

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ADENIS ENRIQUE PRIETO REFUNJOL,
KEITA MORY, SIDI NIJE, JESUS MANUEL CHAVEZ
RODRIGUEZ, MOHAMED ABDI, ABDIAZIZ
MOHAMUD, JOSE MISAEL NAVARRO-GONZALEZ,
NEPTUNE PIERRE, ALEXIS RAMIREZ PORTILLO,
JORGE SALAS-MARIN, JUAN ANTONIO
CONTERAS-MORAN, MAJDI RABEE, ANTONIO
APARICIO-LUNA, KEVIN RIVERA RODRIGUEZ,
FABIAN SANTIAGO SILVA, OSMAN FAGHI HAJI,
JOSE LUIS VERGARA PATINO, RAMON GARCIA,
RONALDO BALFOUR, EDUARDO ALICANDRO-
MARQUEZ, DAVE ALVARENGA VASQUEZ,
ALBERTO PEREZ ARREAGA, JERMAINE BELL

Petitioner-Plaintiffs,

- vs. -

REBECCA ADDUCCI, in her official capacity as Detroit
District Director of U.S. Immigration & Customs
Enforcement; and U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondent-Defendants.

Case No. 2:20-cv-2099

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

INTRODUCTION

1. On May 1, 2020, staff at the Morrow County Jail (“Morrow”) announced that at least 50 detainees there had tested positive for COVID-19. Most of the approximately 79 total people held at Morrow are U.S. Immigration and Customs Enforcement (“ICE”) civil detainees.
2. The announcement occurred just eight days after the first positive case at Morrow and fewer than three weeks since the first positive case was announced at Butler County Jail (“Butler.”) (Detainees are often transferred between the two facilities). Now, the majority of detainees at Morrow are confirmed to have the virus, and their conditions range from asymptomatic to unable to move.
3. When the outbreak began, Morrow cohorted approximately 16 symptomatic and/or confirmed positive people in a group quarantine dorm. After a few days, the jail abandoned its cohorting. Today, all male detainees at the jail are in one of several small congregate rooms where many people have tested positive for, and are symptomatic with, COVID-19.¹
4. No one is receiving medical treatment other than Tylenol. No one is provided adequate cleaning supplies. Detainees were recently forced to wear the same clothing, including undergarments, for over a week.
5. The new Petitioner-Plaintiffs (“New Plaintiffs”) are noncitizens held in civil detention by ICE at Morrow. They are being added to this Petition in addition to the three Plaintiffs who originally filed this action, (“Original Plaintiffs”). The Original Plaintiffs are in the

¹ See Glenn Mcentrye, *50 Inmates at Morrow County Jail Test Positive for COVID-19*, 10TV (May 1, 2020), available at <https://www.10tv.com/article/50-inmates-morrow-county-jail-test-positive-covid-19-2020-may>.

community and still subject to ICE supervision after this Court issued a temporary restraining order (“TRO”) ordering their release.

6. Most of the New Plaintiffs have tested positive for COVID-19, one has an inconclusive test, and one does not know his test result. Likewise, some are suffering from symptoms of COVID-19 and some are not. All of the New Plaintiffs remain confined to one of two communal dorms. In those communal rooms they are confined with other individuals, many of whom have tested positive for the virus, are exhibiting symptoms, or both.
7. Each new Plaintiff is in grave, imminent danger and is not able to be safely housed, receive adequate medical attention, or protect themselves by maintaining social distance while in the jail.
8. The Centers for Disease Control (“CDC”) now recognizes that all individuals in “long-term care facilities” —like the jail where Plaintiffs are held— are at “high-risk for severe illness from COVID-19.”² This is regardless of any other factors.
9. Some of the Plaintiffs additionally have other health complications, such as asthma, high blood pressure, obesity, and other conditions, putting them at additional risk.
10. The congregate setting in which Plaintiffs are confined allows the virus to spread easily, and concentrates the viral load, placing each Plaintiff at imminent risk of serious complications or death.

² Centers for Disease Control, *People Who Are at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited May 3, 2020).

11. Scientists suggest that “as with any other poison, viruses are usually more dangerous in larger amounts.”³ Therefore, scientists believe viral dose affects illness severity.⁴ Each Plaintiff is confined in unavoidably close proximity to many other individuals at different stages of the COVID-19 illness. As a result, each detainee is being dangerously exposed to a high viral dose. This too heightens the likelihood that Plaintiffs’ version of the disease, when they succumb, will be severe.
12. In addition, the World Health Organization has recently warned that unlike other viruses, there is “no evidence” that people who have, or have had, COVID-19 possess antibodies that would protect them against reinfection.⁵
13. Individuals who experience severe cases of COVID-19 may suffer from difficulty breathing, persistent chest pain, and require the support of specialized, life-saving equipment such as ventilators. Those who survive severe cases may still have long-lasting if not permanent side effects, such as decreased respiratory capacity and damage to vital organs such as the heart and liver.
14. If Plaintiffs continue to be detained at Morrow Jail, which is a hotbed of COVID-19, they face a danger that is “so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk” and that violates their constitutional right to safety in government custody. *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

³ See Joshua Rabinowitz & Caroline Bartman, *These Coronavirus Exposures Might be the Most Dangerous* (April 1, 2020), available at <https://www.nytimes.com/2020/04/01/opinion/coronavirus-viral-dose.html>.

⁴ *Id.*

⁵ See Patrick Henry, *WHO: ‘No Evidence’ That COVID-19 Antibodies Protect From Potential Re-infection*, Bloomberg (Apr. 25, 2020), available at <https://time.com/5827450/who-coronavirus-antibodies-reinfection/>

15. Plaintiffs ask this Court to issue a Writ of Habeas Corpus and order their immediate release, subject to appropriate precautionary public health measures, such as home isolation or quarantine as appropriate for their situation, on the ground that their continued detention violates the Due Process Clause of the U.S. Constitution. In the alternative, Plaintiffs ask this Court to issue injunctive relief ordering Defendants to release them immediately, with appropriate precautionary health measures, on the grounds that their continued detention violates the Due Process Clause.⁶

PARTIES

16. **Mory Keita** is a 33-year-old Guinean man who was detained in Morrow until released pursuant to a TRO granted by this court on April 27, 2020. Mory is now safely quarantining at the home of his friend in Columbus, Ohio. Mory has asthma and had experienced coughing, wheezing, difficulty breathing, and increased anxiety while held at Morrow.

17. **Sidi Njie** is a 34-year-old Gambian man who was detained in Morrow until released pursuant to a TRO granted by this court on April 27, 2020. Sidi is now safely quarantining at his home in Columbus, Ohio. Sidi was diagnosed with thyroid cancer in 2013, and had been denied his medication and necessary follow up treatment while detained at Morrow.

18. **Adenis Enrique Prieto Refunjol** is a 46-year-old Venezuelan man who was detained in Butler until released pursuant to a TRO granted by this court on April 27, 2020. Adenis is

⁶ In the eight days since Original Plaintiffs filed their Petition, the facts at Morrow have changed rapidly and continue to change by the hour; the situation is therefore already materially more severe than described in the original Petition, ECF No. 1. Plaintiffs file this Amended Petition to put the new, relevant facts before the Court on an emergency basis, and incorporate by reference all of the still-relevant facts listed in ECF No. 1.

now safely quarantining at a hotel before rejoining his family. He suffers from bronchial asthma and hypertrophic hypertensive cardiopathy.

19. **Jesus Manuel Chavez Rodriguez** is a 35-year-old from Mexico. He has a history of testicular cancer and has chronic Hepatitis C, which puts him at a higher risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.
20. **Mohamed Abdi** is a 23-year-old from Uganda. Mohamed has had asthma his entire life. He has always relied on an inhaler, until now, because Morrow will not provide him with one. His asthma puts him at a higher risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.
21. **Abdiaziz Mohamud** is a 26-year-old from Kenya, who is also a citizen of Somalia. He is an overweight individual, which puts him at higher risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.
22. **Jose Misael Navarro-Gonzalez** is a 29-year-old from El Salvador. He has a serious traumatic brain injury, and as a result suffers from short-term memory loss, severe migraines, and is blind in one eye. He also suffers from poor vision in his good eye, which forces him to touch surfaces to get around. His migraines are triggered by the bright lights in his pod, which he is unable to avoid. On May 1, 2020 he tested positive for COVID-19.
23. **Neptune Pierre** is a 39-year-old man from Haiti. He suffers from heart disease, which puts him at higher risk for serious health complications or death with COVID-19. He tested positive for COVID-19 on May 1.

24. **Alexis Ramirez Portillo** is a 20-year-old from El Salvador. He has suffered from respiratory problems for most of his life, which puts him at higher risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.
25. **Jorge Salas-Marin** is a 25-year-old from Mexico. He suffers from asthma which puts him at greater risk for serious health complications or death with COVID-19. He tested positive for COVID-19 at the end of April and has been held in the isolation dorm with other sick individuals ever since.
26. **Juan Antonio Conteras-Moran** is a 22-year-old from Mexico. He was recently shot, and the bullet punctured an artery in his heart, which puts him at higher risk for serious health complications or death with COVID-19. He continues to suffer from serious pain and complications from this incident. Juan was the first individual in Morrow County jail to test positive and move to the isolation unit; he has now been confined there for two weeks. By now, his symptoms have ceased, but he remains in the group dorm.
27. **Majdi Rabee** is a 41-year-old from Palestine. He suffers from asthma. His asthma puts him at a greater risk for serious health complications or death with COVID-19. He tested positive for COVID-19 in late April and has been held in the isolation dorm ever since. He was, but is no longer, presenting symptoms consistent with COVID-19.
28. **Antonio Aparicio-Luna** is a 37-year-old from Mexico. He suffers from high blood pressure and kidney stones, which puts him at greater risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.

29. **Kevin Rivera Rodriguez** is a 24-year-old from Honduras. On May 1, 2020 he tested positive for COVID-19.
30. **Fabian Santiago Silva** is a 38-year-old from Mexico. He has been diagnosed with pre-diabetes. On May 1, 2020 he tested positive for COVID-19.
31. **Osman Faghi Haji** is a 32-year-old man from Saudi Arabia. He tested positive for COVID-19 on May 1, after many days of experiencing flu-like symptoms.
32. **Jose Luis Vergara Patino** is a 19-year-old from Mexico. Jose had asthma and lung damage due to tuberculosis as a child, which puts him at higher risk for serious health complications or death with COVID-19. He tested positive for COVID-19 on May 1.
33. **Salvador Garcia** is a 35-year-old from Mexico. Mr. Garcia tested positive for tuberculosis four months ago and has been denied his medication while detained at Morrow, which puts him at higher risk for serious health complications or death with COVID-19. He tested positive for COVID-19 on May 2.
34. **Ronaldo Balfour** is a 22-year-old from Jamaica. He suffers from asthma and has used an inhaler throughout his life, but has been denied access to one at Morrow. His asthma puts him at a higher risk for serious health complications or death with COVID-19. He tested positive for COVID-19 on May 2.
35. **Eduardo Alicandro-Marquez** is a 28-year-old from Mexico. While in detention, he developed symptoms consistent with COVID-19, including headaches, body and bone aches, shaking, and irritation in his nose. On April 24, he was moved to the isolation dorm where he still is with other sick people. But he did not test positive for COVID-19.
36. **Dave Alvarenga Vasquez** is a 34-year-old man from El Salvador. He is diabetic, but has not been receiving necessary treatment or blood sugar monitoring at Morrow, which puts

him at higher risk for serious health complications or death with COVID-19. He is suffering from headaches and body pain. He tested positive for COVID-19 on April 30, was moved to the isolation dorm, and has not been tested since.

37. **Alberto Perez Arreaga** is a 66-year-old from Guatemala, who suffers from a chronic liver condition, which puts him at higher risk for serious health complications or death with COVID-19. He has exhibited symptoms of COVID-19 including weakness, but does not know whether he is positive.
38. **Jermaine Bell** is a 34-year-old Jamaican man who still suffers complications from ten simultaneous gunshot wounds he suffered in 2004. He tested positive for COVID-19 on May 1.
39. **Respondent-Defendant Rebecca Adducci** is the Detroit District Director of ICE. Her District comprises Ohio and Michigan. In that position, she is responsible for carrying out ICE's immigration detention operations at Butler and Morrow Jails. Defendant Adducci is a legal custodian of Plaintiffs, and the proper respondent for a habeas petition. *See Roman v. Ashcroft*, 340 F.3d 314, 321 (6th Cir. 2003). She is sued in her official capacity.
40. **Respondent-Defendant ICE** is a federal law enforcement agency within the U.S. Department of Homeland Security. ICE is responsible for criminal and civil enforcement of immigration laws, including the detention and removal of immigrants. Enforcement and Removal Operations, a division of ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiffs.

JURISDICTION AND VENUE

41. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 2241 (habeas

jurisdiction) and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

42. Venue lies in the U.S. District Court for the Southern District of Ohio, the judicial district in which Plaintiffs are currently in custody. Venue is proper in the Southern District of Ohio under 28 U.S.C. § 1391, as venue is proper in any district in which a substantial part of the events or omissions giving rise to the claim occurs.

FACTS

A. Plaintiffs are at high risk of experiencing a severe form of COVID-19

43. Worldwide, nearly 250,000 people have now died from COVID-19, and this number is likely an undercount due to limited testing capabilities across the world and in the United States.⁷

44. At the Morrow County jail, Plaintiffs have all had some level of concentrated exposure to the virus; although thankfully, upon information and belief, no detainee there has yet died.

45. According to the CDC, there are categories of individuals who are at a higher risk for severe illness if they contract COVID-19.⁸ These categories include those with specific underlying medical conditions, people aged 65 years or older, and “[p]eople who live in a nursing home or long-term care facility.”⁹

⁷ Johns Hopkins University of Medicine, *COVID-19 Dashboard by the Center for Systems Science and Engineering at Johns Hopkins University*, <https://coronavirus.jhu.edu/map.html> (last visited May 3, 2020).

⁸ Centers for Disease Control, *People Who Are at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited May 3, 2020).

⁹ *Id.*

46. Every single New Plaintiff is in a high-risk category that puts them at greater risk for severe illness, because each new Plaintiff is confined to a long-term care facility.

Unfortunately, many of the new Plaintiffs have also already tested positive for COVID-19, and are being confined to a pod—a dorm style room—with many others who have also tested positive and/or are at different stages of the virus. Further, many suffer from underlying medical conditions that additionally place them at high risk for severe illness.

47. Both of the pods in which Plaintiffs are confined are enclosed environments without windows that are capable of opening. Plaintiffs are in constant close proximity to other detainees. Detainees continue to eat meals together communally, use one shared water fountain, and are, only as of recently, provided soap. Each pod they are confined in has rows of beds that are so close together, it is possible to touch multiple beds from one's own bed. Each pod also has just one bathroom, each with toilets and one shower room. They also each have a phone, which every detainee in the pod shares. In the isolation dorm, detainees were not provided new clothes for over a week, and staff, too frightened to enter, has stopped cleaning the pod, and detainees have not been provided with sufficient materials to clean the pod themselves. According to multiple Plaintiffs, the bathroom has become "disgusting." As Plaintiff Mohamed Abdi notes, "I feel like we are being set up to die."

48. Congregate settings are not just tinderboxes for contagion, scientists believe they also put individuals at greater risk of suffering more severe complications of COVID-19. The social distancing that Plaintiffs have been denied the ability to practice not only protects against initial exposure to COVID-19, it also helps minimize the intensity of continued viral load exposure which scientists believe can cause individuals to experience a more

dangerous form of the disease.¹⁰ “As with any other poison, viruses are usually more dangerous in larger amounts.”¹¹ Therefore, scientists believe viral dose amounts affect illness severity.¹² And yet, each new Plaintiff is currently confined with other individuals who have also tested positive for COVID-19 and are at different stages of the virus. As a result, each detainee is being dangerously exposed to a high viral load, and also contributing to other detainees’ excess viral load exposure.

49. Patients with severe cases of COVID-19 may require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care. That treatment can require the use of specialized equipment, like ventilators.
50. Patients who do not die from serious cases of COVID-19 may face permanent damage to their health and/or prolonged recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity. COVID-19 can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and it can damage tissues in other vital organs including the heart and liver.

B. Plaintiffs are being denied adequate medical care

51. Detainees are only getting their temperature checked, at most, twice per day; once in the morning and once in the evening. To date, Plaintiffs have only been treated with Tylenol, which has only recently been made available. Plaintiffs with asthma are still being denied access to inhalers. Multiple Plaintiffs have described begging for help, either for

¹⁰ *Id.*

¹¹ Joshua Rabinowitz & Caroline Bartman, *These Coronavirus Exposures Might be the Most Dangerous* (April 1, 2020), available at

<https://www.nytimes.com/2020/04/01/opinion/coronavirus-viral-dose.html>.

¹² *Id.*

themselves or for another detainee, due to shortness of breath or some other serious symptom. Multiple Plaintiffs have described that their desperate pleas for help fell on deaf ears; on more than one occasion, no staff member responded.

52. Some Plaintiffs will undoubtedly need access to health care more significant than the healthcare that the jail is providing or is able to provide.
53. The pandemic has put ventilators and other medical equipment in high demand and short supply around the world and has led to severe shortages of personal protective equipment (“PPE”) such as face masks and gowns. To allow hotspots for illness to incubate, especially when staff and guards carry the disease out into their communities to spread, creates a risk for those outside the facility as well, and increases the likelihood that there will be insufficient supplies for all individuals needing care.
54. For all of the above reasons, leading public health experts are recommending the prompt release of detainees from custody. This both protects those with the high vulnerability to severe illness and also ameliorates risk for all people detained or working in jails, as well as people in their surrounding communities. Release also reduces the burden on the region’s limited health-care infrastructure, as it lessens the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time and exhaust the available resources.

C. Plaintiffs are at grave risk and can be safely released, protecting them and the public.

55. Each New Plaintiff has a safe release plan which will allow them to self-isolate pursuant to CDC guidelines in order to protect themselves and their greater communities, and subsequently follow CDC and ODH general stay-home protocols.

56. Release will not only allow for Plaintiffs to protect themselves from a lethal viral load of COVID-19, it will also provide them the opportunity to, if necessary, seek the proper medical attention they are denied at Morrow. Plaintiffs with asthma will once again have access to inhalers, and those experiencing chest tightness will have the opportunity to be checked by emergency professionals. All Plaintiffs will be able to manage any symptoms and mitigate further harm with tools beyond water and Tylenol.

57. **Jesus Manuel Chavez Rodriguez** is a 35-year-old Mexican man detained at Morrow. He has a history of testicular cancer and has chronic Hepatitis C, which puts him at a greater risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.

58. Jesus has lived in the United States since 2010 and is married to a Legal Permanent Resident of the United States. Together, they have a U.S. citizen child who is suspected of having autism. Jesus was scheduled for a Master Calendar video conference hearing on April 22, 2020. However, ICE failed to transport him to Butler from Morrow so his hearing date was continued. It is now set for May 18, 2020 and will be the first opportunity he has to ask for release on bond. Jesus's only criminal history is a currently pending domestic violence charge that his wife has repeatedly denied and is actively attempting to have dismissed. His wife attests that his charge was a misunderstanding and he never should have been arrested. If he is released, he will be able to self-isolate for a necessary period of time, and when safe, can then live with his sister in Whitehall, Ohio, and ultimately with his wife and son in Covington, Kentucky once the charge is dropped.

59. **Mohamed Abdi** is a 23-year-old from Uganda. Mohamed has had asthma his entire life. He has always relied on an inhaler, until now, because Morrow refuses to supply him

one. His asthma puts him at a greater risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.

60. He is a citizen of Somalia through lineage, and learned that ICE is trying to deport him to Somalia, even though he has never been there. Mohamed was detained by ICE after successfully completing a sentence for robbery. While incarcerated, Mohamed completed his GED, earning his high school diploma. He also started taking college courses through Sinclair Community College, but was released early for good credit time.

61. Mohamed believes that ICE is waiting to secure his travel documents before deportation. Mohamed is willing to be deported to Somalia, although he has never been there, because he is so anxious about dying in Morrow. But if released, Mohamed could stay with his aunt who is a U.S. citizen at her home in Columbus, Ohio, where he could safely self-isolate until it became safe for him to interact with others.

62. **Abdiaziz Mohamud** is a 26-year-old from Kenya, who is also a citizen of Somalia. He is an overweight individual who, the last time he weighed himself, weighed 290 pounds, which puts him at greater risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.

63. Abdiaziz was detained by ICE after successfully completing a sentence for robbery. While in prison, Abdiaziz completed a rehabilitation readiness program, so that he would be prepared to reintegrate. Instead, he was detained by ICE upon his release.

64. He is not sure about the status of his immigration claims.

65. If released by ICE, he would return home to live with his mother, a U.S. citizen, in Columbus, Ohio, where he would be able to self-isolate for a safe duration of time.

66. **Jose Misael Navarro-Gonzalez** is a 29-year-old from El Salvador. He has a serious traumatic brain injury, and as a result suffers from short-term memory loss, severe migraines, and is blind in one eye. He also suffers from poor vision in his good eye, which forces him to touch surfaces to get around. His migraines are triggered by the bright lights in his pod, which he is unable to avoid. On May 1, 2020 he tested positive for COVID-19.
67. His stay of deportation was denied, which his attorney has appealed. He submitted a humanitarian parole request but has not heard back from ICE. He is represented by Case Western Reserve University School of Law's Immigration Clinic and is connected with the Collective Action for Laborers, Migrants & Asylum Seekers as well as Freedom for Immigrants. His only criminal history is a 10-year-old second degree assault charge from Maryland.
68. If released, he would be able to self-isolate for a necessary period of time at a hotel and then live with his friend Wilson in Dayton, Ohio.
69. **Neptune Pierre** is a 39-year-old man from Haiti. He suffers from heart disease and high blood pressure. He tested positive for COVID-19 on May 1.
70. Mr. Pierre entered the United States on a visa in January of 2018. He has applied for asylum and recently filed an appeal of the denial of his claim. He has been in ICE custody since October, 2019.
71. If released, he would be able to live with his cousins, U.S. citizens, in Columbus, Ohio. He would be able to self-isolate in his own private space for the necessary period of time, and then would continue to follow Ohio's Stay Home Order.

72. **Alexis Ramirez-Portillo** is a 20-year-old from El Salvador. He has suffered from respiratory problems for most of his life, for which he sought treatment in El Salvador. His respiratory problems put him at a greater risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.
73. Alexis has no criminal history whatsoever. He was detained by ICE when he went for one of his required check-ins at the ICE office even though he had not violated his recognizance order. His attorney is in the process of reopening his asylum claim, and Alexis has withdrawn his voluntary departure plea.
74. If released, Alexis would live at his friend Fabio's home in Columbus, Ohio where he would isolate himself until it became safe to interact with others, and then would continue to follow Ohio's Stay Home Order.
75. **Jorge Salas Marin** is a 25-year-old from Mexico. He suffers from a respiratory disorder which puts him at greater risk for serious health complications or death with COVID-19. He tested positive for COVID-19 at the end of April and has been held in the isolation dorm with other sick individuals ever since.
76. He has a final removal order, but has not been deported due to COVID-19. He was detained by ICE when he was in a car accident; he has been charged with leaving the scene of that accident, and is represented by the Franklin County Public Defender. Other than this, Mr. Marin's only criminal history is driving-related offenses for which he has served his time, if any, in addition to criminal reentry, for which he is on community control and would report consistent with any release order.
77. If released, he would be picked up and live with his long-time girlfriend Daisy, who is a U.S. citizen. At her home, he would isolate himself until it became safe for him to

interact with others, and he could access medical care if needed, and follow all of the state's directives.

78. **Juan Antonio Contreras Moran** is a 22-year-old from Mexico. He was recently shot, and the bullet punctured an artery in his heart. He continues to suffer from serious pain and complications from this incident, including occasional paralysis in his left arm. On May 1, 2020 he tested positive for COVID-19.
79. He does not know the status of his immigration claims, but he is trying to apply for a youth visa.
80. His only criminal history is a 2019 OVI conviction, in addition to an improper handling of weapon charge for which he was released pretrial. As soon as he was released, ICE detained him.
81. If released now, he would stay with his friend Jose in Columbus, Ohio where he could safely self-isolate for any necessary period and follow all state directives.
82. **Majdi Rabee** is a 41-year-old from Palestine. He suffers from asthma. His asthma puts him at a greater risk for serious health complications or death with COVID-19. He tested positive for COVID-19 in late April and has been held in the isolation dorm ever since.
83. He has been held in ICE detention for over a year. He has a final removal order, but ICE has been unable to secure travel documents to deport him to Palestine. Majdi has a burglary conviction from 2016 for which he served his sentence, and traffic violations. He was told by ICE that he would be released, but he remains at Morrow.
84. If released, he would live with his mother who has a green card and his daughter who is a U.S. citizen, in Mansfield, Ohio, where he would self-isolate for a safe amount of time, then continue to reside according to Ohio's Stay Home Order.

85. **Antonio Apaicio-Luna** is a 37-year-old from Mexico. He suffers from high blood pressure and kidney stones, which puts him at greater risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.

86. Antonio does not know his current immigration status, and is seeking immigration counsel because he wants to remain in the United States. He believes he has a final removal order, but is not sure.

87. Antonio has a 2009 OVI conviction as well as a pending OVI charge. He also has a prior conviction for illegal reentry.

88. If released, Antonio would live with his friend Bethany, a U.S. citizen, at her home in Columbus, Ohio where he would be able to self-isolate as long as necessary. He would comply with any reasonable conditions of release, and with Ohio's Stay Home Order.

89. **Kevin Rivera Rodriguez** is a 24-year-old from Honduras. On May 1, 2020 he tested positive for COVID-19.

90. He has a removal order that his attorney is working to appeal. Both of his brothers were murdered in Honduras, including one brother who was wheel-chair bound and was shot while Kevin was taking him for a walk—the partial basis for his petition to remain in the United States.

91. Kevin's only criminal history is a conviction for reckless driving, which was just resolved via a plea in absentia.

92. If released, Kevin would first go to a hotel to self-isolate safely for as long as necessary. He would then return home to his mother who lives in Columbus, Ohio and continue

acting as her primary caregiver, as soon as he is well. In her home, he would comply with Ohio's Stay Home Order and any other necessary conditions of release.

93. **Fabian Santiago Silva** is a 38-year-old from Mexico. He has been diagnosed with pre-diabetes, which puts him at a greater risk for serious health complications or death with COVID-19. On May 1, 2020 he tested positive for COVID-19.

94. Fabian is represented in immigration proceedings, and brought a cancellation of removal claim on which he did not prevail. He appealed to the Board of Immigration Appeals, and in April learned that the Board is upholding the denial. He is still working with his attorney because his hope is to remain in this county with his two U.S. citizen sons.

95. His only criminal history other than traffic violations is a disorderly conduct conviction and illegal re-entry.

96. If he were released, he would be picked up by his son who is a U.S. citizen and brought back to his own home in Columbus, Ohio where he could self-isolate safely, and then continue to comply with Ohio's Stay Home Order.

97. **Osman Faghi Haji** is a 32-year-old man from Saudi Arabia. He tested positive for COVID-19 on May 1, after many days of experiencing flu-like symptoms.

98. Osman was detained by ICE after completing a four-year sentence for felonious assault, his only felony conviction.

99. He believes he has a final removal order but is not sure. He believes ICE is attempting to deport him to Somalia, where he has never been, but has lineage citizenship.

100. Osman is married to a U.S. citizen and has three U.S. citizen children all of whom reside in California. If Osman is released, he will isolate himself at a hotel pursuant to CDC guidelines, and subsequently is able to stay at a room at the Somali Community

Association of Ohio community center, where he can stay as long as he needs. He will continue following Ohio's Stay Home Order as well as any reasonable conditions of release.

101. **Jose Luis Vergara Patino** is a 19-year-old from Mexico. Jose had asthma and lung damage due to tuberculosis as a child, which puts him at a greater risk for serious health complications or death with COVID-19. He tested positive for COVID-19 on May 1.
102. Jose came to the United States legally with his family when he was 12 years old. He has been a lawful permanent resident since 2012. Last year, he graduated from high school and hopes to become a police officer when he grows up.
103. Just after turning 18 years old, Jose was convicted of unlawful sexual contact with a minor, a misdemeanor, for having consensual sex with someone underage. This is his only criminal history, and what caused him to be detained by ICE. He now has a final removal order and is preparing to be deported to Mexico.
104. If released, Jose will live with his twin sister and mother, both of whom are lawful permanent residents, at their home in Fairfield, Ohio. There, he would be able to self-isolate for a safe period of time and subsequently comply with Ohio's Stay Home Order.
105. **Salvador Garcia** is a 35-year-old from Mexico. Salvador tested positive for tuberculosis four months ago but has been denied medication while detained at Morrow. Due to his tuberculosis, he is at greater risk for serious health complications or death with COVID-19. He tested positive for COVID-19 on May 2.
106. He is a longtime resident of Ohio, where he owns a trucking business. He has not had an immigration hearing yet, and hopes to obtain counsel to challenge his removal so that he can remain here.

107. Mr. Garcia completed a sentence after 2004 charges related to possession with intent to distribute. In 2019, he plead guilty to a misdemeanor restraint charge, which resulted in no U.S. jail time, but led to his current detention by ICE.

108. If released, he would reside with his friend Matthew, a U.S. citizen, who lives in Mansfield, Ohio. He would be able to isolate himself for a safe period of time, then comply with Ohio's Stay Home Order.

109. **Ronaldo Balfour** is a 22-year-old from Jamaica. He suffers from asthma and has used an inhaler throughout his life, but has been denied access to one at Morrow. His asthma puts him at a greater risk for serious health complications or death with COVID-19. He tested positive for COVID-19 on May 2.

110. On April 29 and May 2, Ronaldo suffered breathing attacks but was not provided any medication to alleviate his symptoms.

111. Ronaldo, a trained chef, came to the United States in 2017 on a valid B2 visa to live with his godmother and to pursue his dream of opening a restaurant. He has since married a U.S. citizen. He is in the process of applying for a green card and wants to remain in the U.S.

112. Ronaldo has one prior criminal conviction, a misdemeanor for disorderly conduct.

113. If Ronaldo is released he can return to living at his godmother's house in Covington, Kentucky (outside of Cincinnati), where he can self-isolate in his own bedroom in the basement for a safe period of time, then continue to follow Ohio's Stay Home Order.

114. **Eduardo Alicandro Marquez** is a 28-year-old from Mexico. He entered the jail healthy, but while in detention, he has developed symptoms consistent with COVID-19, including headaches, body and bone aches, shaking, and irritation in his nose. He has tested

inconclusive for COVID-19. Despite this, he was moved to the jail's quarantine dorm with the sickest people, and is still held there.

115. Eduardo has been in the United States since 2017. He resides full time in Georgia, as does most of his extended family. He was visiting Ohio to work a construction job when he was detained by ICE after being arrested for an OVI.

116. He does not have any immigration papers, and is now awaiting deportation. He has no other prior criminal history in the 3 years he has been in the United States.

117. Eduardo was originally told that he would be deported on Tuesday, April 14th. That deportation never happened, and he was transferred to Morrow Jail on April 16th, and he has been there ever since.

118. If he is released, his family and friends plan to purchase him a hotel room in Columbus, Ohio where he would be able to safely isolate himself for the requisite period of time. His family from Georgia will travel to Ohio to stay with him, and ensure he is receiving proper medical care. Eduardo's friend, Mario, will see that he has food and proper medical care.

119. **Dave Alvarenga Vasquez** is a 34-year-old man from El Salvador. He is diabetic, but has not been receiving necessary treatment or blood sugar monitoring at Morrow. His diabetes puts him at a greater risk for serious health complications or death with COVID-19. He is suffering from headaches and body pain. He tested positive for COVID-19 on April 30 after experiencing symptoms for days.

120. Dave understands he is supposed to be deported to El Salvador, but he has not heard any details about whether or when that will occur, and he believes that the airports in that country are currently closed. In the meantime, he has been in ICE custody since December 2019.

121. Dave's only criminal history is a 2011 misdemeanor assault, a more recent open container, and a disorderly conduct charge.
122. He is married to a U.S. citizen, and together they have four children in Loveland, Ohio. If released, he can rejoin his family and self-isolate at their home as long as necessary, follow all state directives, and comply with any other reasonable conditions of release.
123. **Alberto Perez Arreaga** is a 66 year old man from Guatemala, who suffers from a chronic liver condition which puts him at a greater risk for serious health complications or death with COVID-19. He has exhibited symptoms of COVID-19 including weakness, but he does not know whether he has tested positive.
124. Alberto is pursuing an asylum claim based on death threats he experienced in Guatemala, and he is represented by counsel in those proceedings.
125. ICE detained him after a car accident, as a result of which he paid a fine. He has no other criminal history in the United States besides one other non-criminal traffic accident.
126. If released, Alberto will be able to return to his own home in West Chester, Ohio to live with his wife, son, and grandchildren. There he will be able to safely quarantine himself in his own room, before fully rejoining his family, and comply with all other state directives and reasonably conditions of release.
127. **Jermaine Bell** is a 34-year-old Jamaican man who still suffers complications from ten simultaneous gunshot wounds he suffered in 2004. He tested positive for COVID-19 on May 1.
128. Jermaine came to the U.S. on a valid visitor visa in 2016, but was also fleeing gang violence in Jamaica. He has appealed the denial of his asylum claim, and is in the process of retaining immigration counsel.

129. Jermaine has a conviction for money laundering and possession of criminal tools, and no other criminal history.

130. If released, he would be able to self-isolate at the home of his U.S. Citizen friend Jeff in Springfield, Ohio, for a safe period of time, and follow all state directives and reasonable conditions of release.

131. Because every Plaintiff can be safely released to a quarantined or isolated environment as necessary, but still looked after and accountable to friends, family, or community members, none is a flight risk. None has a criminal history that indicates they are dangerous to themselves or others. It is their continued detention that is dangerous for all.

LEGAL BACKGROUND

A. Plaintiffs have a Constitutional Right to Reasonable Safety in Custody

132. “[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As civil detainees, Plaintiffs’ detention is governed by the Fifth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). Under the Fifth Amendment, civil detention may not “amount to punishment of the detainee.” *Bell*, 441 U.S. at 535.

133. New Plaintiffs each have COVID-19, likely have it, or are imminently going to get it. They are being denied medical care. They are constantly exposed to each other, and to staff from the outside community. Their continued confinement with each other increases the likelihood that they will develop a severe form of the virus which can lead to serious injury or death. Thus, their confinement cannot be “reasonably related to a legitimate governmental objective”; instead it is “arbitrary or purposeless[.]” *See Bell*, 441 U.S. at 539; see also *J.H. v. Williamson Cty., Tennessee*, 951 F.3d 709 (6th Cir. 2020) (applying

Bell test to pre-trial detainee’s conditions of confinement claim); *Turner v. Stumbo*, 701 F.2d 567, 572 (6th Cir. 1983) (same).

134. The only appropriate remedy for such a violation is release. See *Wilson, et al. v. Williams, et al.*, 6th Cir. No. 20-347 (May 4, 2020) (upholding injunction directing release from infected federal prison where petitioners properly alleged that “no set of conditions would be constitutionally sufficient” given the circumstances).

135. Plaintiffs’ detention is not “reasonably related” to its objective because it creates a serious risk of imminent illness and death. See *Bell*, 441 U.S. at 539. This risk is urgent, imminent, and unrelated to any legitimate governmental goal, as several federal courts have already held. See, e.g., *Malam v. Adducci*, No. 20-10829, —F. Supp.3d. —, 2020 WL 1672662, at *12 (E.D. Mich. Apr. 6, 2020); *Xochihua-Jaimes v. Barr*, No. 18-71460, —F. App’x. —, 2020 WL 1429877 at *1 (9th Cir. Mar. 24, 2020) (sua sponte ordering immediate release of immigrant petitioner “[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers”); *Thakker v. Doll*, No. 1:20-cv-480, —F. Supp.3d. —, 2020 WL 1671563, at *8 (M.D. Penn. Mar. 31, 2020) (ordering immediate release of immigrant petitioners because “we can see no rational relationship between a legitimate government objective and keeping Petitioners detained in unsanitary, tightly-packed environments.”).

136. When the government fails to meet its obligation to provide adequate medical care, courts have a responsibility to remedy the resulting constitutional violation. See *Brown v. Plata*, 563 U.S. 493, 511 (2011) (“When necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.”). The power to

remedy constitutional violations arising from government confinement falls within the Court's broad power to fashion equitable relief. *See Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978).

137. To vindicate detainees' due process rights in the face of the COVID-19 pandemic, federal and state courts across the country have ordered the release of detained individuals. *See, e.g., Malam*, 2020 WL 1672662.

B. ICE Has the Authority to Release Detained People in Its Custody

138. It is well within ICE's authority to comply with constitutional requirements by releasing people who are vulnerable to severe illness or death if they contract COVID-19. For example, the regulations governing ICE's release authority state that serious medical conditions are a reason to parole an individual, as "continued detention would not be appropriate" in such cases. 8 C.F.R. § 212.5(b)(1).

139. This exercise of discretion comes from a long line of agency directives explicitly instructing officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating against detention.

140. ICE's discretion applies regardless of the statutory basis for a noncitizen's detention. ICE not only has the authority to exercise its discretion to release individuals from custody, but has routinely done so in other jurisdictions—in some places, by large numbers, to depopulate detention centers as a result of the pandemic. But the Defendant Detroit District Director's ICE field office, which controls all of the detainees in Ohio and Michigan, has only released a handful of people out of the hundreds it detains. Upon information and belief, every release among this handful has been the result of an order or pressure from a federal lawsuit.

C. This Court Has the Authority to Order Plaintiffs' Release

141. It is well established that this Court has authority to order Plaintiffs' release to ensure the protection of their constitutional rights. District courts have "ample authority" to address "each element" contributing to a constitutional violation. *Hutto v. Finney*, 437 U.S. 678, 687 (1978).

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

143. Where the government fails to meet its obligations to provide for adequate medical care, courts have a responsibility to remedy the resulting constitutional violation. *See Brown v. Plata*, 563 U.S. at 511. As a result, "[w]hen necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison's population." *Id.*

144. These constitutional principles make clear, consistent with the opinions of leading public health experts, that releasing Plaintiffs is the only viable remedy to ensure their safety during the COVID-19 pandemic. Every single new Plaintiff is in a high-risk category that puts them at greater risk for severe illness, because each new Plaintiff is confined to a long-term care facility. Each new Plaintiff has also tested positive for COVID-19 or will imminently, and is being confined to a pod with many others who have also tested positive and are at different stages of the virus. Further, many suffer from underlying medical conditions that additionally place them at high risk for severe illness. In the face of this great threat, isolation and medical care, or quarantine, as appropriate, and later, social

distancing measures are Plaintiffs' only defense against possibly grave consequences or death. Even social distancing is impossible at Morrow Jail, where Plaintiffs are forced to share close sleeping quarters, toilets, sinks and showers, and to eat and recreate in contained, communal spaces, and are forced to be in close contact with the many other detainees and officers around them. Adequate medical care is likewise impossible to obtain while Plaintiffs stay in this detention facility.

145. If Plaintiffs remain in this jail, they have an increasingly high likelihood of serious illness or death, and increasingly put each other, the staff, and the public at similar risk.

CLAIMS FOR RELIEF

Violation of Fifth Amendment Right to Substantive Due Process

(Unlawful Punishment)

146. Plaintiffs repeat and reallege each and every allegation above, as if set forth in full herein.

147. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government violates this substantive due process right when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment or does not ensure those detainees' safety and health.

148. Defendants are subjecting Plaintiffs to imminent risk of severe illness from COVID-19, for which there is no vaccine, known treatment, or cure. Defendants are subjecting Plaintiffs to a substantial risk of serious harm, in violation of Plaintiffs' rights under the Due Process Clause. Defendants are knowingly creating the danger to which they are subjecting Plaintiffs, and withholding necessary medical care.

149. Leading public health and corrections experts agree that Plaintiffs are at grave risk if they remain at Morrow Jail. Accordingly, Defendants' detention of Plaintiffs amounts to punishment and fails to ensure their safety and health.

150. There is no reasonable relationship between any legitimate government objective and keeping Plaintiffs detained in their current conditions

151. For these reasons, Defendants' ongoing detention of Plaintiffs violates the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- a. Issue a Writ of Habeas Corpus and order Plaintiffs' immediate release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause;
- b. In the alternative, issue injunctive relief ordering Defendants to immediately release Plaintiffs, with appropriate precautionary public health measures, on the grounds that their continued detention violates the Due Process Clause;
- c. Issue a declaration that Defendants' continued detention in civil immigration custody of individuals at increased risk for severe illness, including all individuals in long-term care facilities and persons of any age with underlying medical conditions that may increase the risk of serious COVID-19, violates the Due Process Clause;
- d. Award Plaintiffs their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28

U.S.C. § 2412, and on any other basis justified under law; and

- e. Grant any other and further relief that this Court may deem fit and proper

Date: May 4, 2020

Respectfully submitted,

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**Motion for pro hac vice forthcoming*