

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

EMEKA WILSON-METUS,

Petitioner-Plaintiff,

v.

RAYMUNDO CASTRO, Warden, South Texas ICE Processing Center; DANIEL BIBLE, Field Office Director, Immigration and Customs, Enforcement and Removal Operations, San Antonio Field Office, U.S. Immigration and Customs Enforcement; MATTHEW T. ALBENCE, Acting Director of U.S. Immigration and Customs Enforcement; CHAD WOLF, Acting Secretary, U.S. Department of Homeland Security; and UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

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CIVIL ACTION NO. 5:20-cv-535

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

This is a petition for a writ of habeas corpus and complaint filed on behalf of Petitioner-Plaintiff Emeka Wilson Metus (“Petitioner”). Petitioner is especially vulnerable to contracting the novel coronavirus disease (“COVID-19”) while in the physical custody of Respondents-Defendants (“Respondents”) at the South Texas ICE Processing Center (also known as the South Texas Detention Complex) (“Detention Center”) in South Texas.

There are five confirmed cases of COVID-19 among detainees at the Detention Center. By continuing to detain Petitioner in conditions that expose him to an impermissibly high risk of

contracting COVID-19, Respondents violate Petitioner's rights under the Fifth Amendment to the U.S. Constitution. Petitioner also brings a claim under the Rehabilitation Act of 1973, 29 U.S.C. § 794. Petitioner seeks a declaration and injunction to redress Respondents' unlawful civil detention and to ameliorate all conditions that preclude Petitioner from implementing the only known means of preventing contraction of COVID-19 including, if necessary, an order requiring his immediate release from detention.

INTRODUCTION

1. On March 13, 2020, Governor Abbott declared a State of Emergency in Texas due to COVID-19, a global pandemic that has infected over 840,000 people in the United States and over 21,000 people in Texas. COVID-19 can have devastating effects on individuals' physical health. It can cause severe damage to lung tissue, kidney damage, liver damage, sepsis, respiratory failure, acute cardiac injury, heart failure, and death. Over 10% of infected people require hospitalization. COVID-19 has killed over 60,000 people in the United States since March, including over 600 Texans.

2. Older individuals, immunocompromised individuals, and people with certain chronic health conditions including diabetes, asthma, heart conditions, and lung disease are at greater risk of contracting severe cases of COVID-19. Many fatalities in the United States due to COVID-19 have been older individuals and individuals with chronic underlying medical conditions.

3. There is no vaccine or cure for COVID-19. The U.S. Centers for Disease Control and Prevention ("CDC") recommends preventative strategies like social distancing, intensive hand

washing, decontamination of surfaces, wearing of masks or face coverings, and isolation of people who are ill as the only known ways to avoid COVID-19.¹

4. Petitioner is at heightened risk of severe illness from COVID-19 due to his chronic underlying health conditions. Respondents prevent Petitioner from being able to practice even the most basic precautions while detained. Petitioner urges this Court to enjoin Respondents' ongoing unlawful detention so that Petitioner can practice the preventative strategies necessary to avoid becoming a victim of this historic global pandemic.

CUSTODY

5. Petitioner EMEKA WILSON-METUS is detained at the Detention Center in the physical and legal custody of the following Respondents: RAYMUNDO CASTRO, Warden at the Detention Center; DANIEL BIBLE, Field Office Director, San Antonio Field Office, U.S. Immigration and Customs Enforcement ("ICE"); MATTHEW T. ALBENCE, Acting Director of ICE; CHAD WOLF, Acting Secretary, U.S. Department of Homeland Security ("DHS"). Petitioner EMEKA WILSON-METUS is under the direct control of Respondents and their agents.

JURISDICTION

6. This case arises under the United States Constitution and the Rehabilitation Act of 1973, 29 U.S.C. § 794(a).

7. The Court has jurisdiction over this habeas petition and complaint pursuant to 28 U.S.C. § 2241 (habeas corpus statute), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 1331 (federal questions), 28 U.S.C. § 1361 (Mandamus Act), and Article 1, Section 9, clause 2 of the United States Constitution.

¹ Centers for Disease Control and Prevention, "How to Protect Yourself," Mar. 18, 2020, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> (accessed Apr. 12, 2020).

8. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015).

9. The Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. P. 57.

10. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies, and that agency’s officers are sued in their official capacities. 5 U.S.C. § 702; 29 U.S.C. § 794.

VENUE

11. Venue in the United States District Court for the Western District of Texas is proper pursuant to 28 U.S.C. § 1391(b), because the Wardens and Officers in Charge of the detention center where Petitioner is detained reside in this District, Petitioner is currently detained in this District, and a substantial part of the events and omissions giving rise to Petitioner’s claims occurred in this District.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

13. There is no statutory obligation for Petitioner to exhaust his administrative remedies prior to filing this habeas petition and complaint, since he is not requesting review of a final order of removal. 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies prior to challenging removal order in circuit court).

14. Petitioner has no administrative remedies to exhaust through ICE because no process exists to challenge the unconstitutional conditions of his detention. Even if meaningful administrative remedies were available, Petitioner, as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust them under 8 U.S.C. § 2241.

PARTIES

15. Petitioner is an immigration detainee at the South Texas Detention Complex, in Pearsall, Texas. He is a 48-year old asylum seeker (he is applying for relief under the Convention Against Torture) who has lived in the United States since May 2015 and has several serious medical conditions. On February 5, 2020, the Department of Homeland Security took custody of Mr. Wilson-Metus and brought him to the Detention Center.

16. If he contracts COVID-19, Mr. Wilson-Metus is at high risk of serious injury or death. As there is no vaccine or cure for COVID-19, the CDC recommends self-isolation, staying six feet apart from other people, and following strict hygienic precautions. Mr. Wilson-Metus cannot employ these precautions while detained at the Detention Center, where he must eat communally, use shared bathrooms, and sleep in a communal space with dozens of other people, some of whom are within arm's reach. Although frequent handwashing is necessary to prevent COVID-19, Respondents and their agents refuse to provide him with regular access to soap, hand sanitizer, or other hygienic materials such as disposable paper towels or tissues. Despite the serious threat to his life and his need for disability accommodations, officials have denied Mr. Wilson-Metus' request to be released.

17. Mr. Wilson-Metus suffers from high blood pressure and diabetes. These conditions substantially limit his major life activities including, but not limited to, functioning of his immune, circulatory, and endocrine systems. Mr. Wilson-Metus has a record of and is regarded as having

such impairments and limitations. On April 27, 2020, personnel of the Detention Center transferred Mr. Wilson-Metus on an emergency basis to the Frio Regional Hospital because his blood pressure had risen to uncontrollable levels. He was then returned by Defendants to the Detention Center where he continues to suffer from serious symptoms of high blood pressure.

18. For several days, Mr. Wilson-Metus has been experiencing pains in his chest that make it difficult for him to breathe. He is also experiencing body aches and pain in his spine. ICE and the Detention Center staff have provided no medical care for these ailments.

19. Mr. Wilson-Metus is at high risk for severe illness and death and this risk is exacerbated by the additional, imminent risk of exposure to COVID-19 and the lack of precautions at the Detention Center. Mr. Wilson-Metus has informed Respondent ICE that he is at higher risk for serious illness from exposure to COVID-19 due to these medical conditions.

20. Since the date that ICE took custody of Mr. Wilson-Metus, it was aware of Mr. Wilson-Metus' health conditions. On April 28, 2020, Mr. Wilson-Metus submitted a case inquiry to his deportation officer. That same day in the evening, an ICE agent informed Mr. Wilson-Metus that his custody status had been reviewed and he would not be released.

21. Respondent-Defendant RAYMUNDO CASTRO is the warden of the South Texas Detention Complex in Pearsall, Texas. Defendant Castro is Mr. Wilson-Metus' immediate custodian and resides in the judicial district of the United States District Court for the Western District of Texas, San Antonio Division.

22. Respondent-Defendant DANIEL BIBLE is sued in his official capacity as the Field Office Director for the San Antonio, Texas ICE office. He oversees all ICE/ERO functions and detainees in the San Antonio, Texas area, including detainees at the Detention Center. He has legal custody over Mr. Wilson-Metus and is authorized to release him.

23. Respondent-Defendant MATTHEW T. ALBENCE is sued in his official capacity as the Acting Director of ICE. In that capacity, he exercises authority over all ICE policies, procedures, and practices relating to ICE enforcement operations and detention facilities. He is responsible for ensuring that all people held in ICE custody are detained in accordance with law.

24. Respondent-Defendant CHAD WOLF is sued in his official capacity as the acting Secretary of DHS. He is responsible for enforcing federal laws concerning border control and immigration. Defendant Wolf has direct authority over ICE, which is responsible for the civil detention of immigrants in the United States.

25. Defendant U.S. Immigration and Customs Enforcement is a component agency of DHS. ICE detains Mr. Wilson-Metus at the Detention Center as part of a program or activity of an Executive agency and pursuant to federal immigration law.

STATEMENT OF FACTS

i. COVID-19 is Spreading Quickly and Poses a Grave Risk of Serious Illness or Death, Especially for Particularly Vulnerable People.

26. COVID-19 is a highly infectious disease caused by a novel coronavirus, officially known as SARS-CoV-2.

27. On March 11, 2020, the World Health Organization declared that the outbreak of COVID-19 had reached pandemic status.

28. COVID-19 is easily transmitted. The numbers of confirmed cases and deaths in the United States continues to grow. At the time of filing, the total number of confirmed cases and deaths of COVID-19 in the United States continues to rise every day.²

² Max Roser, Hannah Ritchie, and Esteban Ortiz-Ospina, “Coronavirus Disease (COVID-19) – Statistics and Research,” updated Apr. 29, 2020, available at: <https://ourworldindata.org/coronavirus?country=USA> (accessed Apr. 29, 2020).

29. All persons in the United States are at some risk of COVID-19 given the increase in community transmission throughout the United States.³

30. Any adult who contracts the virus may experience life-threatening symptoms and death. The fatality rate is higher in men and increases significantly for people with advanced age and certain pre-existing medical conditions.

31. COVID-19 can severely damage lung tissue, which requires an extensive period of hospitalization and rehabilitation, and in some cases, can cause permanent loss of respiratory capacity.

32. COVID-19 may also target the heart, causing cardiac injury such as myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure.

33. People with serious cases of COVID-19 describe painful symptoms, including vomiting, severe diarrhea, relentless shivering, and suffocating shortness of breath. Those infected with COVID-19 may only experience a fever intermittently, however, and fever may not be present at all for some people such as the elderly, immunosuppressed, or those taking certain medications.⁴

34. COVID-19 may also cause permanent kidney and neurological injury.

35. These complications can manifest at an alarming pace. Individuals can show the first symptoms of COVID-19 infection in as little as two days after exposure, and their condition can seriously deteriorate in five days or sooner.

³ Centers for Disease Control and Prevention, "Public Health Recommendations for Community-Related Exposure," available at <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html> (accessed Apr. 13, 2020).

⁴ Centers for Disease Control and Prevention, "Public Health Recommendations for Community-Related Exposure," available at <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html> (accessed Apr. 13, 2020).

36. People experiencing no symptoms can still spread COVID-19, making testing or seclusion of only those who are symptomatic an ineffective solution.

37. Most people who develop serious COVID-19 illness will need advanced medical support. This level of supportive care requires highly specialized equipment that is in limited supply, even in non-detention settings, and a team of dedicated medical care providers. People who recover from serious cases may need extensive rehabilitation.

38. There is no vaccine against COVID-19 nor is there any known medication to prevent or treat infection.

39. The only known effective measures to reduce the risk of illness, injury, or death from COVID-19 are to prevent individuals from being infected in the first place. The CDC advises that COVID-19 spreads mainly between people who are in close contact with another, through respiratory droplets produced when someone speaks, coughs, or sneezes, and through aerosolized fecal contact, as well as through the touching of shared surfaces. The virus may remain viable from hours to days on surfaces made from a variety of materials.⁵

40. The primary effective measures for protecting people from COVID-19 are (1) social distancing, *i.e.*, remaining physically separated from others regardless of their symptoms or lack of symptoms; and (2) vigilant sanitation and hygiene, including frequent hand washing with soap and water. The CDC now recommends that individuals who are in close proximity to others should wear cloth face coverings to mitigate the risk of transmission.

41. Usage of personal protective equipment (“PPE”) is only effective if accompanied by adequate training, including proper donning and doffing procedures.

⁵ Centers for Disease Control and Prevention, “Public Health Recommendations for Community-Related Exposure,” available at <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html> (accessed Apr. 13, 2020).

42. In recent days, the number of reported cases of COVID-19 infection in many parts of the country, including Frio County, have significantly increased and public officials estimate the reported number of hospitalizations and deaths may soon follow suit.

43. COVID-19 could kill as many as 73,000 people in the United States by early August.⁶

44. At the time of filing, there are more than 1 million confirmed COVID-19 cases in the United States and over 58,355 deaths.⁷ The Texas Department of State Health Services (“DSHS”) reports that there are more than 25,000 confirmed COVID-19 cases in Texas.⁸

45. Confirmation of COVID-19 cases is subject to the availability of accurate tests and the use of sufficiently inclusive testing protocols. Relatively few individuals have been tested for COVID-19 in Frio County and the number of individuals infected by COVID-19 may be much higher.

46. States have taken extraordinary and unprecedented measures to ensure residents practice “social distancing” in order to halt the spread of COVID-19. On March 13, 2020, Governor Abbott declared a State of Emergency in Texas due to COVID-19.⁹ On March 30, 2020,

⁶ Lisa Shumaker, “U.S. coronavirus outbreak soon to be deadlier than any flu since 1967 as deaths top 60,000” Apr. 29, 2020, available at: <https://www.reuters.com/article/us-health-coronavirus-usa-casualties/u-s-coronavirus-outbreak-soon-to-be-deadlier-than-any-flu-since-1967-as-deaths-top-60000-idUSKBN22B32C> (accessed Apr. 29, 2020).

⁷ *Supra* n.2.

⁸ Tex. Dep’t of State Health Services, “Texas Case Counts COVID-109: Coronavirus Disease 2019” available at: <https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83> (accessed Apr. 27, 2020).

⁹ Proclamation by the Governor of the State of Texas Certifying that COVID-19 Poses an Imminent Threat of Disaster in the State and Declaring a State of Disaster for All Counties in Texas, Mar. 13, 2020, available at: https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IMAGE_03-13-2020.pdf (accessed Apr. 14, 2020).

Frio County Judge Arnulfo C. Luna, issued a shelter-in-place order requiring “individuals to “maintain social distancing of at least 6 feet from any other person.”¹⁰

47. Recognizing the extraordinary circumstances of COVID-19 and its major risk of spreading throughout institutionalized settings, the Texas Department of Criminal Justice (“TDCJ”) has stopped the intake of inmates from county jails. In a letter to county sheriffs on April 11, 2020, TDCJ Executive Director Bryan Collier cited COVID-19 prevention and said halting the transfers was “necessary and temporary” to protect employees and inmates.¹¹

ii. Respondents Expose Petitioner to COVID-19 Infection, Serious Illness, and Possible Death by Detaining Petitioner at the Detention Center.

48. Immigration detention facilities are “congregate environments,” — places where people live and sleep in close proximity to each other. Infectious diseases that are communicated by air or touch are quickly spread in these confined settings. Respondents’ ongoing detention of Mr. Wilson-Metus in these crowded environments during the COVID-19 pandemic presents an imminent danger of severe infection, illness, and death to Mr. Wilson-Metus.

49. The CDC has issued guidance for correctional facilities and detention centers for preventing and managing the COVID-19 pandemic to ensure the safety of detained individuals, staff, contractors, and visitors to detention centers.¹²

50. The CDC recommends that detention centers restrict transfers of detainees to and from other facilities and limit the amount of “operational entrances and exits to the facility.”¹³

¹⁰ County Judge Arnulfo C. Luna, Executive Order of County Judge Arnulfo C. Luna Issued March, 30, 2020, Mar. 30, 2020, *available at*: <http://www.co.frio.tx.us/upload/page/1949/SHELTER%20IN%20PLACE%20ORDER.pdf>.

¹¹ Jacob Helker, “Texas state prisons halt intake of inmates from county jails,” ABC 7 News Online, Apr. 13, 2020, *available at*: <https://abc7amarillo.com/news/local/tdcj-halts-intake-of-inmates-from-county-jails> (accessed Apr. 14, 2020).

¹² CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” Mar. 23, 2020, *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (accessed Apr. 14, 2020).

¹³ *Id.* at 9.

Respondents do not follow this guidance. New detainees enter the Detention Center at issue every day. Guards, ICE Deportation Officers, and contractors enter the facility on a shift basis multiple times per day without adequate screening for COVID-19. Despite the CDC's guidance, Respondents continue to transfer detainees between detention centers without engaging in the CDC's recommended screening process.¹⁴

51. The failure to perform tests of staff or contractors who have ongoing community contacts presents a daily risk of introduction of the virus into the Detention Center. The possibility of asymptomatic transmission means that monitoring only staff, contractors, and detainees who have fevers will fail to prevent transmission.

52. The CDC recommends that detention centers practice "intensified cleaning and disinfecting procedures" including disinfecting commonly used surfaces and objects "several times per day."¹⁵ Respondents do not follow these directives at the Detention Center. Individuals detained at the Detention Center frequently use pay phones, tablets, toilets, showers, appliances like microwave ovens, and common surfaces like chairs and dining tables without adequate disinfection between uses. The CDC recommends that detention centers provide adequate soap and hand sanitizer at no cost to detained individuals to encourage frequent hand washing.¹⁶ Respondents routinely fail to provide sufficient free soap or hand sanitizer to detained individuals to permit compliance with the CDC's recommendation of frequent handwashing. Often additional soap is available for purchase at immigration detention center commissaries. Many detained individuals lack funds to purchase basic hygiene products, especially those who have recently been forced to flee violence and persecution in their home country and seek refuge in the United States.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

53. The CDC also recommends that detention centers “implement social distancing strategies” in common areas, during recreation time, and during meals.¹⁷ Nevertheless, Mr. Wilson-Metus spends nearly all of his days in a crowded dormitory with other detainees.

54. COVID-19 has been detected at the Detention Center. Under current conditions, it is impossible to stop the spread of the virus within the facility, where social distancing is unachievable.

55. Detention centers are integral components of the public health systems in the communities in which they are located. Detainees who contract severe cases of COVID-19 will require hospitalization in the community. This threatens to overwhelm local resources.

56. The Frio Regional Hospital is the only hospital in Frio County where the Detention Center is located and serves several surrounding counties. The hospital has limited COVID-19 testing capacity, and has difficulty recruiting staff. The Frio Regional Hospital employs just two physicians, two advanced nurse practitioners and a contract nurse anesthetist.¹⁸ Frio County lacks the medical staff necessary to treat COVID-19 patients effectively,¹⁹ and its hospital only has 22 beds.²⁰

57. Immigration detention facilities in Texas have faced outbreaks of infectious diseases in recent years due to overcrowding, poor hygiene measures, medical negligence, and poor access to resources and medical care. For example, based on a review of a mumps outbreak in Texas facilities run by ICE Health Service Corps (“IHSC”), the CDC found that immigrant

¹⁷ *Id.* at 11.

¹⁸ Marina Starleaf Riker, “‘That is killing us financially’: Pandemic threatens rural Texans’ access to health care,” San Antonio Express News, Apr. 6, 2020, *available at*: <https://www.expressnews.com/news/local/article/That-is-killing-us-financially-Pandemic-15178207.php> (accessed Apr. 27, 2020).

¹⁹ *Id.*

²⁰ American Hospital Directory, Frio Regional Hospital, *available at*: https://www.ahd.com/free_profile/450293/Frio_Regional_Hospital/Pearsall/Texas/.(accessed Apr. 27, 2020).

detention facilities in Texas,²¹ including the Detention Center, exposed hundreds of detained migrants to mumps, leading the CDC to recommend that IHSC work with health departments, the CDC, and facility health administration to “develop appropriate control measures based on local epidemiology and the specific needs of each facility.”²² Mumps, unlike COVID-19, can be prevented through vaccination.

58. In June 2019, the IHSC informed Congress of 308 infectious disease outbreaks across 51 facilities in a single year.²³

59. On April 4, 2020, ICE determined that its Field Office Directors should reassess custody of detainees “over 60 years old” and detainees who are “immune-compromised,” including individuals with “heart disease.”²⁴ “The presence of one of those factors . . . should be a significant discretionary factor weighing in favor of release,” unless release would pose a danger to property or persons.²⁵ Even for detainees with past criminal convictions, the Directors should look at the age of the arrest as a mitigation factor.²⁶

²¹ Elizabeth Trovall, “ICE Confirms 27 Cases of Mumps in Detention Facilities Across Texas,” HOUSTON PUB. MEDIA, Feb. 14, 2019, *available at*: <https://www.houstonpublicmedia.org/articles/news/2019/02/14/321862/ice-says-there-are-27-confirmed-cases-of-mumps-in-detention-facilities-across-texas/> (accessed Apr. 14, 2020).

²² Jessica Leung et al., “Notes from the Field: Mumps in Detention Facilities That House Detained Migrants—United States, September 2018—August 2019,” 68 U.S. DEP’T OF HEALTH & HUM. SERV. MORBIDITY & MORTALITY WEEKLY REP. 749, 749, Aug. 30, 2019, *available at*: <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6834a4-H.pdf> (accessed Apr. 14, 2020).

²³ “USA: ‘We are Adrift, About to Sink,’ Amnesty International, Apr. 7 2020, *available at*: <https://www.amnesty.org/en/documents/amr51/2095/2020/en/> (accessed Apr. 14, 2020).

²⁴ Letter from Peter B. Berg, Assistant Director, Field Operations, to Field Office Directors and Deputy Field Office Directors entitled “COVID-19 Detained Docket Review,” at 2-3, Apr. 04, 2020.

²⁵ *Id.* at 3.

²⁶ *Id.*

60. ICE has only tested 705 of its 30,737 detainees, a mere 2.3%.²⁷ Out of those 705 tests, 375 people tested positive, meaning that approximately 54% detainees who were tested have the virus.²⁸

61. On or about April 13, 2020, thirty-three days after the World Health Organization declared COVID-19 to be a global pandemic, Respondent ICE issued a policy document for ICE detention facilities requiring detention facilities to take certain measures regarding COVID-19 (“ERO PRR”).²⁹

62. The ERO PRR is inadequate to provide safe conditions for Petitioner. It lacks deadlines, lacks a reporting or oversight structure by which to monitor compliance by detention facilities, lacks information on how detention facilities can procure hygiene supplies, PPE, or medical supplies, and it acknowledges but then ignores the fact that the coronavirus can be transmitted by asymptomatic and pre-symptomatic individuals. It fails to outline specific actions to be taken regarding medical monitoring, the provision of medical care within the detention facility, or the transfer of an individual requiring more intensive medical services or hospitalization.

63. The Detention Center where Mr. Wilson-Metus is detained, does not and cannot meet many of the requirements set out in the ERO PRR.

64. As early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts for the U.S. Department of Homeland Security, shared concerns about the specific risks to

²⁷ U.S. Immigration and Customs Enforcement, “ICE Guidance on COVID-19: Confirmed Cases,” Updated Apr. 29, 2020, *available at*: ice.gov/coronavirus#tab1 (accessed Apr. 29, 2020) (“To date, there have been 705 total detainees tested.”); *see also* Monique O. Madan, “ICE has tested a tiny fraction of its detainees for COVID-19. Most of them were positive,” Miami Herald, Apr. 22, 2020, *available at*: <https://www.miamiherald.com/news/local/immigration/article242203726.html> (accessed Apr. 27, 2020).

²⁸ *Id.*

²⁹ ICE Enforcement and Removal Operations, “COVID-19 Pandemic Response Requirements,” *available at*: <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf> (accessed Apr. 14, 2020).

immigrant detainees as a result of COVID-19 with the agency. These experts warned of the danger of rapid spread of coronavirus in immigration detention facilities. In a whistleblower letter to Congress, Dr. Allen and Dr. Rich recommended that “[m]inimally DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases.” They concluded that “acting immediately will save lives not only of those detained, but also detention staff and their facilities, and the community-at-large.”³⁰

a. The South Texas ICE Processing Center

65. As of the date of this filing, there are 7 confirmed COVID-19 cases in Frio County.³¹ Defendant ICE reports that five of those cases are detainees at the Detention Center.³²

66. Respondents confine Mr. Wilson-Metus and hundreds of other civil immigration detainees at the Detention Center. Currently, the Detention Center has capacity to hold up to 1,904 adult detainees.³³ The Detention Center is operated by the GEO Group, Inc. and is located in Pearsall, Texas in Frio County.

67. Data from the Transactional Records Access Clearinghouse at Syracuse University shows that the Detention Center has an average daily population of 1,451 detainees for the 2020 Fiscal year.³⁴

³⁰ Letter from Dr. Scott Allen & Dr. Josiah Rich to the Senate and House Committees on Homeland Security and Oversight and Reform, at 5-6, Mar. 19, 2020, available at: <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html> (accessed Apr. 14, 2020).

³¹ Tex. Dep’t of State Health Services, “Texas Case Counts COVID-109: Coronavirus Disease 2019” available at: <https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83> (accessed Apr. 29, 2020).

³² U.S. Immigration and Customs Enforcement, “ICE Guidance on COVID-19: Confirmed Cases,” Updated Apr. 29, 2020, available at: ice.gov/coronavirus#tab1 (accessed Apr. 29, 2020).

³³ The GEO Group, Inc., “Our Locations: South Texas ICE Processing Center,” available at: <https://www.geogroup.com/FacilityDetail/FacilityID/44> (accessed Apr. 27, 2020).

³⁴ Transactional Records Access Clearinghouse, “Large Numbers at Risk in ICE Detention Facilities for the COVID-19 Virus,” Apr. 21, 2020, available at: <https://trac.syr.edu/immigration/reports/605/> (accessed Apr. 27, 2020).

68. The conditions in the Detention Center contravene medical and public health directives for risk mitigation. Incoming detainees are inadequately screened for COVID-19.³⁵ Until very recently detainees were not provided gloves, and only one mask per detainee was provided.

69. Guards, Deportation Officers, contractors, court staff, and others who enter the facility rarely wear PPE. Commonly used items and surfaces like telephones in the visitation area are infrequently disinfected.

70. Detainees describe using water as the only method to clean their surroundings.³⁶ Respondents have limited detainees' access to basic hygiene products such as soap.³⁷ Respondents detain individuals at the Detention Center in "pods," that house several dozen individuals at a time.³⁸ Detainees are forced to sleep just a few feet from one another in bunk beds.

71. Upon information and belief, there are now 3, and possibly 4, "pods" that have been placed in quarantine by the facility. Each of these pods detains 40-55 persons.

72. Some immigrants held in the Detention Center went on a hunger strike due to their concerns about Defendants' failure to respond to the COVID-19 threat to their safety, and some were pepper-sprayed when the staff at the Detention Center attempted to end the hunger strike.³⁹

73. On information and belief, ICE does not include information on its website regarding positive COVID-19 test results of contractors at any ICE detention facilities.

³⁵ Julian Aguilar and Perla Trevizo, "Migrants say COVID-19 fears led to disturbance in Texas immigration detention center," *The Texas Tribune*, Mar. 25, 2020, *available at*: <https://www.texastribune.org/2020/03/25/fears-covid-19-led-disturbance-texas-immigration-detention-center/> (accessed Apr. 23, 2020).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Silvia Foster-Frau, "Detained migrants pepper-sprayed for protesting amid coronavirus fears," *San Antonio Express News*, Mar. 24, 2020, *available at*: <https://www.expressnews.com/news/us-world/border-mexico/article/Detained-migrants-pepper-sprayed-for-rioting-amid-15154870.php#> (accessed Apr. 27, 2020).

b. Emeka Wilson-Metus' Health Condition Makes Him Particularly Likely to Suffer Severe Complications Related to COVID-19.

74. Mr. Wilson-Metus is an asylum-seeker. He has resided in the United States since May 2015 with his wife and two children.

75. The DHS and ICE took custody of Mr. Wilson-Metus on February 5, 2020. Prior to that date, Mr. Wilson-Metus was serving a federal sentence at FCI, Bastrop for false use of a United States passport. Respondents detained Mr. Wilson-Metus weeks after ICE became aware of the risk of COVID-19 to immigrants with health conditions that place them at higher risk. The CDC warned that certain people are at higher risk for severe COVID-19 illness, particularly people with serious heart conditions, such as hypertension, and diabetes, and people who are immunocompromised.⁴⁰ The majority of persons hospitalized for COVID-19 have underlying medical conditions, including diabetes and high-blood pressure.⁴¹

76. Mr. Wilson-Metus has multiple risk factors that make him more likely to develop a severe illness and even die from COVID-19. His health problems are serious and well-documented. He suffers from hypertension and diabetes. These conditions place him at greater risk of serious illness or even death if he contracts COVID-19.

77. On Monday, April 27, 2020, personnel of the Detention Center transferred Mr. Wilson-Metus on an emergency basis to the Frio Regional Hospital. Mr. Wilson-Metus' blood

⁴⁰ Center for Disease Control, Coronavirus Disease 2019 (COVID-19): People Who are At Higher Risk, *available at*: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html (accessed Apr. 14, 2020); *see also* Center for Disease Control, “Initial Public Health Response and Interim Clinical Guidance for the 2019 Novel Coronavirus Outbreak — United States, December 31, 2019–February 4, 2020” Feb. 5, 2020 (first available online), *available at*: <https://www.cdc.gov/mmwr/volumes/69/wr/mm6905e1.htm> (accessed Apr. 29, 2020) (explaining that “persons with underlying health conditions or compromised immune systems might be at higher risk for severe illness from this virus[.]”).

⁴¹ Center for Disease Control, “Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019 — COVID-NET, 14 States, March 1–30, 2020,” Apr. 17, 2020, *available at*: <https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm> (accessed Apr. 29, 2020).

pressure had risen to uncontrollable levels and the Detention Center medical staff could not treat it. The Detention Center medical staff informed Mr. Wilson-Metus that if he was not immediately taken to a hospital, he was going to suffer a heart attack and die. Mr. Wilson-Metus remained in the hospital for a couple of hours and then was returned to the Detention Center that same day.

78. For several days preceding the filing of this petition, Mr. Wilson-Metus has experienced pains in his chest making it difficult for him to breathe. He has also experienced body aches and complains that his spine hurts. Defendant ICE, Defendant Castro and the Detention Center staff have provided no medical care for these ailments.

79. Despite being held for 12 weeks, ICE and the immigration court have not scheduled Mr. Wilson-Metus for a hearing on his application for relief under the Convention Against Torture.

80. Mr. Wilson-Metus' health conditions were known to ICE when it detained Mr. Wilson-Metus. ICE made this decision even though its officials were aware that COVID-19 was spreading across the United States and that people like Mr. Wilson-Metus were at heightened risk.

81. Due to the conditions of detention at the Detention Center, Mr. Wilson-Metus finds it impossible to maintain the recommended distance of six feet from others. Defendants hold Mr. Wilson-Metus in conditions where he sleeps less than six feet away from others in a room full of people with whom he shares a bathroom and eating space. He must also touch shared objects and surfaces that are not disinfected after others' use.

82. Due to these conditions, Mr. Wilson-Metus is not able to follow the CDC's recommendations, such as social distancing, rigorous hygiene, separated sleeping and eating, getting plenty of sleep, and accessing support structures.

83. Respondents' actions and failures to act have placed Mr. Wilson-Metus directly in harm's way. Mr. Wilson-Metus is detained in the same room, or "pod," with 40-55 other people.

84. Respondents and their agents have only provided Mr. Wilson-Metus with two protective masks in the past four weeks because of his health condition, and otherwise have not provided him any other PPE. Based on information and belief, Respondents and their agents do not provide an adequate number of masks to detainees and have not provided any other PPE to detainees, including Petitioner. Respondents and their agents do not properly sanitize the Detention Center to prevent the spread of COVID-19 among detainees and staff.

CLAIMS FOR RELIEF

CLAIM ONE

Fifth Amendment to the U.S. Constitution (Due Process Clause)

85. Petitioner repeats and incorporates by reference the allegations made above.

86. The Fifth Amendment to the U.S. Constitution requires that all individuals who are detained by the State be afforded conditions of reasonable health and safety including food, shelter, and medical care.

87. Respondents subject Petitioner to conditions of confinement that heighten his risk of contracting COVID-19.

88. Respondents act with deliberate indifference to the excessive risk of harm to Petitioner's health and safety posed by COVID-19. Respondents are aware of Petitioner's underlying health conditions and of their heightened risk of serious illness or death if infected with COVID-19. Respondents are aware that the conditions at the Detention Center expose Petitioner to greater risk of infection. By subjecting Petitioner to this risk, Respondents fail to ensure safety and health in violation of Petitioner's due process rights. Respondents further violate Petitioner's due process rights by failing to take action to ameliorate the conditions that prevent Petitioner from adopting the only known means of protecting himself from infection, or by failing to release him.

89. The Fifth Amendment to the U.S. Constitution also requires that civil detainees must not be subjected to conditions that amount to punishment. The government violates this substantive due process right when it subjects civil immigration detainees to cruel treatment and conditions of confinement that amount to punishment, and fails to ensure detainees' health and safety.

90. Separately and cumulatively, regardless of Respondents' intent, the following conditions amount to a violation of due process rights of Petitioner who is a civil detainee:

- a. denial of soap, hand sanitizer, and other hygiene products to Petitioner;
- b. failure to clean and decontaminate adequately frequently used common items and surfaces;
- c. continuous detention of Petitioner in crowded conditions that preclude social distancing;
- d. failure to monitor detainees for COVID-19 on a regular basis;
- e. failure to screen adequately incoming detainees, guards, ICE Deportation Officers, contractors and visitors for COVID-19 before they enter the Detention Centers; and
- f. failure to provide treatment or medication to Petitioner to manage his chronic underlying health condition.

91. The conditions of confinement are not reasonably related to a legitimate goal of detention.

92. Respondents' actions amount to and are intended as punishment and violate Petitioner's due process rights.

93. Respondents hold Petitioner in custody in violation of the Fifth Amendment to the United States Constitution. A writ of habeas corpus, pursuant to 28 U.S.C. § 2241, is necessary to remedy the constitutional violations, to ensure Petitioner receives necessary medical care, and to remove the unreasonable risk that Petitioner will contract COVID-19 and suffer serious physical injury and harm.

94. Alternatively, if the Court denies a writ of habeas corpus, declaratory and injunctive relief to compel Respondents to provide safe conditions is needed to remedy Respondents' violation of the Fifth Amendment and to prevent serious, imminent, irreparable physical injury to Petitioner.

CLAIM TWO

Violation of the Rehabilitation Act—Failure to Provide Reasonable Accommodation to Persons with Disabilities

95. Petitioner realleges and incorporates by reference the allegations made above.

96. Section 504 of the Rehabilitation Act (“Section 504”) provides that “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” 29 U.S.C. § 794.

97. Section 504 of the Rehabilitation Act requires federal agencies to provide “reasonable accommodations” to individuals with disabilities so they can fully participate in benefits administered by these agencies. 29 U.S.C. § 794(a).

98. DHS regulations implementing the Rehabilitation Act mandate that “[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any

program or activity conducted by the Department.” 6 C.F.R. § 15.30; *see also* 29 U.S.C. § 794(a). The regulations implementing Section 504 prohibit entities receiving federal financial assistance from utilizing “criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient’s program or activity with respect to handicapped persons.” 34 C.F.R. § 104.4(b)(4).

99. Defendant ICE is an Executive agency within the meaning of the Rehabilitation Act.

100. Petitioner is a qualified individual with disabilities for the purposes of Section 504.

101. The services, programs, and activities within the Detention Center receive substantial federal financial assistance and are programs and activities conducted by an Executive agency. Petitioner is entitled to participate in those services, programs and activities.

102. By failing to take account of Petitioner’s vulnerability to severe illness or death if he contracts COVID-19 and by exposing Petitioner to a heightened risk of contracting COVID-19, Respondents intentionally prevent Petitioner from participating in the services, programs, and activities within the Detention Center by reason of his disabilities by failing to provide him adequate medical care such that Petitioner is too ill to partake in services, programs and activities within the Detention Center.

103. Respondents also intentionally prevent Petitioner from participating in the services, programs, and activities within the Detention Center by reason of his disabilities, by failing to provide Petitioner with PPE, sanitary conditions and the ability to maintain hygienic practices that would allow him to reside with other detainees..

104. Respondents' actions have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of removal proceedings and the services, programs, and activities within the detention facilities with respect to Petitioner.

105. Respondents fail to "reasonably accommodate" Petitioner's disabilities by failing to ameliorate the conditions that prevent Petitioner from employing the only known means of protecting himself from infection or by failing to release Petitioner from the Detention Center.

106. Respondents' disparate treatment of Petitioner based on his disabilities, Respondents' use of criteria or methods of administration with respect to the services, programs, and activities within the Detention Center, and Respondents' failure to provide Petitioner with reasonable accommodations constitute disability discrimination in violation of Section 504.

PRAYER FOR RELIEF

WHEREFORE, Petitioner pray that this Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Declare Petitioner's detention to be unlawful and unconstitutional;
- C. Order the immediate release of Petitioner or his placement in community-based alternatives to detention such as conditional release, with appropriate medical care and precautionary health measures;
- D. In the alternative, if the Court does not grant a writ of habeas corpus, order Respondents to provide Petitioner with appropriate medical care and protection from the risk of contracting COVID-19 by ameliorating all conditions that prevent Petitioner from implementing the public health recommendations that are the only known means of preventing against and mitigating the effects of COVID-19;

- E. Enjoin Respondents from transferring Petitioner outside of this judicial district pending litigation of this matter or his removal proceedings;
- F. Award Petitioner reasonable costs and attorneys' fees; and,
- G. Grant any other relief that this Court deems just and proper.

Dated: April 30, 2020

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

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*Application to appear pro hac vice forthcoming

Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submit this verification on behalf of the Petitioner. Undersigned counsel have discussed with Petitioner the events described in this Petition for Writ of Habeas Corpus and Complaint and, on the basis of those discussions, verify that the statements in the Petition and Complaint are true and correct to the best of our knowledge.

Dated: April 30, 2020

/s/ Javier N. Maldonado

Javier N. Maldonado

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