

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

[Redacted Name]

Petitioner-Plaintiff,

v.

THOMAS DECKER, in his official capacity as Field Office Director, New York City Field Office, U.S. Immigration & Customs Enforcement; CHAD WOLF, in his official capacity as Acting Secretary, U.S. Department of Homeland Security; and RONALD P. EDWARDS, in his official capacity as Director, Hudson County Correctional Facility,

Respondents-Defendants.

Civil Action No. _____

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

INTRODUCTION

1. [REDACTED] is a civil immigration detainee who, by virtue of his serious medical condition, type-2 diabetes, faces an imminent risk of severe illness or death if he contracts COVID-19 at the Hudson County Correctional Facility (the “HCCF” or “Hudson”), where he is currently detained, and where the virus has already claimed the lives of four staff members and infected 37 detainees and inmates. Despite their knowledge of this enormous risk, Respondents continue to detain Petitioner, at grave risk to his life and health, during this unprecedented public health crisis. Immigration and Customs Enforcement’s (“ICE”) failure to heed the advice of medical experts to release medically vulnerable individuals has created a risk of harm to [REDACTED] that is both unconscionably high and entirely preventable.

2. A growing number of courts in this District and around the country have ordered the immediate release of medically-vulnerable immigration detainees in recent days, recognizing both the enormous risk of harm that COVID-19 creates as well as ICE’s failure to sufficiently abate the risk of harm. *See e.g., Durel B. v. Decker*, Civ. No. 20-3430, ECF No. 34 (D.N.J. Apr. 21, 2020) (McNulty, J.); *Cristian A.R. v. Decker*, Civ. No. 20-3600, ECF No. 26 (D.N.J. Apr. 12, 2020) (Arleo, J.); *Leandro R.P. v. Decker*, Civ. No. 20-3853, 2020 WL 1899791 (D.N.J. Apr. 17, 2020) (McNulty, J.); *Anthony v. Anderson*, Civ. No. 20-3704, ECF No. 22 (D.N.J. Apr. 17, 2020) (Martinotti, J.); *Jeferson V.G. v. Decker*, Civ. No. 20-3644, 2020 WL 1873018 (D.N.J. Apr. 15, 2020) (McNulty, J.); *Rafael L.O. v. Tsoukaris*, Civ. No. 20-3481, 2020 WL 1808843 (D.N.J. Apr. 9, 2020) (Vazquez, J.); *Hope v. Doll*, Civ. No. 20-562, ECF No. 11 (M.D. PA Apr. 7, 2020); *Coronel v. Decker*, ---F. Supp. 3d---, 2020 WL 1487272 (S.D.N.Y. Mar. 27, 2020); *Avendano Hernandez v. Decker*, 20-cv-1589, 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020); *Basank v. Decker*, ---F. Supp. 3d---, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Thakker v.*

Doll, 20-cv-480-EJ, ECF No. No. 47 (M.D. Penn. Mar. 31, 2020); *Bravo Castillo v. Barr*, 5:20-cv-605-TJH-AFM, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020).

3. ██████████ seeks the same relief in light of his pre-existing medical conditions. Packed in close quarters with other detainees and correctional staff, forced to share necessities like showers and telephones with dozens of others, and deprived of basic forms of preventative hygiene, ██████████ is helpless to take the key risk mitigation steps known to limit transmission of the virus. And if he is infected, he faces a heightened risk of severe illness and death within a correctional facility that has a track record of failing to provide adequate medical care even outside times of crisis.

4. Medical experts agree that reducing correctional facility populations is critical to reducing risk during the widespread COVID-19 outbreak, and that officials must first focus on vulnerable populations to reduce harm to the entire population. Failing to heed this medical consensus and against a backdrop of extreme crisis, ICE has not sufficiently exercised its discretion to release medically-vulnerable individuals. Instead, the Acting Director of ICE recently informed Congress that the agency has no plans to release any additional detainees from detention facilities to protect them from becoming ill with COVID-19, because ICE believes that would send a message that the United States is “not enforcing [its] immigration laws” and would encourage people to migrate to the United States.¹ Thus, ICE has conceded it is using civil detention – and putting lives at risk – to deter border crossings.

¹ *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus*, UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND REFORM, <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>, attached as Exhibit A to the Declaration of Katherine Haas (“Haas Decl.,” attached as Exhibit 7 to this Complaint.).

5. Before filing suit, [REDACTED] notified ICE of his medical condition and requested that he be released in light of the harms he will experience if he contracts COVID-19 while detained. Those pleas have fallen on deaf ears. The continued detention of [REDACTED], a high-risk individual, violates his due process rights by subjecting him, a civil detainee, to punitive conditions of confinement and by constituting deliberate indifference to his serious medical needs.

PARTIES

6. Petitioner-Plaintiff [REDACTED] is a 39-year-old man who has been incarcerated by ICE since March 2020 at the Hudson County Correctional Facility. He suffers from type-2 diabetes. Because of his medical condition, [REDACTED] is at high risk for severe illness or death if he contracts COVID-19.

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

8. Respondent-Defendant Chad F. Wolf is named in his official capacity as the Secretary of the Department of Homeland Security. He is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); he supervises Respondent Decker; and is legally responsible for the pursuit of non-citizens' detention and removal. As such, he is a custodian of [REDACTED].

9. Respondent-Defendant Ronald P. Edwards is named in his official capacity as the Director of the Hudson County Correction Facility. In this capacity, he is a custodian of [REDACTED]. His office is located at the Hudson County Correctional Facility, Kearny, NJ.

JURISDICTION & VENUE

10. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (the All Writs Act); 42 U.S.C. § 1983 (Civil Rights Act); and Article I, Section 9, clause 2 of the Constitution (the Suspension Clause). Venue properly lies in this district under both 28 U.S.C. § 1391 and 28 U.S.C. § 2241.

STATEMENT OF FACTS

I. New York and New Jersey are Epicenters of an Exponentially Escalating Global Pandemic.

11. On March 13, 2020, President Trump declared a national emergency in response to the coronavirus pandemic. At the time, there were just over 1,600 confirmed cases in the United States and 46 deaths. Today, over 843,937 cases have been confirmed across the country and COVID-19 has led to the death of at least 46,851 individuals.

12. New York and New Jersey are epicenters of the COVID-19 in the United States with over 359,668 identified cases in New York and New Jersey and 24,603 virus-related deaths.

13. Because the coronavirus that causes COVID-19 is particularly contagious, authorities are taking unprecedented precautions to manage the public health crisis and minimize the transmission of the virus by reducing the opportunity for large groups of people to congregate.

II. The Heightened Risk of Severe Illness or Death from COVID-19 in Jails and Detention Facilities

14. According to Dr. Robert B. Greifinger, who has worked in health care for detained populations for more than thirty years, “the conditions of immigration detention facilities pose a heightened public health risk to the spread of COVID-19, even greater than other non-carceral institutions.” *See* Declaration of Robert Greifinger ¶ 9 (“Greifinger Decl.,” attached as Exhibit 1 to this Complaint); *see also* Declaration of Dora Schriro ¶ 26 (“Schriro Decl.,” attached as Exhibit 2 to this Complaint) (“Based on my years of experience overseeing and managing secure facilities, conditions in immigration detention facilities place people in close contact with one another and allow disease to spread freely.”).

15. When people are in close proximity to each other without an ability to distance themselves, the person-to-person transmission rate for COVID-19 is exponential. By way of example: On March 23, 2020, there were two confirmed cases of COVID-19 among inmates at the Cook County Jail in Chicago, Illinois; on April 1, 2020—eight days later—167 inmates and 34 staff members had tested positive.² Similarly, the chief physician at the Rikers Island jail complex acknowledged that “infections are soaring” at the facility despite allegedly “following Centers for Disease Control and Prevention guidelines.”³ As of April 20, 2020, eight prisoners have died in New Jersey’s correctional facilities.⁴ The outbreak has similarly impacted the

² 167 inmates at Cook County Jail confirmed positive for COVID-19, CHICAGO SUN-TIMES (Apr. 1, 2020), <https://chicago.suntimes.com/coronavirus/2020/4/1/21203767/cookcounty-jail-coronavirus-positive-covid-19>, (Ex. B to Haas Decl.).

³ Miranda Bryant, *Coronavirus Spread at Rikers is a ‘Public Health Disaster’, Says Jail’s Top Doctor*, THE GUARDIAN (Apr. 1, 2020), <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>, (Ex. C to Haas Decl.).

⁴ Joe Hernandez, *Coronavirus update: 8 N.J. prisoners die of COVID-19*, (Apr. 20, 2020), <https://whyy.org/articles/coronavirus-update-8-n-j-prisoners-die-of-covid-19/>, (Ex. D to Haas Decl.).

HCCF, where four staff members have died and over 125 detainees, inmates, and staff members have been infected with COVID-19.

16. The conditions of detention and correctional facilities pose an acute risk for the spread of COVID-19 due to their close quarters, the proportion of vulnerable people detained, lack of medical care resources, and inability to seal off the facility from the outside world, given jail staff still enter and leave the facilities. Greifinger Decl. ¶ 10. On March 23, 2020, the Centers for Disease Control and Prevention (CDC) acknowledged that correctional and detention facilities “present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.”⁵

17. Preventative strategies utilized by the general public, like social distancing and preventative hygiene are not possible in these facilities. Greifinger Decl. ¶ 10.

18. When an outbreak occurs, facilities holding immigrant detainees are ill-equipped to engage in adequate containment and proper medical treatment for sick detainees. Greifinger Decl. ¶ 11 (explaining that many immigration detention centers “lack adequate medical care infrastructure to address the spread of infectious disease and treatment of high-risk people in detention”).

19. Medical experts agree that reducing the number of detainees is a necessary component of risk mitigation. Greifinger Decl. ¶¶ 40-44. Any reduction in detained populations must focus on the most vulnerable detainees, in order to safeguard their health, the health of other detainees and facility staff, and the community as a whole. *Id.*

⁵ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, CENTERS FOR DISEASE CONTROL (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, (Ex. E to Haas Decl.).

20. As medical staff and resources within the facility become overwhelmed, regional hospitals and health centers end up bearing the brunt of providing healthcare for sick detainees, who are disproportionately likely to be those with pre-existing medical vulnerabilities. *Id.* ¶ 42. The rapid spread of an infectious disease like COVID-19 within a detention or correctional facility ultimately results in adverse public health outcomes for the broader community and region.

21. In the face of the current crisis, detention and correctional systems around the country and the world have announced concerted efforts to reduce their detained populations. On March 22, 2020, the New Jersey Supreme Court ordered, on consent, the release of the vast majority of individuals serving county jail sentences, in light of the “profound risk posed to people in correctional facilities arising from the spread of COVID-19.” On April 10, 2020, the Governor of New Jersey similarly ordered the release of individuals from state prison whose age or health status put them at risk of developing life-threatening complications from COVID-19.⁶

22. In contrast, on April 17, 2020, the Acting Director of ICE informed the U.S. House Committee on Oversight and Reform that ICE had completed its review of its existing population and that it does not plan to release any additional detainees currently being held in its detention facilities as a result of COVID-19.⁷ This despite the fact that, as of April 17th, there were 124 confirmed cases of COVID-19 among those in ICE custody, even though *only 400 ICE detainees nationwide* had been tested for the virus, out of approximately 33,000 people in ICE custody. *See* Schriro Decl. ¶ 19. Countless more have undoubtedly been infected. Indeed, as of

⁶ Nicholas Pugliese, *Coronavirus Update: N.J. to Release ‘Low-Risk’ Prisoners*, (Apr. 10, 2020), <https://whyy.org/articles/coronavirus-update-n-j-to-release-low-risk-prisoners/>, (Ex. F to Haas Decl.).

⁷ *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus*, UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND REFORM, <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>, (Ex. A to Haas Decl.).

April 23rd, ICE’s website now confirms that 287 detainees have tested positive—more than double the number of infected cases in just a week. ICE informed the House Committee that a reason that it is not planning on releasing any additional detainees because of COVID-19 is that ICE believes that releasing detainees—even if for the purpose of trying to protect them and others from being infected with COVID-19—could give the impression that ICE is “not enforcing our immigration laws,” which would be a “huge pull factor” and create a “rush at the borders.” *Id.* In the name of deterring future migration, ICE is continuing to play “Russian roulette” with the lives of vulnerable people in its custody. *See Coreas v. Bounds*, No. 20-cv-780 (TDC), ECF. No. 56, at *28 (D. Md. Apr. 3, 2020).

III. The Risks to ██████████ Health are Particularly Acute in the Hudson County Correctional Facility, Where ICE is Detaining Him.

A. Hudson County Correctional Facility Has Confirmed COVID-19 Cases.

23. The New Jersey facility where ██████████ is detained, Hudson County Correctional Facility, is especially vulnerable to rapid transmission of COVID-19 because of the unsanitary and hazardous conditions within the facility and its history of providing poor treatment.

24. The novel coronavirus is rapidly spreading at the HCCF and there are multiple confirmed cases of COVID-19 amongst ICE detainees, jail inmates, and facility staff. *See Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *7 (“It is undisputed that COVID-19 is spreading quickly through the Bergen and Hudson County Facilities.”). As of April 20, 2020, ten ICE detainees, twenty-seven inmates, and eighty-nine staff members had tested positive for COVID-19 at the HCCF. *See Declaration of Ronald Edwards, Arevalo v. Decker*, 2:20-cv-04337, ECF. No. 22-6 ¶ 20(a)-(c) (D.N.J. Apr. 20, 2020). Earlier this month, a corrections

officer, two nurses, and a commissary director who worked at the facility died from COVID-19.⁸ The facility has not provided estimates of suspected positive cases but the number of cases and casualties there is “certain to rise.” *Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *8.

B. The Facility has Unsanitary Conditions and Fails to Provide Adequate Medical Care.

25. ICE detainees at Hudson have also reported that conditions have deteriorated in recent weeks as the facility takes ad hoc and insufficient measures to try to contain transmission, including by widespread and arbitrary use of extreme isolation. Detainees report 23 hour lockdowns during which they are not permitted to leave their cells. During the two 30-minute reprieves that come each day, detainees must choose between showering and calling their family or attorneys. This level of isolation from the outside world is not only draconian, but ineffective, as detainees still share infrequently-sanitized or cleaned common spaces, telephones, and showers when allowed out of their cells. As the Court in *Cristian A.R.* noted, based on the cleaning schedule at the HCCF, “close to *thirty inmates and detainees* pass through common areas, potentially coming into contact with contaminated surfaces before they are routinely cleaned.” *Id.* at *10 n.16 (emphasis added). [REDACTED] reports that when he leaves his cell during these times, he is “surrounded by other people,” only some of who choose to wear masks. Declaration of Bianca Granados ¶ 17 (“Granados Decl.,” attached as Exhibit 6 to this Complaint)

26. When detainees are in their cells, it remains impossible to social distance. Detainees reside in a 10’ x 7’ cell, which apart from the bunk-bed in the room, contains 70.6

⁸ Rodrigo Torrejon, *Hudson County Jail Correctional Officer, 56, Dies from Coronavirus, Police Union Says* (Apr. 2, 2020), available at <https://www.nj.com/coronavirus/2020/04/hudson-county-jail-correctional-officer-56-dies-from-coronavirus.html> (Ex. G to Haas Decl.); Ron Zeitlinger, *Nurse at Hudson County Jail Dies from Coronavirus* (Apr. 5, 2020), available at <https://www.nj.com/hudson/2020/04/nurse-at-hudson-county-jail-dies-from-coronavirus.html> (Ex. H to Haas Decl.); Monsy Alvarado, *Another Hudson County Jail Employee Dies of Coronavirus Complications* (Apr. 8, 2020), available at <https://www.northjersey.com/story/news/new-jersey/2020/04/07/coronavirus-another-hudson-county-nj-jail-employee-dies/2962894001> (Ex. I to Haas Decl.).

square feet to move around. Several detainees, including those who have underlying medical conditions that make them high-risk for developing complications from COVID-19, report that they still share the cell with a cellmate. ██████████ reports that he currently is housed alone in his cell, but has at times in the recent past had a cellmate. Granados Decl. ¶ 15. The facility also still operates “bullpens” of “nine inmates” where new detainee intakes and pre-admission medical screenings of detainees occur. *Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *14. Indeed, recently released guidance from ICE issued on April 10, 2020 acknowledges that “strict social distancing may not be possible in congregate settings such as detention facilities.”⁹ The guidance says that beds should be rearranged, but only “if practicable,” and that six feet of distance should be maintained, but only “whenever possible.” *Id.*

27. Detainees also describe insufficient hand soap, hand sanitizer, and cleaning supplies. While detainees are provided with some soap, at least one has reported that once they run out, requests for additional soap have been ignored or denied. ██████████ reports that he has to buy soap and hygiene products from the commissary, and because his commissary account is currently closed, he will soon run out of soap. Granados Decl. ¶ 16. Accordingly, detainees such as ██████████ spend 23 or more hours in their cells with limited access to soap, making it extraordinarily difficult to consistently “perform the most effective measure of combatting the spread of the virus: washing and disinfecting their hands.” *Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *7. Detainees further report that they are not provided with sufficient, or in some cases, any cleaning supplies for their cells, and that everyone in an entire housing unit is forced to share a single mop if they attempt to clean their space. One detainee has reported that a few

⁹ *COVID-19 Pandemic Response Requirements*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT REMOVAL OPERATIONS, <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf> (Ex. J to Haas Decl.); *see also* Greifinger Decl. ¶ 15 (“ICE facilities have fixed architecture and are designed as congregate settings, requiring many people to be in close proximity.”)

weeks ago, when he was moved to another cell, he found that the “walls were covered in feces” and he still was denied cleaning or cleaning products. Declaration of Sarah Deri Oshiro ¶ 17 (“Oshiro Decl.,” attached as Exhibit 3 to this Complaint).

28. Some detainees also report that facility officials have forbidden them from flushing toilets frequently, and that the showers are not regularly cleaned, adding to unsanitary conditions. *See* Oshiro Decl. ¶ 14. Attorneys who visited the facility prior to the end of contact visits confirmed that there was a lack of hand soap in the visitors’ bathrooms, meaning that visitors would carry in whatever germs they entered the facility with. Detainees also report that they are provided with a single pair of disposable gloves and a single surgical mask to use repeatedly, which limits the effectiveness of these items. This despite the fact that surgical masks “are not intended to be used more than once.”¹⁰ Moreover, the CDC has updated its guidance in light of new evidence of asymptomatic transmission of COVID-19 to recommend that all individuals wear cloth face coverings “in public settings where other social distancing measures are difficult to maintain.”¹¹ The failure of the HCCF to provide sufficient functional protective equipment to its detainees, and failure to require detainees to consistently use it when provided, means that the HCCF is not meaningfully in compliance with this guidance.

¹⁰ *N95 Respirators and Surgical Masks (Face Masks)*, UNITED STATES FOOD & DRUG ADMINISTRATION, <https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/n95-respirators-and-surgical-masks-face-masks> (Ex. K to Haas Decl.).

¹¹ *Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission*, CENTERS FOR DISEASE CONTROL (Apr. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> (Ex. L to Haas Decl.). Likewise, New Jersey Governor Phil Murphy ordered all residents to wear face masks in grocery stores on April 8, 2020. *See New Jersey Orders Residents to Wear Masks in Grocery Stores*, THE HILL (Apr. 8, 2020), <https://thehill.com/homenews/state-watch/491840-new-jersey-orders-residents-to-wear-masks-in-grocery-stores> (Ex. M to Haas Decl.).

29. [REDACTED] also reports that his cell is an “icebox” and that he wears several layers of clothes to try and stay warm. Granados Decl. ¶ 14. He does not have access to a blanket in his cell. *Id.*

30. Further contributing to the elevated risk of harm is the HCCF’s track record of failure to provide adequate and prompt medical care even before the current pandemic. *See* Declaration of Marinda Van Dalen ¶¶ 19-44 (“Van Dalen Decl.,” attached as Exhibit 4 to this Complaint). Examples of inadequate care at this specific facility includes a history of denial of vital medical treatment such as dialysis and blood transfusions; subjecting detainees in need of surgeries to unconscionable delays; altering established treatment regimens; failing to provide necessary mental health services; overuse of solitary confinement; and ignoring repeated requests for care from detainees with serious symptoms. *Id.* ¶¶ 23-37.

31. Unsurprisingly, these deficiencies have been aggravated in the wake of the COVID-19 outbreak. *See* Declaration of Jennifer Durkin ¶ 7 (“Durkin Decl.,” attached as Exhibit 5 to this Complaint). “Detainees report that they are either irregularly receiving medications critical to treating the conditions that put them at a higher risk for severe illness from the virus, like insulin for diabetes, or not receiving those medications at all.” *Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *24. One detainee at the facility, who is a type-2 diabetic, reported that he receives his insulin at inconsistent times each day, often after he has eaten, causing his blood sugar to rise. *Id.* at *14. He also reports that he has not been receiving meals from “a designated-diet menu, originally ordered due to his diabetes, hypertension, and high cholesterol,” but instead receives “regular meals,” and has been told that these are the “only meals available.” *Id.* (quotations and alterations omitted).

32. The Department of Homeland Security’s own Office of the Inspector General also recently reported on the substandard care, long waits for medical care and hygiene products, and

mistreatment in ICE detention facilities.¹² Additionally, at another New Jersey facility, an inmate recently passed away while waiting over an hour for an ambulance to arrive at the facility. *See* Declaration of Laura Rodriguez, *Arevalo v. Decker*, 2:20-cv-04337, ECF. No. 26-3 ¶ 4 (D.N.J. Apr. 20, 2020). It is unclear whether the individual died from COVID-19, but he had a fever and also suffered from numerous underlying health conditions that would have put him at risk of complications related to the virus. *Id.* ¶ 3.

C. ICE’s Recently Enacted COVID-19 Guidelines are Deficient.

33. On April 10, 2020, ICE issued new guidance related to detention conditions during the COVID-19 pandemic (the “April 10 Guidelines”).¹³ While a step in the right direction, these guidelines, which amount to non-binding recommendations,¹⁴ fall “well short” of adequately protecting detainees. Greifinger Decl. ¶ 14. To take just a few examples of the Guidelines’ deficiencies:

34. *First*, as noted above, the April 10 Guidelines acknowledge that consistent social distancing is all but impossible, requiring that six feet of distance be maintained between the facility’s staff and detainees only “whenever possible.”

35. *Second*, with regard to new arrivals, the April 10 Guidelines ask those who have had contact with a confirmed COVID-19 case or those who meet epidemiological risk criteria be quarantined and monitored for 14 days. Greifinger Decl. ¶ 17. This policy utterly fails to

¹² *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf> (Ex. N to Haas Decl.).

¹³ *COVID-19 Pandemic Response Requirements*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT REMOVAL OPERATIONS, <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf> (Ex. J to Haas Decl.).

¹⁴ *Fraihat v. U.S. Immigration and Customs Enforcement*, No. 19-1546 JGB, at *8 (C.D. Ca. Apr. 20, 2020) (“there is a serious question whether the issuance of non-binding recommendations is an objectively ‘reasonable’ response to a pandemic, given the high degree of risk and obvious consequences of inaction.”).

recognize that—particularly because New York and New Jersey are the epicenter of the pandemic—a large share of new arrivals have likely been exposed to COVID-19 and may be asymptomatic carriers. The April 10 Guidelines do not require any quarantine period for such individuals.

36. *Third*, the April 10 Guidelines’ definition of a “high-risk individual”—one who, due to pre-existing conditions, is more susceptible to developing serious illness from COVID-19—does not comport with the guidelines set forth by the CDC. The CDC has recognized that pregnant or postpartum people, people with histories of smoking, those between the ages of 60 and 65, and those with a body mass index over 40 are at a higher-risk, but the April 10 Guidelines fail to include any of these populations in ICE’s criteria for vulnerable individuals. Greifinger Decl. ¶ 16. Moreover, facilities are only required to identify and report the existence of such individuals in the facility, but are not mandated to release them or install any other protective measures. *Id.* At the HCCF, they are detained as a cohort, which actually facilitates rather than reduces the spread of COVID-19 in the absence of adequate social distancing and access to proper hygiene. *Id.*

37. *Fourth*, the April 10 Guidelines do not address the lack of testing in ICE facilities. Although ICE continues to detain more than 32,000 people, only 400 detainees have been tested to date. The absence of testing limits the efficacy of ICE’s isolation procedures. Greifinger Decl. ¶ 18. Much of the April 10 Guidelines contemplates what to do with confirmed cases. Without testing, ICE cannot identify confirmed cases within its facilities, which renders much of the guidelines meaningless.

IV. The COVID-19 Pandemic Presents a Grave Risk of Harm, Including Serious Illness and Death, to Those with Certain Medical Conditions or other Risk Factors.

38. COVID-19 can lead to severe illness, extended hospitalization, and death.

Greifinger Decl. ¶ 4. CDC guidance notes that those at high-risk for severe illness from COVID-19 includes “[p]eople of all ages with underlying medical conditions, particularly if not well controlled.”¹⁵ Underlying medical conditions that may increase the risk of serious COVID-19 for individuals of any age include “blood disorders, chronic kidney or liver disease, compromised immune system, including from HIV, endocrine disorders, including diabetes, metabolic disorders, heart and lung disease, neurological and neurologic and neurodevelopmental conditions, and current or recent pregnancy.” Greifinger Decl. ¶ 7.

39. According to preliminary data from China, 20% of high-risk individuals who contract COVID-19 have died. Greifinger Decl. ¶ 5.; *see also Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *24.

40. Those in high-risk categories who do not die may have prolonged serious illness requiring hospital care, including ventilators that will likely be in very short supply. Greifinger Decl. ¶ 6.

V. [REDACTED] is a Medically-Vulnerable Individual Who Faces a Heightened Risk of Severe Harm if He Contracts COVID-19 While Detained.

41. [REDACTED] faces unprecedented and imminent harm because COVID-19 has been spreading through the HCCF and he does not have the ability to take measures to keep himself healthy.

¹⁵ *Groups at Higher Risk for Severe Illness*, CENTERS FOR DISEASE CONTROL (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (Ex. O to Haas Decl.).

42. [REDACTED] is a 39-year-old man who has been detained by ICE at the Hudson County Correctional Facility since March 2020. [REDACTED] has been treated for his type-2 diabetes since 2016. Granados Decl. ¶ 10. His treating physician from prior to his detention states that his treatment plan involved Metformin twice a day; finger glucose test three times a day; and a strict low carbohydrate diet. *Id.* [REDACTED] has not received a low-carbohydrate diet nor have his blood levels been tested three times per day while at the HCCF. *Id.* ¶ 13. Instead, he is only being served lunch meat, white bread, and canned food. *Id.*

43. [REDACTED] reports that his diabetes has not been properly controlled while in detention, where his condition has worsened and his blood sugar level has become unstable. *Id.* ¶ 11. At one point, his blood sugar became so unstable that the medical team at Hudson had to inject him with insulin—the first time that he has needed an insulin injection in his life. *Id.* When [REDACTED] does not eat his meals at regularly scheduled times, his blood sugar becomes destabilized and puts him at a health risk. *Id.* ¶ 12. This has happened several times while at the facility, and at least one time, he did not receive a meal at all. *Id.*

44. [REDACTED] further reports that, on at least several instances when he has felt unwell, he has had to wait several days before seeing a doctor after putting in a sick call for medical assistance. *Id.*

45. In the fifteen years that [REDACTED] has lived in the U.S., [REDACTED] has been arrested only one time, on March 1, 2020, following an argument with his 13-year-old stepson. *Id.* ¶ 9. The pending charges in Bronx Criminal Court are for misdemeanor assault in the third degree, misdemeanor endangering the welfare of a child, and a non-criminal harassment violation. *Id.* [REDACTED] was released on his own recognizance by the criminal court and is currently fighting this case. *Id.* However, cases in criminal court have been delayed due to the

impact of COVID-19, impairing his ability to resolve his case. *Id.* This is his first and only arrest. *Id.*

46. If released, [REDACTED] would be able to go back home to his wife, a U.S. citizen, and their two U.S. citizen children, ages six and 9 months. His youngest child is currently ill as he suffers from asthma and is currently prescribed antibiotics. *Id.* ¶ 6. [REDACTED]'s wife is a healthcare worker who is not able to take time off of work at this time, as she is considered an essential worker. *Id.* ¶ 7. [REDACTED]'s detention is therefore causing serious hardship to his vulnerable family of U.S. citizens. *Id.*

VI. ICE was on Notice of the Risks of COVID-19 to Medically Vulnerable Detainees.

47. Because [REDACTED] brought his medical conditions to ICE's attention, *see* Granados Decl. ¶ 5, the Defendants had actual knowledge of his high-risk of harm from exposure to COVID-19.

48. Defendants have also long been on notice of the risk that COVID-19 poses generally to persons with certain underlying medical conditions. Indeed, medical experts who work with the DHS Office of Civil Rights and Civil Liberties raised concerns to the Department in February and March 2020.¹⁶ On March 19, 2020, they brought their concerns to the House and Senate Committees on Homeland Security. Allen & Rich Letter at 2. They explained that in order to save both the lives of detainees and in the community at large, "minimally, DHS should consider releasing all detainees in high risk medical groups[.]" *Id.* at 5-6.

49. John Sandweg, a former acting director of ICE, has written publicly about the need to release nonviolent detainees because ICE detention centers "are extremely susceptible to

¹⁶ *See* March 19, 2020 letter from Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH to House and Senate Committees on Homeland Security, available at <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf> [Hereinafter "Allen & Rich Letter"] (Ex. P to Haas Decl.).

outbreaks of infectious diseases” and “preventing the virus from being introduced into these facilities is impossible.”¹⁷

50. Moreover, advocates put Defendants on notice of the risks posed to individuals in New Jersey on March 20, 2020. The April 10 Guidelines also note the severe danger COVID-19 could present to high-risk individuals with underlying medical conditions.

VII. No Other Forum Can Provide Meaningful Relief to Abate the Harm to [REDACTED]

51. Despite the exigent circumstances, ICE continues to improperly deny release or bond to [REDACTED], whose equities and minimal criminal history demonstrate that he is neither a danger to the community nor a risk of flight.

52. ICE has a range of highly effective tools at its disposal to ensure that individuals report for court hearings and other appointments, including conditions of supervision while released.

53. Counsel for [REDACTED], The Bronx Defenders (“BXD”), routinely liaise with ICE officials and with counterparts at the U.S. Attorney’s Office to secure the release of clients with severe medical conditions or other compelling circumstances on conditions or reasonable bond. Consistent with this practice, BXD reached out to the government to identify high-risk clients, including [REDACTED].

CAUSE OF ACTION

Violation of the Right to Substantive Due Process

54. Defendants’ conduct violates [REDACTED] right to substantive due process under the Fifth Amendment of the United States Constitution.

¹⁷ See John Sandweg, “I Used to Run ICE. We Need to Release the Nonviolent Detainees.” THE ATLANTIC (March 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/> (Ex. Q to Haas Decl.).

55. Defendants' conduct violates [REDACTED] right to substantive due process under the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue a Writ of Habeas Corpus on the ground that [REDACTED] continued detention violates the Due Process Clause, and order his immediate release, with appropriate conditions as necessary;
3. In the alternative, issue injunctive relief ordering Defendants to immediately release [REDACTED], with appropriate conditions as necessary, on the grounds that his continued detention violates his due process rights;
4. Issue a declaration that Defendants' continued detention of [REDACTED], who is at increased risk for severe illness from COVID-19, violates the Due Process Clause;
5. Award reasonable attorneys' fees and costs for this action;
6. Grant any other and further relief that this Court deems just and proper.

Dated: April 24, 2020
Highland Park, NJ

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**Petition for permission to file pro hac vice
forthcoming*