from flushing toilets frequently, which adds to unsanitary conditions. Attorneys who recently visited the jails confirmed that there was a lack of hand soap in the visitors' bathrooms, meaning that visitors would carry in whatever germs they entered the facility with.
42. Further contributing to the elevated risk of harm is these jails' track record of failure to provide adequate and prompt medical care even before the current pandemic. *See* Declaration of Marinda Van Dalen ¶¶ 18-45 ("Van Dalen Decl."). Examples of inadequate care at these specific facilities includes a history of denial of vital medical treatment such as dialysis and blood transfusions; subjecting detainees in need of surgeries to unconscionable delays; altering

established treatment regimens; failing to provide necessary mental health services; overuse of solitary confinement; and ignoring repeated requests for care from detainees with serious symptoms. *Id.* ¶¶ 23-36. These deficiencies in medical treatment have placed individuals at risk of strokes, heart attacks, renal failure, amputation, life-threatening heart conditions, kidney failure, and blindness. *Id.* ¶¶ 41-44. Last year, a mumps outbreak at Bergen County Jail resulted in the quarantine of dozens of immigration detainees for several weeks.

43. The Department of Homeland Security's own Office of the Inspector General also recently reported on the substandard care, long waits for medical care and hygiene products, and mistreatment in ICE detention facilities.

44. In light of their failure to provide consistent access to basic hygiene and adequate health care even under normal circumstances, it appears unlikely that ICE's New York City-area jails will be able to competently and safely respond to the COVID-19 pandemic.

The COVID-19 Pandemic Presents a Grave Risk of Harm, Including Serious Illness and Death to the Elderly and Those with Certain Medical Conditions

45. COVID-19 can lead to respiratory failure, kidney failure, and death. Mishori Decl. ¶ 9. Older patients and those with chronic underlying conditions are at a particularly high risk for severe cases and complications. *Id.* Underlying medical conditions that may increase the risk of serious COVID-19 for individuals of any age include blood disorders, chronic kidney or liver disease, immunosuppression, endocrine disorders (including diabetes), metabolic disorders, heart and lung disease, neurological and neurologic and neurodevelopmental conditions, and current or recent pregnancy. *Id.* ¶ 10.

46. The need for intensive care and the likelihood of death is much higher from COVID-19 than from influenza. *Id.* ¶ 9. Complications from COVID-19, including severe damage to lungs, heart, liver, or other organs, can manifest at an alarming pace and serious deterioration can

occur in a matter of days. *Id.* ¶ 12. According to recent estimates, the fatality rate of people infected with COVID-19 is about ten times higher than a severe seasonal influenza. *Id.* ¶ 9. Preliminary data from China shows serious illness, sometimes resulting in death, occurs in up to 16% of cases, with a higher rate among those older and high-risk individuals. *Id.*

47. Those in high-risk categories who do not die may have prolonged serious illness requiring hospital care, including ventilators that will likely be in very short supply, and a team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. Patients who do not die from serious cases of COVID-19 may face prolonged recovery, including rehabilitation from neurological damage and loss of respiratory capacity. *Id.* ¶ 11.

Plaintiffs Face a Heightened Risk of Severe Harm if They Contract COVID-19 While Detained.

48. The seven plaintiffs in this case—all in civil immigration custody—face unprecedented and imminent harm once COVID-19 begins to spread in the jails where ICE is detaining them. Each plaintiff has one or more underlying medical conditions that renders him or her particularly vulnerable to severe illness and death if they contract the disease.

49. **Juan Morocho Sumba.** Mr. Morocho Sumba is a 45-year-old father to two U.S. citizen children, one of whom has required speech therapy and both of whom have exhibited emotional difficulties related to their father's incarceration. Mr. Morocho Sumba has no criminal convictions and a single open charge that he is vigorously contesting. He has been incarcerated by ICE at Orange County Correctional Facility since December 2019.

50. Mr. Morocho Sumba suffers from aortic valve disease and hypertension. He required an aortic valve replacement, a type of open-heart surgery in 2014. In December 2019, Mr. Morocho Sumba was taken to the emergency room after experiencing chest pain. The emergency room

staff found that he had an abnormal electrocardiogram and an enlarged heart and advised that he see a cardiologist. Since that emergency room visit, Mr. Morocho Sumba has not seen a cardiologist while in ICE custody.

51. Mr. Morocho Sumba is vulnerable to severe illness or death from COVID-19 because of his heart condition and hypertension.

52. **Josefina Coronel.** Ms. Coronel is a 48-year-old survivor of human trafficking who has been incarcerated by ICE at Hudson County Jail since October 2019. The Immigration Judge granted her claims for withholding of removal and protection under the Convention against Torture on February 26, 2020. ICE nevertheless continues to incarcerate Ms. Coronel.

53. Ms. Coronel suffers from congestive heart failure, hypertension, and diabetes. In July 2019, she had a severe cardiac incident resulting in cardiac catheterization and hospitalization for several days.

54. Ms. Coronel is vulnerable to severe illness or death from COVID-19 because of her heart condition, hypertension, and diabetes.

55. **Ramon Garcia Ponce.** Mr. Garcia Ponce is a 56-year-old father to four U.S. citizen children who is deeply rooted in New York City. He has been incarcerated by ICE at Hudson County Correctional Facility since January 2020. Mr. Garcia Ponce's contacts with the criminal justice system have been limited to summons largely related to his work as a food vendor.

56. In January 2019, Mr. Garcia Ponce presented at Lincoln Hospital with a severe headache. He was diagnosed with subarachnoid hemorrhage, a type of life-threatening stroke, and transferred to Bellevue Hospital for neurosurgery. Mr. Garcia Ponce also suffers from diabetes and high blood pressure.

57. Mr. Garcia Ponce is vulnerable to severe illness or death from COVID-19 because of his history of stroke, diabetes, and high blood pressure.
58. On March 17, 2020, Mr. Garcia Ponce, through counsel, submitted a motion to expeditiously calendar a bond hearing, within 48 hours of his motion. The Immigration Court responded by ignoring the motion and calendaring the case for March 30, 2020.
59. **Florencio Moristica Ochoa.** Mr. Moristica Ochoa has been incarcerated by ICE since July 2018 at Bergen County Jail. On March 2, 2020, the immigration judge terminated Mr. Moristica's removal proceedings, finding that in light of his severe cognitive impairment, the government had not provided evidence sufficient to meet its burden to establish a charge of removability. His criminal history consists of two convictions for disorderly conduct, a non-criminal violation under state law, and he has a cousin with whom he will reside if released.
60. Mr. Moristica Ochoa suffers from a uniquely severe neurocognitive disorder that impairs his ability to function or understand his surroundings. This disorder affects him to a severe degree such that he is unable to articulate his own age or answer basic questions about his personal history or present circumstances. He is frequently unable to understand his medical circumstances, need for treatment, and the consequences of failing to follow the recommendations of medical professionals. Mr. Moristica will be unable to modify his behavior in accordance with the advice of public health officials, lacks the capacity to follow directions regarding preventative measures, and cannot comprehend how to guard himself from COVID-19 infection under conditions where the facility is not taking sufficient steps to protect him.
61. Mr. Moristica Ochoa is vulnerable to severe illness or death from COVID-19 because of his severe intellectual disability.

62. After he prevailed in his removal case before the immigration judge, Mr. Moristica moved for a new bond hearing on March 13, 2020. His counsel has made several attempts to communicate with the court about calendaring this bond hearing but received no response.
63. **Jose Madrid.** Mr. Madrid is a 41-year-old man who has been incarcerated by ICE at Bergen County Jail since January 2020. He has lived in the United States for over 20 years, and his entire criminal record consists of two non-criminal convictions for disorderly conduct, a violation. He is a beloved member of his family, which consists of U.S. citizens and lawful permanent residents.
64. Mr. Madrid has type 2 diabetes. This condition has already affected his health, as he is obese and has impaired vision, as well as cataracts. He was previously being treated at a health center in his community in Peekskill, NY, where a doctor had prescribed him two medications to control his diabetes. At Bergen, he is only receiving one medication.
65. Because of his medical conditions, Mr. Madrid is at high risk for severe illness or death if he contracts COVID-19.
66. **Jose Otero.** Mr. Otero is a 38-year-old man who has been incarcerated by ICE since November 2019 at Essex County Jail. His only contact with the criminal legal system was two arrests, both of which were dismissed. He will return to living with his U.S. citizen-include, with whom he has resided since 2003, if released.
67. Mr. Otero was the victim of a violent assault that forced him to have a nephrectomy (removal of left kidney), partial liver resection, and left lung resection. As a result of having major organs of his body partially removed, his immune system is compromised. Mr. Otero has also been diagnosed with Post Traumatic Stress Disorder, major depressive disorder, and a major

neurocognitive disorder. Mr. Otero suffers from constant pain and health issues that require specialized care, and have not been adequately treated at Essex County Jail.

68. Because of his medical and mental health conditions, Mr. Otero is at high risk for severe illness or death if he contracts COVID-19.

69. **Miguel Miranda.** Mr. Miranda is a 44-year-old man who has been incarcerated by ICE since February 2020 at Bergen County Jail. His only arrest was dismissed and sealed. If released, he will return to living with his partner of multiple years and his stepchildren and working as a delivery person for the Italian restaurant where he was previously employed.

70. Mr. Miranda has type 2 diabetes and suffers from gastrointestinal problems. He is in removal proceedings at the Varick Immigration Court in New York, NY. Because of his medical conditions, Mr. Miranda is at high risk for severe illness or death if he contracts COVID-19.

No Other Forum, Including ICE and Immigration Courts, Can Provide Meaningful Relief to Abate the Harm to Plaintiffs.

71. ICE has the authority to release individuals like the plaintiffs, whose detention is governed by the discretionary detention statute, 8 U.S.C. § 1226(a). Despite the exigent circumstances, ICE continues to improperly deny release or bond to plaintiffs, whose equities and minimal criminal histories demonstrate that they are neither dangers nor risks of flight.

72. Counsel for the plaintiffs, The Legal Aid Society (“LAS”) and The Bronx Defenders (“BXD”), routinely liaise with ICE officials and with counterparts at the U.S. Attorney’s Office to secure the release of clients with severe medical conditions or other compelling circumstances on conditions or reasonable bond.

73. Consistent with this practice, both LAS and BXD, reached out to the government to identify high-risk clients, including the seven plaintiffs in this case. Through counsel, all plaintiffs submitted detailed release requests to ICE, which described the medical conditions that render

them highly vulnerable to adverse health outcomes from COVID-19. As of this filing, the government has not acted to release any of the plaintiffs in this case.

74. Under normal circumstances, individuals like the plaintiffs would be able to seek either initial or changed-circumstances bond hearings in the immigration courts. At such hearings, agency precedent requires the individuals to bear the burden of proving they are not a danger nor a flight risk in order to win release on bond.

75. The COVID-19 pandemic has caused the Varick Immigration Court, where all seven plaintiffs had or have their removal proceedings, to no longer provide an effective venue for detainees to vindicate their right to review their detention through bond hearings. This is true for a number of factors: detainees can no longer consistently or privately communicate with their counsel; the Immigration Court is under-resourced and incapable of providing effective mechanisms for attorneys to represent their clients during the present public health crisis requiring remote appearances; and detainees, their family members, and counsel can no longer collect the required evidence and documentation to meet their burden of proof in bond hearings given the closure of most public and private institutions and restrictions on movement.

76. First, all four facilities at which plaintiffs are detained ended contact visits for legal visitation in the past week due to COVID-19. However, because there is no other effective, consistently functional, and confidential manner to communicate with clients, the end of contact visits has rendered it prohibitively difficult to have the in-depth private conversations required for representation in bond or other matters.

77. While Orange and Hudson County Jails have video teleconference systems that attorneys can use to speak to detainees, the systems at both facilities are plagued by technological problems including poor quality of video and audio, frequent malfunctions, and a lack of privacy at the

jails. Since the onset of the pandemic, attorneys have been forced to use the video systems with much greater frequency but the systems have not expanded capacity. As a result, scheduled appointments have been canceled, no additional time slots have been made available, and audio and video quality has deteriorated further. As such, this method of communicating with plaintiffs is not an adequate substitute.

78. Bergen and Essex County Jails lack any video teleconference system. Neither jail has set up a system to allow attorneys or detainees to make legal phone calls that are free, consistently confidential, or easily accessible.

79. Second, the Varick Immigration Court has not formulated policies or put into practice protective mechanisms that allow attorneys to continue to represent their clients in the context of this public health crisis. Normally, attorneys appear in person from Court, even as their clients appear either by video teleconference or in person. Now, however, as officials at every level of government have issued instructions to avoid contact and stay at home to the greatest extent possible, attorneys are frequently seeking to appear by telephone and find effective mechanisms of service of documents to the Immigration Court. While some immigration judges accept filing of documents by email, others are refusing such service, rendering it difficult for attorneys who are at risk of spreading or contracting COVID-19 to represent clients without coming into contact with others through going to the post office or the Immigration Court filing window.

80. Several immigration judges who staff the detained docket at Varick Immigration Court have also been absent from Court this past week and stated that they would be out in the coming week as well. Others have *sua sponte* adjourned cases without requests for continuances from

either party in the proceedings because of delays caused by pandemic-related dysfunction at the court.

81. A number of attorneys have filed urgent requests for bond hearings to be scheduled on behalf of their clients in the past two weeks but almost all have been unable to obtain responses from court staff, or been scheduled for hearings within weeks or longer instead of within days as requested.

82. Lastly, due to widespread closure of government offices and private businesses, and the directives for individuals to stay at home to the greatest extent possible, it has become prohibitively difficult for detainees to meet their burden of proof in bond hearings.

83. Courts in New York recently closed except for non-essential functions, and have stopped producing certificates of disposition or copies of court files in response to records requests. However, immigration judges routinely draw adverse inferences and deny bond when individuals fail to produce documentary evidence, such as criminal court documents, police reports, hospital and school records, to support their applications for bond. Making such a showing is nearly impossible under the present circumstances.

CAUSES OF ACTION

FIRST CLAIM

Violation of the Right to Substantive Due Process

84. Defendants' conduct violates Plaintiffs' right to substantive due process under the Fifth Amendment of the United States Constitution.

85. Defendants' conduct violates Plaintiffs' right to substantive due process under the Fourteenth Amendment of the United States Constitution.

SECOND CLAIM
Violation of the Right to Procedural Due Process

86. Defendants' conduct violations Plaintiffs' right to procedural due process under the Fifth Amendment of the United States Constitution.
87. Defendants' conduct violates Plaintiffs' right to procedural due process under the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Issue an order directing Defendants to immediately release Plaintiffs from custody on their own recognizance or on reasonable conditions of supervision;
- 3) In the alternative, issue an order requiring Defendants to provide Plaintiffs with constitutionally adequate, individualized hearings within 48 hours at which the Department of Homeland Security bears the burden of establishing by clear and convincing evidence that continued detention is justified in light of the grave risks to Plaintiffs' health and well-being in ICE custody, and at which Plaintiff's vulnerability to COVID-19 is weighed as a factor in determining suitability for release; and at which ability to pay and alternative conditions of release are considered, or to immediately release Plaintiffs;
- 4) Award reasonable attorneys' fees and costs for this action;
- 5) Grant any other and further relief that this Court deems just and proper.

Dated: March 20, 2020
New York, NY

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