UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ANTHONY BAEZ, JONATHAN BERMUDEZ, JERMAINE GONSALVES, and DEDRICK LINDSEY on behalf of themselves and all others similarly situated; Plaintiffs-Petitioners, v. ANTONE MONIZ, SUPERINTENDENT OF THE PLYMOUTH COUNTY CORRECTIONAL FACILITY, in his official capacity; Defendant-Respondent.	Case No. 1:20-cv-10753

PETITIONERS' MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S MOTION TO DENY PETITIONER'S HABEAS PETITION

Petitioners Anthony Baez, Jonathan Bermudez, Jermaine Gonsalves and Dedrick Lindsey (collectively "Petitioners") filed this habeas corpus action (the "Petition") pursuant to 28 U.S.C. § 2241 to seek prompt redress for systematic and ongoing violations of their own constitutional rights and the constitutional rights of a similarly-situated class of other federal detainees (the proposed class members), being held by Respondent Antone Moniz ("Respondent") at the Plymouth County Correctional Facility ("Plymouth" or "PCCF") in Plymouth, Massachusetts. These violations endanger Petitioners and the proposed class members' lives. As detailed in the Petition, and as supported in the exhibits and affidavits attached thereto, Respondent's conduct, including, but not limited to, his repeated failures to implement and maintain consistently appropriate social distancing and hygiene practices at Plymouth pose a grave risk to the health

and lives of Petitioners and the other members of the putative class. Petitioners ask this Court to direct Respondent to take prompt action to correct those constitutional violations and prevent the spread of a lethal virus within the facility.

In response to this serious and significant Petition, Respondent has not expressed interest in taking genuine steps to address the deficiencies described by Petitioners. Instead, he advances meritless arguments which demonstrate his lack of concern and lack of understanding of the seriousness of the COVID-19 situation within Plymouth.

For example, other than vague generalities about his efforts "to permit and encourage" social distancing, Respondent's response is notable for its failure to address with any specificity precisely what Respondent is actually doing *to enforce* at Plymouth the type of six foot social distancing that is being imposed upon broader society throughout the Commonwealth and the nation at-large. Respondent also admits, but does not address, the fact that he continues to house federal detainees in shared cells and dormitories at Plymouth. And of course, while Respondent states that he has the ability "to conduct COVID-19 testing on site" and trumpets his claim that only one employee and no detainees have yet tested positive for COVID-19, he obscures the fact (addressed in the Petition) that only a tiny fraction of those detainees and staff have actually been tested for the virus. *See* Petition at ¶94. Instead, Respondent seeks to have the Petition dismissed out of hand—without any further inquiry into its practices and without any regard for the serious allegations presented in the affidavits attached to the Petition.

Respondent's arguments seeking denial and/or dismissal of the Petition should be rejected. As explained in greater detail, none of Respondent's contentions is supported by the law or the facts applicable to the Petition.

First, Respondent's contention that this Court lacks subject matter jurisdiction is wrong because this matter arises under 28 U.S.C. § 2241, not the Prison Litigation Reform Act ("PLRA"). Respondent's efforts to wedge this matter into the strictures of the PLRA is inconsistent with the way numerous courts around the country have addressed similar claims for relief, and flatly contradicts guidance from the Justice Department itself. Moreover, even if this Court were to conclude that some subset of Petitioners' claim is subject to the PLRA, the Court remains free to grant substantial portions of the relief requested in the Petition given the extraordinary circumstances related to the COVID-19 pandemic.

Second, Respondent's argument that Petitioners lack standing to pursue their claims for relief is baseless. Petitioners have submitted a detailed Petition alleging constitutional violations committed, supported by affidavits from their criminal defense counsel and three medical experts who have opined on the spread of COVID-19 within incarcerated populations. Those submissions detail actual injuries that Petitioners are suffering and will suffer if the conditions at Plymouth are not addressed promptly and are more than sufficient to establish Petitioners' standing to pursue their claims here. Indeed, at best, Respondent's challenge to Petitioners' standing justifies further and detailed factual inquiry into the current conditions at Plymouth and Respondent 's response (or lack thereof) to the COVID-19 crisis.

Third, Respondent's contention that Petitioners failed to exhaust their administrative remedies under the PLRA fails for the same reasons as mentioned above—this action arises under 28 U.S.C. § 2241, not the PLRA. Moreover, the inmate grievance procedure that Respondent touts as the administrative remedy that Petitioners should have pursued makes crystal clear that it is in fact not available for the type of class-wide, multi-pronged complaints that are asserted in the Petition. Accordingly, there was nothing for Petitioners to exhaust. And,

of course, any such exhaustion requirement—even if one did exist—should be waived in light of the extraordinary and unprecedented threat to Petitioners posed by the current COVID-19 crisis.

Finally, Respondents' effort to redirect the issues presented in the Petition into multiple individual claims arising under the Bail Reform Act, 18 U.S.C. § 3142, wholly disregards Petitioners' right to pursue their class-based habeas corpus claims and protect their constitutional rights under 28 U.S.C. § 2241. Other federal courts have taken action to protect those rights in light of the threat posed by the COVID-19 crisis. *See, e.g., Banks v. Booth*, Civ. A. No. 20-849(CKK), slip op. at 22, 26 (D.D.C. Apr. 20, 2020), ECF No. 51. This Court can and should do likewise.

For all these reasons, Respondent's Motion to Deny Petitioners' Habeas Petition should be rejected.

ARGUMENT

I. THIS COURT HAS SUBJECT MATTER JURISDICTION UNDER SECTION 2241.

A. The PLRA Does Not Apply Because Petitioners Properly Petition For A Writ Of Habeas Corpus Under Section 2241.

Respondent first contends that the Petition should be dismissed because it is barred by the Prison Litigation Reform Act ("PLRA"). *See* Respondent Antone Moniz's Memorandum of Law in Support of His Motion To Deny Petitioner's Habeas Petition for Lack of Subject Matter Jurisdiction and for Failure to State a Claim ("Resp. Mem."), ECF No. 22, at 14-20. That contention is simply wrong. The PLRA expressly does not apply to "habeas corpus proceedings

challenging the fact or duration of confinement in prison." 18 U.S.C. § 3626(g)(2).[1] Because Petitioners' habeas corpus petition directly challenges "the fact or duration" of their confinement[2] at Plymouth, the PLRA does not apply to this case. *Putnam v. Winn*, 441 F. Supp. 2d 253, 255 (D. Mass. 2006) (holding that PLRA exhaustion requirement "does not apply to any requests for collateral relief under 28 U.S.C. §[] 2241" (citing *Walker v. O'Brien*, 216 F.3d 626, 628–29, 633–37 (7th Cir. 2000))); *see also Martin v. Bissonette*, 118 F.3d 871, 874 (1st Cir. 1997) ("[T]he PLRA does not apply to habeas petitions") (citing, among others, *Smith v. Angelone*, 111 F.3d 1126, 1131 (4th Cir. 1997); *United States v. Levi*, 111 F.3d 955, 956 (D.C. Cir. 1997) (per curiam); *Anderson v. Singletary*, 111 F.3d 801, 805 (11th Cir. 1997)).

The First Circuit has repeatedly ratified the use of habeas corpus petitions to address constitutional deficiencies in the conditions of detainees' confinement. *See United States v. DeLeon*, 444 F.3d 41, 59 (1st Cir. 2006) ("If the conditions of incarceration raise Eighth Amendment concerns, habeas corpus is available."); *Miller v. United States*, 564 F.2d 103, 105 (1st Cir. 1977) ("Section 2241 provides a remedy for a federal prisoner who contests the conditions of his confinement . . . ."); *Francis v. Maloney*, 798 F.3d 33, 36 (1st Cir. 2015) ("[A]n individual may invoke § 2241 to . . . contest one's imprisonment in a specific facility.").

Many other courts have already concluded that habeas corpus constitutes a proper vehicle to remedy constitutional violations caused by detention officials' failure to adequately respond to the current COVID-19 crisis. *See, e.g.*, *Banks v. Booth*, Civ. A. No. 20-849(CKK),

[1] The First Circuit has left open the possibility that detainees may challenge the conditions of their confinement in a habeas corpus petition that does not also attack the fact or duration of their confinement. *See Brennan v. Cunningham*, 813 F.2d 1, 4-5 (1st Cir. 1987) (observing that the Supreme Court "explicitly left open the possibility that a challenge to prison conditions, cognizable under § 1983, might also be brought as a habeas corpus claim" (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 499-500 (1973)).

[2] Where a petitioner requests release or transfer as a consequence of prison officials' constitutional violations, his petition is "properly viewed as similar to cases involving challenges to the fact or length of confinement." *See Brennan v. Cunningham*, 813 F.2d 1, 4-5 (1st Cir. 1987).

slip op. at 22, 26 (D.D.C. Apr. 20, 2020), ECF No. 51; *see also, e.g.*, *Fofana v. Albence*, No. 20-10869, 2020 WL 1873307, at *11 (E.D. Mich. Apr. 15, 2020);; *Basank v. Decker*, No. 20 CIV. 2518 (AT), 2020 WL 1481503, at *1 (S.D.N.Y. Mar. 26, 2020); *Bent v. Barr*, No. 19-CV-06123-DMR, 2020 WL 1812850, at *2 (N.D. Cal. Apr. 9, 2020); *Doe v. Barr*, No. 20-CV-02141-LB, 2020 WL 1820667, at *8 (N.D. Cal. Apr. 12, 2020); *Thakker v. Doll*, No. 1:20-CV-480, 2020 WL 1671563, at *9 (M.D. Pa. Mar. 31, 2020); *Leandro R. P. v. Decker*, No. CV 20-3853 (KM), 2020 WL 1899791, at *9 (D.N.J. Apr. 17, 2020); *Barbecho v. Decker*, No. 20-cv-2821 (AJN), 2020 WL 1876328, at *1 (S.D.N.Y. Apr. 15, 2020); *Savino v. Souza*, No. CV 20-10617-WGY, 2020 WL 1703844, at *9 (D. Mass. Apr. 8, 2020); *Mays v. Dart*, No. 20 C 2134, 2020 WL 1812381, at *5 (N.D. Ill. Apr. 9, 2020).

Indeed, Respondent's position that habeas corpus is unavailable here contradicts the Justice Department's own guidance. *See* Dep't of Justice, Justice Manual, Federal Habeas Corpus 9-37.000, available at https://www.justice.gov/jm/jm-9-37000-federal-habeas-corpus (last visited Apr. 23, 2020) (stating that detainees may raise "complaints about conditions of confinement" in Section 2241 petitions).

If detainees may need to be transferred or released in order to remedy alleged constitutional deficiencies in their medical care, the detainees' claim necessarily qualifies as an attack on "the fact or duration of confinement" and is therefore cognizable under § 2241. *Kane v. Winn*, 319 F. Supp. 2d 162, 214-15 (D. Mass. 2004); *accord Fox v. Lappin*, 441 F. Supp. 2d 203, 206 (D. Mass. 2005) ("[W]here transfer or release are at issue, a habeas petition is warranted."); *Putnam*, 441 F. Supp. 2d at 256 (ruling that challenge to regulation precluding detainee's transfer to halfway house contests fact or duration of sentence, and thus a cognizable habeas corpus petition). In other words, when a petitioner seeks "a quantum change in the level

of custody," to a "less restrictive" form of custody, he appropriately challenges "the fact or duration of his confinement" in a habeas corpus petition. *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 873 (1st Cir. 2010) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005); *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991)); *Fox*, 441 F. Supp. 2d at 206 (quoting *Kane*, 319 F. Supp. 2d at 215); *see also Collazo-Leon v. U.S. Bureau of Prisons*, 51 F.3d 315, 317 (1st Cir. 1995) (ruling on merits of habeas corpus petition requesting transfer out of conditions of confinement where habeas corpus formed sole basis for jurisdiction).

Such is the case here. Petitioners contend that release of a sufficient number of Plymouth's federal detainees is a requisite component of the remedial measures they seek to redress their unconstitutional conditions of confinement and remedy Respondent's violation of his constitutional duty to safeguard Petitioners' health and safety.[3] *See Kane*, 319 F. Supp. 2d at 215. As detailed by Drs. Giftos, LaRocque, and Rich, Plymouth will continue to expose Petitioners to severe risks from COVID-19 until Respondent implements social distancing policies and practices including but not limited to single occupancy cells. Plymouth is simply not a "suitable facility" so long as Petitioners cannot socially distance. *See Garcia v. Spaulding*, 324 F. Supp. 3d 228, 233 (D. Mass. 2018) (permitting petitioner to seek writ of habeas corpus for a transfer from a detention center that allegedly could not safeguard the petitioner's health and safety). Because their Petition inherently and necessarily implicates a change in the quantum of confinement of Plymouth's federal detainees, Petitioners properly petitioned for writs of habeas corpus challenging the fact of their continued confinement. *See Gonzalez-Fuentes*, 607 F.3d at 873; *cf. Heath v. Hanks*, No. 18-CV-624-JD, 2019 WL 6954202, at *3 (D.N.H. Dec. 19, 2019)

[3] Professor Judith Resnik explains that "because COVID-19 can end people's lives unexpectedly and abruptly, COVID-19 claims turn the condition of being incarcerated into a practice that affects the fact or duration of confinement." Decl. of Professor Judith Resnik Regarding Provisional Remedies for Detained Individuals ¶ 26 ("Resnik Decl."), *Money v. Jeffreys*, No. 20 cv 2094 (N.D. Ill. Apr. 8, 2020), ECF No. 24-3.

(ruling that habeas petition was the appropriate vehicle through which detainee could request transfer so he could receive proper health care).

Respondent does not cite a single case supporting the proposition that Petitioners cannot pursue a writ of habeas corpus under these circumstances. *See* Resp't's Mem. 14-20. At most, he quotes inapposite portions of a Supreme Court dissent and an extra-circuit case. *See* Resp't's Mem. 18 n.8 (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 507 (1973) (Brennan, J., dissenting); *Moran v. Sondalle*, 218 F.3d 647, 650-51 (7th Cir. 2000) (per curiam)). The Court consequently should reject Respondent's unsubstantiated argument that Petitioners' Section 2241 petition is not cognizable.

B. This Court Can Grant Petitioners Preliminary Relief.

Even if this Court were to find that Petitioners pleaded a civil rights claim that is subject to the PLRA,[4] it need not convene a three-judge panel to grant Petitioners relief. First, Section 3626(a)(3) governs only requests for release where "crowding is the primary cause of the violation of a Federal right." 18 U.S.C. § 3626 (a)(3)(E)(i). Second, this Court has full authority to order the full range of relief measures that Petitioners have requested short of a literal order directing the release of detainees. *See* 18 U.S.C. § 3626(a)(3)(A)(i), (D); *Banks*, *supra*, slip op. at 22, 26; *Mays*, 2020 WL 1812381, at *15.

1. Section 3626(a)(3) Applies Only to "Overcrowding" Claims.

Section 3626(a)(3) only applies to overcrowding claims, not claims premised on a failure to respond to an ongoing emergency, such as the COVID-19 pandemic. Subparagraph (E) provides that a three-judge court can only issue a prisoner relief order if it "finds by clear and convincing evidence that – (i) crowding is the primary cause of the violation of a Federal right."

[4] This analysis is also necessary were the Court to conclude that *Preiser* allows habeas corpus petitions challenging the conditions of confinement more broadly. *See supra* n.1.

"Overcrowding" is a term of art that "refers to the presence in a facility or prison system of a prisoner population exceeding that facility or system's capacity." *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 920 (E.D. Cal. 2009) (Reinhardt, J., writing for three-judge court), *aff'd sub nom. Brown v. Plata*, 563 U.S. 493 (2011). The Second and Ninth Circuits use a prison's "design capacity" to evaluate whether it is overcrowded. *Id.* at 920-21 (citing *Doty v. Cty. of Lassen*, 37 F.3d 540, 543 (9th Cir. 1994)); *Hoptowit v. Ray*, 682 F.2d 1237, 1248–49 (9th Cir. 1982); *Lareau v. Manson*, 651 F.2d 96, 99–100 (2d Cir. 1981)); *see also Agramonte v. Shartle*, 491 F. App'x 557, 560 (6th Cir. 2012) (holding that mere "increased population" is insufficient for an overcrowding claim). A "primary cause" is the "[f]irst or highest in rank, quality, or importance; principal" cause. *Brown*, 563 U.S. at 525 (quoting American Heritage Dictionary 1393 (4th ed. 2000)).

Section 3626(a)(3)'s procedural requirements are expressly limited to "prisoner release orders," which are, in turn, predicated on prison overcrowding. But this case does not concern prison overcrowding. Far from it. Petitioners accept Respondent's representation that the current population of Plymouth's federal detainees is well below the design capacity of the respective units in which they are housed. Resp.'s Mem. 22. The gravamen of Petitioner's claim is that "the primary cause" of the violation of their constitutional rights stems from Respondent's constitutionally deficient response to COVID-19. *See* 18 U.S.C. § 3626(a)(3)(E)(i); c*f. Coleman*, 922 F. Supp. 2d at 920-21 (noting that the PLRA only applies where crowding is the primary cause). Respondent's failure to implement the Centers for Disease Control's recommendations, especially with respect to social distancing, primarily caused the violation of Petitioners' Fifth and Eighth Amendment rights. *See Brown*, 563 U.S. at 525.

The definition of a "prisoner release order" is established by the requirements for entering such an order. *Reaves v. Dep't of Corr.*, 404 F. Supp. 3d 520, 523 (D. Mass. 2019) (citing *Plata v. Brown*, No. C01-1351 TEH, 2013 WL 12436093, at *9 (N.D. Cal. June 24, 2013)). Because a three-judge panel can only issue a prisoner release order under Section 3626(a)(3)(E) if "crowding is the primary cause of the violation of a federal right," the procedural preconditions attendant to such orders do not apply to claims whose primary cause derives from something other than prison overcrowding. *Reaves*, 404 F. Supp. 3d at 523. If they did, then detainees could not receive release or transfer to remedy those constitutional wrongs not primarily caused by a facility's overpopulation relative to its design capacity, even if that relief were the only effective remedy for the constitutional violation. *Plata v. Brown*, 2013 WL 12436093, at *10 (providing examples). Nothing in the legislative history of Section 3626(a)(3) suggests that Congress intended foreclose district courts from granting such relief in those circumstances. *See Reaves*, 404 F. Supp. 3d at 523; *see also United States v. Mass. Water Res. Auth.*, 256 F.3d 36, 48 (1st Cir. 2001) ("Unless a statute in so many words, or by a *necessary and inescapable inference*, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)).

Respondent's failure to take necessary precautions to protect the federal detainees in his custody from the life-threatening risk of COVID-19 gave rise to the violation of Petitioners' federal rights, not Plymouth's overcrowding relative to its design capacity. Respondent does not contest this. As such, § 3626(a)(3)'s strictures do not apply to Petitioner's requests for relief. *See Mass. Water Res. Auth.*, 256 F.3d at 48; *Reaves*, 404 F. Supp. 3d at 523. *But see Money v. Pritzker*, No. 20-CV-2093, 2020 WL 1820660, at *13 (N.D. Ill. Apr. 10, 2020) (treating

Respondent's alleged failure to adequately respond to COVID-19 as an overcrowding claim where release was the sole remedy Plaintiffs requested); *Plata v. Newsom*, No. 01-cv-01351-JST, slip op. at 16 (N.D. Cal. Apr. 17, 2020), ECF No. 3291 (similar).

2. This Court Can Order the Full Range of Relief Petitioners Have Requested that Is Less Intrusive Than a Direct Order for Release of Plymouth Federal Detainees.

Section 3626(a)(3) provides that "a court" must enter an order for "less intrusive relief" before a three-judge panel convenes to determine whether a prisoner release order is warranted. The statute itself therefore contemplates that a single district court judge may order a broad spectrum of relief as needed to remedy violations of federal rights before a prisoner release order issues. Accordingly, this Court can order the full range of "less intrusive" relief Petitioners have requested. *See* 18 U.S.C. § 3626(a)(3)(A)(i). Only if this Court were to do so, and those less intrusive measures failed to remedy Respondent's deprivation of Petitioners' Fifth and Eighth Amendment rights, would the issue of convening a three-judge panel in this matter squarely arise. As such, that question is not yet ripe for this Court's consideration. 18 U.S.C. § 3626(a)(3)(D). The three-judge panel contemplated by 18 U.S.C. § 3626(a)(3)(D) has a limited role: to evaluate whether a prisoner release order is appropriate after a single district court judge rules that the claim is meritorious. *See Brown*, 563 U.S. at 524 ("Once the three-judge court was convened, that court was not required to reconsider the merits. Its role was solely to consider the propriety and necessity of a population limit.").

In response to the COVID-19 pandemic, courts have provided detainees with a broad array of "less intrusive relief," notwithstanding detainees' request for release. For example, in *Mays v. Dart*, where detainees challenged the Cook County Jail's response to COVID-19, the Northern District of Illinois federal district court ordered the jail's sheriff to take a variety of

steps to improve conditions in the facility, including implementing new social distancing policies, providing detainees "soap and/or hand sanitizer . . . in quantities sufficient to permit them to frequently clean their hands," and adopting and implementing new policies to ensure "sanitization between all uses of frequently touched surfaces and objects." 2020 WL 1812381, at *15. Similarly, the District of Columbia federal district court granted pretrial detainees and postconviction defendants' motion for a temporary restraining order requiring District of Columbia Department of Corrections officials to address their failures "to take comprehensive, timely, and proper steps to stem the spread of [COVID-19]." *Banks*, slip op. at 22, 26. Consequently, the court ordered more than three full pages' worth of remedial measures ranging from ensuring "appropriate and consistent implementation of social distancing policies," to expedited responses to "sick cell requests," to effective monitoring of cell restrictions. *Id.* at 27-31.

In *Coleman v. Newsom,* even though a three-judge panel was already convened to oversee the remediation of constitutionally inadequate medical and mental health care in the California state prison system due to overcrowding, that panel concluded that a single district court judge was the appropriate forum for Plaintiffs' § 1983 action seeking relief from the threat of COVID-19 within those facilities. Nos. 2:90-cv-0520 KJM DB, P, 01-cv-01351-JST, 2020 WL 1675775, at *8 (E.D. Cal. & N.D. Cal. Apr. 4, 2020). The three-judge panel directed plaintiffs to "go before a single judge to press their claim that Defendants' response to the COVID-19 epidemic is constitutionally inadequate," adding that, "if a single-judge court finds a constitutional violation, it may order Defendants to take steps short of release necessary to remedy that violation." *Id.* at *7.

Petitioners contend – and Respondent does not dispute – that this Court has full authority to grant the "less intrusive" relief Petitioners' requested in their Petition, while staying consideration of Petition Request B.1, concerning an order of release. *See* Resp't's Mem. 14-18 (focusing only on Petitioners' request to reduce population of Plymouth's federal detainees). These would include (1) ordering Respondent to enhance social distancing policies and practice among Plymouth's federal detainees and between those detainees and facility staff; (2) ordering Respondent to institute additional precautionary measures to mitigate the risk of federal detainees contracting COVID-19; (3) appointing a monitor to assess conditions at the facility and recommend to the Court additional safety measures necessary to protect federal detainees' health and safety in response to COVID-19; and (4) formulating a process or protocol for identifying and prioritizing subclasses of the proposed class for consideration for release in the event this court, or any other court or authority, deems such release necessary to vindicate Petitioners' constitutional rights. Petition 39-40, ECF No. 1; Application for an Emergency TRO 2, ECF No. 9. None of these constitute prisoner release orders and therefore fall squarely within the Court's purview.

Finally, this Court could also "enlarge" Petitioners' and proposed class members' custody without running afoul of § 3626(a)(3). In so doing, it could simply grant them temporary permission to serve their detention elsewhere, without issuing a prisoner release order per se. *See* Resnik Decl. ¶¶ 31-33; *see also Savino v. Souza*, No. CV 20-10617-WGY, 2020 WL 1703844, at *8 (D. Mass. Apr. 8, 2020) (ordering "bail" for immigration detainees challenging detention conditions in habeas corpus petition on ground that district courts have "inherent authority" to issue bail "in the case of 'a health emergency,' where the petitioner also has

demonstrated a likelihood of success on the merits" (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per curiam)). Because Petitioners seek release only during the duration of the COVID-19 state of emergency, such a provisional remedy constitutes a "less intrusive remedy" that a single judge court can order. *See Wilson v. Williams*, No. 4:20-cv-00794, slip op. at 20 (N.D. Ohio Apr. 22, 2020), ECF No. 22, (holding that "enlargement" is not release within the meaning of Section 3626(a)(3)).

II. PETITIONERS HAVE STANDING TO PURSUE THEIR CLAIMS.

Respondent next argues that the Petition should be summarily denied because Petitioners lack standing to pursue their claims. *See* Resp.'s Mem. at 20-24. That argument is meritless and should be rejected by this Court.

Petitioners have asserted claims addressing the significant and serious risks posed to them and other proposed class members by Respondent's failure to take appropriate actions in response to the COVID-19 crisis. Respondent's contention that these concerns are merely "speculative" not only disregards the specific and detailed allegations set forth in the Petition (as well as the various affidavits attached as exhibits thereto), it also ignores the practical reality posed to Petitioners by the imminent threat of the virus itself. Respondent would have Petitioners wait until a COVID-19 outbreak occurs at Plymouth before they could claim standing to assert their constitutional claims. *See* Resp't's Mem. at 21-22. That requirement is nowhere to be found in the law.

A. The Petition Contains Sufficient Allegations and Ample Evidence to Support Petitioner's Standing to Pursue Their Claims.

In order to meet the requirements for standing, a plaintiff must "'allege such a personal stake in the outcome or controversy' as to warrant [their] invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on [their] behalf." *Warth v. Seldin*, 422

U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). A plaintiff must plead an injury, causation, and redressability. *Davis v. FEC*, 554 U.S. 724, 733-34 (2008) ("[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.") (internal quotation marks and citations omitted). The Petition in this case easily satisfies these requirements.

In this case, each of the Petitioners has alleged that Respondent is violating their constitutional rights by failing to implement necessary safety precautions to mitigate their risk of contracting a highly contagious, potentially fatal disease. Petitioners' conditions of confinement render them to practice social distancing, employ routine hygiene practices, use hand sanitizer and/or wash their hands regularly. These conditions are punitive in nature and violate Petitioners' constitutional rights under the Fifth and Eighth Amendments. *See* Petition at ¶150-178. These allegations—all of which are supported by affidavits attached to the Petition—are plainly sufficient to establish Petitioners' standing to pursue this action.

Nor is Petitioners' standing defeated by Respondent's claim that none of the Petitioners or proposed class members has (yet) contracted COVID-19. The constitutional violations alleged by the Petitioners in this case are grounded in the Respondent's *current* conduct—including the failure to enforce social distancing in all areas at Plymouth, the failure to adhere to the CDC Interim Guidelines, and the failure to enforce hygienic practices at the facility. *See*, *e.g.,* Petition at Exhibit H ¶ 4 (description from Petitioner Baez of a cell shared with four other detainees where it is impossible to maintain six feet of separation); Exhibit K ¶ 4 (description by Petitioner Lindsay of tables that require detainees to eat in close proximity to each other); *see also* Petition at Exhibit H, ¶8-9; Exhibit I, ¶5-7,9-10; Exhibit J, ¶7-9; Exhibit K, ¶9 (basic hygiene protections are largely unavailable). Accordingly, Petitioners' allegations regarding

constitutional injuries are not rooted solely in their "risk" of contracting the virus; Petitioners contend that those injuries are ongoing.

Moreover, notwithstanding Respondent's contentions to the contrary, a risk of future harm is a legally cognizable risk for purposes of standing "if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013). Here, the unprecedented risks posed by the COVID-10 epidemic—particularly the enhanced risks posed to Petitioners under the conditions at Plymouth— necessarily satisfies any requirement that the threat be either "certainly impending" or "substantial." *Id.*

Indeed, several federal courts have recently determined that the serious risks posed to detainees by the COVID-19 pandemic were sufficient to confer standing on those detainees to pursue habeas petitions under 18 U.S.C. § 2241. *See Banks*, slip op. at 8 ("Plaintiffs' claimed injury is the risk of contracting COVID-19. The Court finds that the risk of contracting a disease is a legally cognizable risk for purposes of standing."); *see also Fofana v. Albence*, No. 20-10869, 2020 WL 1873307, at *8 (E.D. Mich. Apr. 15, 2020). As explained by the *Fofana* court, "Petitioners do not need to allege that [Plymouth currently has] confirmed COVID-19 cases or that they have contracted the virus to demonstrate standing . . . It is well documented that detention facilities increase the risk of contracting infectious diseases because of the inherent nature of confinement." *Id.* "The Constitution does not require that Petitioners be seriously ill from COVID-19, or that they await the introduction and spread of COVID-19 in their detention facility before they may assert their Fifth Amendment rights." *Id.*

So too here. Petitioners allege that all of the proposed class members are being exposed to a cognizable risk of contracting COVID-19, a highly contagious, lethal disease for which there

is no vaccine and no cure. *See* Petition at ¶21, 27. Moreover, Petitioners' claims are supported by the affidavits of three doctors who have detailed the unique risks posed to incarcerated persons in a situation such as the one faced by Petitioners. *Id.* at ¶73-75. Dr. Josiah Rich has opined that "correctional settings are ideal for rapid spread of viruses that are transmitted person-to-person, especially those passed by droplets through coughing and sneezing." *See* Petition, Ex. C at ¶3. Dr. Rich's opinion is clear: there are several aspects of a correctional setting that significantly increase the risk of the spread of COVID-19 such as poor ventilation systems, detainees' sleeping arrangements and inadequate opportunities for detainees to exercise necessary hygiene measures. *Id.* at ¶6, 9, 11. Indeed, Plymouth is particularly vulnerable to the spread of COVID-19 because of its minimal health standards. *Id.* at 11; *see also Bent v. Barr*, No. 19-CV-06123-DMR, 2020 WL 1812850 at *3 (N.D. Cal. Apr. 9, 2020) ("Courts fielding habeas petitions in the wake of the escalating pandemic have rejected similar standing arguments, even when there is no evidence that a particular detention facility has detected a confirmed case of the virus. " (citing cases); *accord Thakker v. Doll*, No. 20-CV-480, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020) ("Respondents would have us offer no substantial relief to Petitioners until the pandemic erupts in our prisons. We reject this notion.").

If that were not enough, this Court need look no further than the ongoing situation at Donald W. Wyatt Detention Facility ("Wyatt") in Central Falls, Rhode Island, to determine the imminence of the threat posed to Petitioners by the virus. For several weeks prior to April 21, 2020, Wyatt, like Plymouth, had reported no positive tests at the facility.[5] On April 21, 2020, Wyatt filed a status report with the Rhode Island federal district court indicating one positive

[5] It is unclear how many COVID-19 tests were actually conducted on Wyatt detainees and staff during its earlier period. *See In re Donald W. Wyatt Detention Facility*, Case No. 1:20-mc-00004-JJM (D.R.I. Apr. 20 & 21, 2020), ECF Nos. 2, 3.

COVID-19 test of a detainee at Wyatt. *See In re Donald W. Wyatt Detention Facility*, Case No. 1:20-mc-00004-JJM (D.R.I. Apr. 21, 2020), ECF No. 3. Within one day of its first positive test, the facility went on an immediate and near-complete lockdown, causing the cancellation of multiple judicial hearings and directly disrupting detainees' access to their counsel.[6] As of the date of the submission of this brief, Wyatt is reportedly up to eight confirmed cases of COVID-19 among its federal detainees. E-mail from Kevin Neal, Supervisory Deputy U.S. Marshal, District of Massachusetts, to Emily R. Schulman, Esq. (Apr. 24, 2020, 4:15 EDT). Plainly, Plymouth will be in a similar position when and if a detainee tests positive for COVID-19. That risk is more than sufficient to establish Petitioners' standing in this action.

B. Petitioners' Increased Risk of Contracting COVID-19 Is Redressable by Their Requested Relief.

There is little doubt that the most effective ways to slow the spread of COVID-19 are to practice social distancing and good hygiene. *See* Petition at ¶27-33. As noted by the Court in *Banks*, "[d]ue to the unique posture of jails and prisons, steps taken to reduce the risk of infection among any inmates, such as reducing the inmate population or providing adequate cleaning supplies, would also reduce [Petitioners'] risk of contracting COVID-19." *See Banks*, slip op. at 8. Further, measures taken at Plymouth regarding social distancing and improved hygiene conditions will reduce the risk of infection to Plymouth detainees who are not released. *Id.*

Contrary to Respondent's claim that Petitioners have offered "no proof" that their release from Plymouth will reduce their risk of injury or death (*see* Resp't's Mem. at 23), Petitioners have presented ample evidence to support their that contention, including three separate expert

[6] *See* http://www.wyattdetention.com/ (Apr. 23, 2020) ("On April 21, 2020, The Wyatt Detention Facility has had its first case of COVID-19. The Facility has been put on Lockdown status.")

affidavits. As noted by Dr. Rich, in order to reduce the risk of an outbreak of COVID-19 at Plymouth, "it is imperative to scale up efforts to 'decarcerate,' or release, as many detainees as possible." *See* Petition at ¶73 & Ex. C. Dr. Regina LaRocque notes that an outbreak of COVID-19 in a correctional institution would have "disastrous consequences" for both the facility and the broader community, and that it is "urgent" that Plymouth institute a "comprehensive social distancing regimen." *Id.* ¶74 & Ex. D. Dr. Jonathan Giftos has opined that it is an "urgent priority to reduce the number of people in detention facilities, including Plymouth, during this national public health emergency." *Id.* at ¶75 & Ex E. Respondent's spurious claim that Petitioners have greater access to medical care while incarcerated ignores the reality of the COVID-19 pandemic, which is that if there is a COVID-19 outbreak at Plymouth, Petitioners' and other detainees' access to medical care will not prevent the disease from spreading like wildfire through the facility and into the greater community.

C. This Court May Properly Authorize Discovery to Resolve Any Dispute Regarding Petitioners' Standing.

Finally, to the extent that the Court has any lingering questions regarding Petitioners' standing to pursue their claims in this case, it may properly authorize discovery to investigate any factual disputes that bear on that issue. *See Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 363-64 (1st Cir. 2001) (explaining that a factual challenge to plaintiff's standing justifies "differential factfinding," which may include "discovery," "extrinsic evidence, and "evidentiary hearings."); *see also Hernandez-Santiago v. Ecolab, Inc.*, 397 F.3d 30, 33 (1st Cir. 2005) ("Where a party challenges the accuracy of the pleaded jurisdictional facts, the court may conduct a broad inquiry, taking evidence and making findings of fact.").

Here, Respondent has challenged Petitioners' standing by citing to its contentions regarding the lack of COVID-19 cases at Plymouth, Resp.'s Mem. at 21-22, as well as its

assertions regarding the "adequate social distancing" that is allegedly occurring at the facility. *Id.* at 22-23. But the Petition contains *both* allegations *and* evidence that directly rebut these contentions. *See* Petition ¶¶ 94-95 (explaining that, as of April 16, 2020, only four detainees and seventeen staff members at Plymouth had been tested for COVID-19 and that there therefore "is not reliable information regarding the spread of the virus at [Plymouth]"); *see also* Petition at Exhibit H, ¶4, 5-6; Exhibit I, ¶8-9; Exhibit J, ¶4-5; Exhibit K, ¶4-5.

Accordingly, even if this Court were to question Petitioners' standing to pursue their claims, it should promptly authorize fact-finding regarding the Petitioners' allegations in order to address that issue. *Valentin*, 254 F.3d at 363-64. Respondent's suggestion that the Court should instead summarily dismiss the Petition in its entirety for lack of standing must be rejected.

III. PETITIONERS ARE NOT REQUIRED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES.

Respondent next argues that the Petition should be dismissed because Petitioners did not exhaust their administrative remedies under the Prison Litigation Reform Act ("PLRA"). *See* Resp. Mem. at 24-27. But, as previously argued, this case involves a habeas petition under 28 U.S.C. § 2241. Thus, the PLRA—including its administrative exhaustion requirements—is wholly inapplicable here. *See supra*. pp. 4-14; *see also Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 634 (2d Cir. 2001) (explaining that "the [administrative exhaustion] requirements of the [PLRA] do not apply to habeas proceedings"). For that reason, the Government's arguments regarding PLRA exhaustion should be rejected.

Moreover, any exhaustion requirements that might otherwise apply to this action should necessarily be excused in light of the exigencies presented by the current COVID-19 crisis. Courts addressing similar petitions have acknowledged that the urgency created by the pandemic requires that any otherwise applicable administrative exhaustion requirements be waived. *See*

United States v. Haney, 2020 WL 1821988 (S.D.N.Y. Apr. 13, 2020) (Rakoff, J.) (waiving the exhaustion requirement in 18 U.S.C. § 3582 "in the extraordinary circumstances now faced by prisoners as a result of the COVID-19 virus and its capacity to spread in swift and deadly fashion"); *United States v. Perez*, 2020 WL 1546422 (S.D.N.Y. Apr. 1, 2020) ("Here, even a few weeks delay carries the risk of catastrophic health consequences for [the defendant]"); *cf. Doe v. Barr*, 2020 WL 1820667 (N.D. Cal. Apr. 12, 2020) (addressing a § 2241 petition and explaining that "Courts have entertained similar COVID-19 claims under habeas jurisdiction without mentioning prudential exhaustion"); *see also Washington v. Barr*, 925 F.3d 109, 118 (2d Cir. 2019) (explaining that a genuine threat of "catastrophic health consequences" could "make exhaustion futile.").

Nor is there any serious doubt here that any effort by Petitioners to address the concerns presented in the Petition through an internal grievance process would be futile. *See Iacaboni v. United States*, 251 F. Supp. 2d 1015, 1017 n.1 (D. Mass. 2003) ("The obvious futility of any administrative remedy would excuse the failure to exhaust."); *Monahan v. Winn*, 276 F. Supp. 2d 196, 204 (D. Mass. 2003) (incarcerated person need not pursue an administrative remedy that "clearly would be futile"). The COVID-19 crisis was declared a national emergency by the President on March 13, 2020. *See* Petition at ¶34. The Centers for Disease Control and Prevention ("CDC") issued its Guidance on Management of Coronavirus Disease 2019 (Covid-19) in Correctional and Detention Facilities (the "Interim Guidance") on March 23, 2020. *Id.* at ¶76. That Interim Guidance specifically addressed, *inter alia*, the need for detention facilities to enforce social distancing within their facilities at all times. *Id.* at ¶79. The Governor of Massachusetts issued a series of emergency orders regarding the crisis, *id.* at ¶36, and the Massachusetts Supreme Judicial Court has repeatedly addressed significant concerns regarding

the safety of detained individuals in the Commonwealth during the crisis. *Id.* at ¶64-65. Despite all of those well-known public directives, Respondent continues to house federal detainees in shared cells, *id.* at ¶96, 101, 109, fails to enforce six feet of social distancing at meals and during recreation, *id.* at ¶97, 110, 119, fails to regularly test inmates or staff for the virus, *id.* at ¶95, and fails to institute appropriate hygienic practices to prevent the spread of the virus. *Id.* at ¶99, 102-103, 111-114, 121-122, 125-127. Under these circumstances, Respondent's notion that these issues will somehow be remedied promptly through the internal inmate grievance process is not credible. *See Iacaboni, supra.*

Even more fundamentally, Plymouth's inmate grievance process makes clear that it does not apply to broader group complaints such as those being advanced by Petitioners in this case. Part I(C)of the instructions for Plymouth's inmate grievance process specifically states that "*No grievance will be accepted by a group, on behalf of a group, or a grievance which includes more than one inmate*." *See* Resp't's Mem. at Ex. A (attaching PCCF 491 "Inmate Grievance Procedure") at Part I(C) (emphasis added). Those very same instructions further provide that "*Any Inmate Grievance Form that contains multiple grievances . . . will not be accepted*." *See id.* at Part II(G) (emphasis added). Accordingly, the very internal administrative procedures that Respondent contends Petitioners should have followed make clear that those internal procedures are *not* available for the class-wide, multi-pronged complaints being asserted in the Petition in this case. Accordingly, there is no administrative process to be exhausted here. *Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016) (explaining that an administrative procedure is "unavailable" when

it operates as a "dead end," including "'where the relevant administrative procedure lacks authority to provide any relief'") (quoting *Booth v. Churner*, 532 U.S. 731, 726 n.4 (2001)).[7]

Finally, in the unlikely event that this Court were to determine that the PLRA applies here, the unprecedented circumstances surrounding the COVID-19 outbreak necessarily justify a waiver of any administrative exhaustion requirements in this case. Courts have recognized that there are rare circumstances where administrative remedies under the PLRA "offer no possible relief in time to prevent . . . imminent danger from becoming an actual harm." *Fletcher v. Menard Correctional Center,* 623 F.3d 1171, 1174 (7th Cir. 2010). Indeed, the United States Supreme Court has explained that a detainee need not exhaust remedies if they are not "available." *Ross v.* Blake, 136 S. Ct. 1850, 1855 (2016). And a remedy is considered "available" only if it is "capable of use" by a detainee to "obtain some relief for the action complained of." *Id.*

Petitioners' claims in this case arise in precisely the type of extraordinary scenario contemplated by the Seventh Circuit in *Fletcher*: the COVID-19 virus is spreading across the nation and the Commonwealth by the day, and detention facilities which, like Plymouth, have repeatedly claimed to have "no cases," have suddenly found themselves confronting a rising number of infections and in "lockdown" in a matter of hours. *See supra* at pp. 17-18. Under these circumstances, no administrative remedy can occur within the shortened time frame required to address the harm facing the Petitioners and the proposed class members. Medical

[7] Equally important, Respondent has elsewhere conceded that any effort by Petitioners to pursue an administrative remedy at Plymouth in this case would necessarily be futile. Specifically, as Respondent has taken pains to point out, Respondent's internal procedures are insufficient to remedy fully the constitutional violations that Petitioners are suffering. *See* Resp't's Mem. at 27 (contending that Respondent is powerless to "usurp" the detention orders of federal judges). Respondent cannot credibly take that position and simultaneously assert that Petitioners should first pursue an internal grievance procedure before proceeding on their broader claim for habeas relief.

experts have determined that "it is imperative to scale up efforts to 'decarcerate,' or release, as many detainees as possible," that an outbreak of COVID-19 in a correctional institution would have "disastrous consequences" for both the facility and the broader community, and that it is "urgent" that Plymouth institute a "comprehensive social distancing regimen." *See* Petition at ¶73-74 & Ex. C-D. It is simply impossible for an administrative remedy to occur in time to avoid the disastrous consequences of an outbreak of COVID-19 within Plymouth. For these reasons, Respondents' supposed administrative remedy is not genuinely "available" to Petitioners and any exhaustion requirement must be waived. *Fletcher*, 623 F.3d at 1173.

IV. THE RELIEF SOUGHT IN THE CLASS ACTION PETITION IS APPROPRIATELY ADDRESSED IN THIS PROCEEDING RATHER THAN IN INDIVIDUAL DETENTION PROCEEDINGS.

Petitioners have explained above that the various remedies sought in their Petition are not barred by the PLRA and are appropriately presented through a class action arising under 28 U.S.C. § 2241. *See supra* pp. 4-14. The Government, however, has one final argument: that the "primary remedy" sought by Petitioners can only be sought through individual motions in their criminal cases brought pursuant to 18 U.S.C. § 3142. Specifically, the government argues that the "bail process is the only appropriate legal avenue through which Petitioners may seek release due to the threat to health and safety posed by COVID-19." *See* Resp.'s Mem, at 26.

On this point, the Government is simply wrong. As discussed in detail above, under the circumstances presented in this case, a federal court may properly address detainees' conditions of pretrial confinement, including matters relating to release, in a habeas petition arising under section 2241. *See supra* pp. 4-14. Indeed, as previously referenced, the U.S. District Court for the District of recently granted injunctive relief to a class of inmates, including pretrial detainees, who sought multi-faceted remedies, including release, under 28 U.S.C. § 2241 for

unconstitutional conditions of confinement related to COVID-19. *See Banks,* slip op. at 1; *see also Chunn. v. Edge*, No. 1:20-cv-01590, ECF No. 1 (habeas petition seeking relief for conditions of confinement related to COVID-19 on behalf of a class of petitioners that include pretrial detainees). Although the *Banks* Court has not yet issued an order addressing the proposed release of any of the petitioners or class members, it did not indicate that the petitioners' request in that case for a release plan relating to pretrial detainees in any way limited its authority over the matter. *See Banks*, slip op. at 31 (concluding only that an order requiring "immediate release of inmates" was "inappropriate at this time").

Equally important, Respondent's argument fails to acknowledge the inefficiency in pursuing the bail process for each proposed class member under 18 U.S.C. § 3142, which would require a separate filing and hearing for each of the *one-hundred and seventy-two (172) federal detainees* at Plymouth. And, perhaps more importantly, the individual bail process cannot effectively and efficiently address the numerous conditions of confinement that are currently affecting and violating the constitutional rights of all of the proposed class members and for which the Petition seeks redress. Those conditions are not limited to the particulars of one individual case.

Remarkably, the government cites Judge Young's recent decision in *United States v. Moore-Bush* for the proposition that the concerns presented in the Petition should be addressed through individual detention proceedings rather than through this habeas action. In that case, the Court declined to grant individual relief to a defendant in part because "[t]hus far, neither residents nor staff [at MCI Framingham] have tested positive for COVID 19." No. 18-CR-30001

(D. Mass. Mar. 25, 2020), ECF No. 568.[8] What the government fails to mention is that, soon after Judge Young issued his decision, the defendant was in fact *diagnosed with COVID-19. See* Assented-to Emergency Motion for Immediate Electronic Production of Medical Records, *Moore-Bush*, (Apr. 10, 2020), ECF No. 570. Thus, the *Moore-Bush* individual detention hearing—which focused solely on the circumstances surrounding one defendant and not more broadly on the conditions of the facility where the defendant was being held and the conduct of its personnel—in fact demonstrates the practical limitations of the bail review process in addressing the serious and significant matters raised in the Petition.[9]

At bottom, the government hopes to avoid in this case what it has apparently managed to avoid in each of the individual bail proceedings that have been separately filed by various federal detainees in this District in response to the COVID-19 crisis: a comprehensive and thorough examination of Plymouth's response to the serious and significant threat posed by the COVID-19 virus to all of the federal detainees at the facility. But it is precisely such a comprehensive examination that is required in order to ensure that the constitutional rights of those detainees are adequately protected. Petitioners have validly and properly asserted their claims on behalf of

[8] It is unclear from the record whether *any* COVID-19 tests had actually been conducted at MCI-Framingham as of March 25, 2020, the date of the Court's decision in that case. In its submission opposing release in that case, the government represented that "even if a case of Covid-19 were to be confirmed at MCI-Framingham, the facility has the capacity to address it." *See* Gov't's Opp'n at 6, *Moore-Bush*, ECF No. 567 (Mar. 24, 2020). Unfortunately, that promise was wishful thinking. As of April 22, 2020, twenty-six (27) prisoners and eleven (11) staff members at MCI-Framingham have tested positive for COVID-19. Norman Miller, *MCI-Framingham Sees Increased Risk of Coronavirus in Inmates, Staff*, MetroWest Daily News (Apr. 22, 2020), https://www.metrowestdailynews.com/news/20200422/mci-framingham-sees-increase-of-coronavirus-in-inmates-staff.

[9] Nor does the government's citation to *Gon v. Gonzalez*, 534 F. Supp. 2d 118, 120 (D.D.C. 2008) help its cause. In *Gon,* the district court held only that a single habeas petition challenging a pretrial detention order "unduly duplicates judicial efforts" undertaken during his prior bail hearing. By contrast, the habeas petition in this case, which seeks to address broadly the conditions at Plymouth affecting Petitioners and the other Class Members, plainly does not duplicate any prior judicial efforts. Moreover, the unique circumstances presented by the COVID-19 crisis necessarily presents precisely the type of *extraordinary* and special circumstances where habeas corpus relief is appropriate for Petitioners and the other class members.

themselves and on behalf of Plymouth's other federal detainees Plymouth under 28 U.S.C. § 2241. *See supra* pp. 4-14. Nothing in the Bail Reform Act bars Petitioners from proceeding.

CONCLUSION

This Court has jurisdiction over this matter and the Petition submitted in this case states a claim for relief. For those reasons the Court should deny Respondent's Motion to Deny Petitioner's Habeas Petition.

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CERTIFICATE OF SERVICE

I, Emily R. Schulman, counsel for Petitioners, hereby certify that this document has been filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Emily Schulman
Emily R. Schulman