UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOSE L. VELESACA, on his own behalf and on behalf of others similarly situated,

Petitioners-Plaintiffs,

v.

THOMAS R. DECKER, in his official capacity as New York Field Office Director for U.S. Immigration and Customs Enforcement; MATTHEW ALBENCE, in his official capacity as the Acting Director for U.S. Immigration and Customs Enforcement; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; CHAD WOLF, in his official capacity as Acting Secretary of the U.S. Department of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; CARL E. DUBOIS, in his official capacity as the Sheriff of Orange County,

Respondents-Defendants.

Case No. 1:20-cv-01803

CLASS PETITION FOR WRIT OF HABEAS CORPUS AND CLASS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This civil rights case challenges the federal government's unlawful, prolonged jailing of thousands of people arrested in the New York City area for civil immigration offenses. Federal law requires that many of the individuals arrested by immigration authorities receive, within 48 hours of arrest, individualized determinations about whether to be released while their immigration proceedings go forward. For years large percentages of those arrested in the New York City area were quickly granted release. With the arrival of the Trump Administration, however, federal immigration officials in New York City dramatically changed their practices, adopting what is in effect a blanket policy of denying release and bond across the board. This policy—which this complaint refers to as the "No-Release Policy"—violates the legal requirement that ongoing

detention be based on assessment of each individual's situation. The No-Release Policy is particularly egregious in light of the fact that the government's own data reveal that many of the jailed individuals present little or no threat to public safety or risk of flight. According to data obtained by the New York Civil Liberties Union under the Freedom of Information Act, from 2013 to June 2017, approximately 47% of those deemed to be low risk by the government were granted release. From June 2017 to September 2019, that figure plummeted to 3%. This dramatic drop in the release rate comes at a time when exponentially more people are being arrested in the New York City area and immigration officials have expanded arrests of those not convicted of criminal offenses. The federal government's sweeping detention dragnet means that people who pose no flight or safety risk are being jailed as a matter of course—in an unlawful trend that is getting worse.

2. Implementation of the No-Release Policy was accompanied by a modification to a risk-assessment tool that immigration officers across the country have used since 2013 to assist with release decisions. By mid-2017, ICE had changed the tool's algorithm to prevent it from recommending that people be released on bond or their own recognizance. Instead, the altered tool can recommend only that an individual be detained without bond or refer the decision to an ICE supervisor, who in ICE's New York Field Office, will almost inevitably order the person detained without bond. Since the 2017 change in the risk-assessment tool, when it recommends detention, the New York Field Office effectively treats that recommendation as binding, departing from it in less than one percent of cases.

3. Once denied release under the new policy, people remain unnecessarily incarcerated in local jails for weeks or even months before they have a meaningful opportunity to seek release in a hearing before an Immigration Judge. While waiting for those hearings, those detained suffer

under harsh conditions of confinement akin to criminal incarceration. While incarcerated, they are separated from families, friends, and communities, and they risk losing their children, their jobs, and their homes. Because of inadequate medical care and conditions in the jails, unmet medical and mental-health needs often lead to serious and at times irreversible consequences. And once hearings before Immigration Judges finally do take place, approximately 40% of people detained by ICE are granted release on bond.

4. The petitioner-plaintiff Jose Velesaca is one of the thousands of people whom ICE officials in New York City have denied an individualized custody determination. Like the rest of the proposed class, he will have spent weeks in detention before being provided a meaningful opportunity to seek release before an Immigration Judge. Mr. Velesaca was arrested on January 30, 2020, and was detained pursuant to the No-Release Policy. He is currently detained at the Orange County Correctional Facility, where ICE rents bed space.

5. The respondents-defendants are responsible for the policy of denying release to virtually everyone the New York Field Office arrests. The policy, which has grievously harmed thousands of people, violates the Immigration and Nationality Act and its implementing regulations, the Due Process Clause of the Fifth Amendment to the United States Constitution, the Administrative Procedure Act, and the Rehabilitation Act. The petitioners seek declaratory and injunctive relief to end respondents' unlawful policy and the enormous and unnecessary harm it inflicts.

PARTIES

6. Petitioner Jose Velesaca was arrested by ICE, denied release pursuant to 8 U.S.C. § 1226(a) by ICE's New York Field Office, and is currently detained at the Orange County Correctional Facility, within the Southern District of New York. ICE has ordered the petitioner detained without bond pursuant to the No-Release Policy.

7. Respondent UNITED STATES DEPARTMENT OF HOMELAND SECURITY ("DHS") is the federal agency responsible for arresting, detaining, and prosecuting people suspected of civil immigration violations, including the petitioners.

8. Respondent CHAD WOLF is the Acting Secretary of DHS. All sub-components of DHS are subject to his control and direction, and he is responsible for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103(a). Respondent Wolf routinely transacts business in the Southern District of New York and is a legal custodian responsible for the arrest and detention of the petitioners. He is sued in his official capacity.

9. Respondent UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT is a subcomponent of DHS responsible for arresting, detaining, and prosecuting people suspected of civil immigration violations, including the petitioners.

10. Respondent MATTHEW ALBENCE is the Acting Director of ICE. ICE is subject to his control and direction, and he is responsible for the administration and enforcement of the immigration laws. Respondent Albence routinely transacts business in the Southern District of New York and is a legal custodian responsible for the arrest and detention of the petitioners. He is sued in his official capacity.

11. Respondent THOMAS R. DECKER is the director of ICE's New York Field Office, which is responsible for ICE activities in New York City and in Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties. Respondent Decker's place of business is in the Southern District of New York, and he is an immediate legal custodian responsible for the arrest and detention of the petitioners. He is sued in his official capacity.

12. Respondent CARL DUBOIS is the Sheriff of Orange County and the official in charge of the Orange County Correctional Facility, which detains individuals suspected of civil

immigration violations pursuant to a contract with ICE. Respondent DuBois is the immediate physical custodian responsible for the detention of the petitioner Jose Velesaca. He is sued in his official capacity.

FACTS

13. The petitioner and the putative class are people in immigration detention arrested by ICE's New York Field Office who are detained pursuant to Section 1226(a) of Title 8 of the United States Code and whom ICE has denied bond or release on recognizance pursuant to the recently adopted No-Release Policy. Under the policy virtually all persons arrested by immigration authorities in the New York City area are denied bond or release without an individualized determination.

14. For people arrested within the jurisdiction of the New York Field Office, ICE's post-arrest processing, including the initial custody determination, generally occurs at the ICE offices in New York City at 201 Varick Street or at 26 Federal Plaza.

15. People who are denied release or bond by the New York Field Office are generally held at one of four county jails that contract with ICE: the Orange County Correctional Facility in New York and the Hudson County Correctional Facility, Bergen County Jail, and Essex County Correctional Facility in New Jersey (collectively "ICE's New York City-area facilities").

Respondents' Initial Custody-Determination Process

16. Under the Immigration and Nationality Act, many of the people whom ICE detains in the interior of the United States are eligible to be released from custody during the pendency of their immigration proceedings. The implementing regulations delegate the Attorney General's authority to grant bond or conditional parole to ICE officers. 8 C.F.R. § 1236.1. As part of this discretionary process, the officer must make an individualized determination about the appropriateness of release based on two factors: that "such release would not pose a danger to

property or persons, and that the alien is likely to appear for any future proceeding." In making this determination, ICE also must consider special vulnerabilities such as disabilities, as it has done in the past. ICE officers are required to make this initial custody determination within 48 hours of arresting someone.

17. In 2013, ICE implemented a risk-assessment tool to assist its officers to make these initial custody determinations. ICE officers input information about the arrested person into the tool, which was originally programmed to generate one of four recommendations: (1) release the person on their own recognizance; (2) authorize release of the person upon posting of bond in a specified amount; (3) defer the decision to the ICE supervisor, or (4) order the person detained. ICE officers and supervisors then determined whether to affirm or override this recommendation.

18. ICE memorializes its custody decision on Form I-286, Notice of Custody Determination, which the agency serves on the detained person. At no point in ICE's post-arrest processing or custody review do detained people have a meaningful opportunity to participate in the decision or to contest their custody status: detained people are not provided a hearing, are not served with the underlying evidence against them, are not provided any resources or materials explaining how they might challenge the custody decision, and are not given access to counsel during this initial processing.

ICE Implements the No-Release Policy

19. ICE began to alter its custody determinations process in 2015, modifying its risk-assessment tool so that it could no longer recommend individuals be given the opportunity for release on bond. In mid-2017, ICE then removed the tool's ability to recommend release on recognizance. As a result, the assessment tool—on which ICE offices across the country rely—can only make one substantive recommendation: detention without bond.

20. In 2017, the New York Field Office doubled down on detention and implemented a blanket policy of denying bond or release without an individualized determination of whether detention was necessary based on flight or safety risks. This policy shift and the reliance on the manipulated risk-assessment tool lead to a categorical denial of bond or release in virtually all cases.

21. Even for individuals who are plainly eligible for release, the New York Field Office makes virtually no exceptions to the No-Release Policy. Though ICE officers may only deny release or bond based on two criteria—risk of flight and danger to the community—the New York Field Office now routinely denies release to people whom ICE's own risk-assessment tool has classified as a low risk of both flight and danger to the community. Between mid-2017, when ICE altered the assessment tool, to September 2019, ICE detained approximately 97% of this low-risk population. The result is that hundreds of people for whom detention is unjustified are being unlawfully deprived of their liberty.

22. Prior to these changes in policy, the New York Field Office conducted individualized custody determinations in many cases, releasing significant numbers of people who posed no risk of flight or danger to the community. In 2013 and 2014, about 40% of all people arrested by immigration officials in the New York City area were released or granted bond; between mid-2017 to September 2019, less than 2% were released on recognizance and under one-tenth of 1% had bond set.

23. The sharp drop in release rates is even more dramatic given the Trump Administration's shift in focus to arresting people with no criminal history and who have resided in the United States for years. Specifically, the No-Release Policy came at a time that the Administration implemented a "zero tolerance" policy that rescinded the Obama Administration's immigration enforcement priorities, which had focused on apprehending noncitizens based on their criminal histories.

Instead, the current policy states that ICE will "no longer exempt classes or categories of removable aliens from potential enforcement." As a result, during the administration's first year in office alone, there was a 334% spike in ICE arrests of noncitizens in New York City with no criminal convictions who have resided in the United States for ten or more years. By the end of 2018, the number of people without criminal convictions arrested by ICE in the New York City area had skyrocketed by 414% from 2016. The percentage of people without criminal convictions constituted an even larger portion of overall arrests in 2019: 36% versus 13% in 2016. If the New York Field Office were actually conducting individualized determinations pursuant to its stated criteria, the percentage of people released should have actually *increased* since 2017 because more people arrested qualified for release.

24. In addition to this change in enforcement priorities, the Trump Administration has vastly expanded its enforcement actions. Since President Trump has taken office, the number of ICE arrests in the New York City area has risen by over one third.

25. As a result of the convergence of these three separate, but related, policy changes, the New York Field Office is now arresting record levels of immigration detainees and ordering them detained without bond, even though an increasing number of them present no danger to the community or risk of flight. In fact, once people detained by ICE receive a bond hearing in front of an Immigration Judge in New York City, approximately 40% ultimately are granted bond.

26. The New York Field Office has provided no explanation—or even acknowledgement—of this sweeping policy change.

Detention Following Denial of Release

27. People who are not released remain incarcerated, at a minimum, until their first appearance before an Immigration Judge. Recently, the average time between a person's arrest and their initial

hearing has fluctuated between several weeks and nearly three months. These hearings take place at the Varick Street Immigration Court, where people detained by the New York Field Office appear by videoconference from the county jail where they are being detained. This initial appearance is generally the earliest point at which a person can request a custody redetermination from the Immigration Judge and win release on bond.

28. For many detained people, however, this first master calendar hearing does not provide a meaningful opportunity to seek bond, particularly if they are not represented by counsel prior to the hearing.

29. A significant percentage of people in immigration detention in the New York City area cannot afford a private attorney or are unable to retain one, and must therefore rely on an attorney from the New York City-sponsored New York Immigrant Family Unity Project (NYIFUP) for representation in their initial immigration proceedings. NYIFUP attorneys are rarely able to identify people detained by ICE until the person's first hearing in immigration court, called an "initial master calendar hearing." Moreover, because of the difficulty of researching and contacting private attorneys while incarcerated, it can take a long time to find and retain private counsel. Thus, many people who are arrested by ICE's New York Field Office do not have an attorney during the time they are detained awaiting their first appearance before an immigration judge.

30. There are many reasons that a detained person may not be able to go forward with an application for bond at the initial appearance, particularly if they do not have counsel beforehand. First, assembling a bond application is factually and legally complex as well as time-intensive, almost always involving supporting evidence that includes letters of support and an initial application for immigration relief with supporting evidence. As explained above, many people do

not have counsel until this initial hearing or shortly before it, and it would be exceptionally difficult to collect the necessary documents while incarcerated without assistance of counsel. Moreover, the government does not provide people in detention with information about the materials they would need to submit for a bond application nor how they might do so.

31. Second, ICE often does not provide relevant evidence supporting its charges until the initial hearing.

32. Third, these hearings are held by videoconference, which makes it difficult for NYIFUP attorneys who have only just met their prospective clients to have the confidential attorney-client communications necessary to prepare an application for bond or immigration relief. Moreover, people in immigration detention are often not given a confidential space in the county jails while appearing in court by video conference, meaning it can be uncomfortable or even unsafe for them to discuss or testify about sensitive information relevant to their bond application or application for immigration relief, such as sexual orientation or gender identity, experiences of violence or rape, medical or mental health diagnoses, cooperation with law enforcement, or violence and discrimination in the jail.

33. Fourth, a significant number of people in immigration detention speak little or no English, which is a further challenge to preparing the necessary documents and participating in the hearing.

34. For these reasons, it would be extremely difficult for most people to prepare a bond application without counsel by their first master calendar hearing and many Immigration Judges expressly recommend that individuals wait until they have met with an attorney before going forward with a bond hearing.

35. As a result, people often continue to be detained pursuant to ICE's initial custody decision for a significant period of time beyond this initial hearing.

Harms of Detention

36. Immigration detention severely and irreparably harms detained people in numerous ways.

37. Detention is devastating for those detained and their families. Immigration detainees are held in jails under the same restrictions as people held on criminal charges or serving criminal sentences. Most people arrested by local immigration authorities have lived in this country for long periods, live with their families, and are deeply integrated into local communities. On average, people arrested by the New York Field Office have lived in the United States for sixteen years when ICE arrests them. Almost a third (30%) are legal permanent residents. Approximately half (47%) of people arrested by immigration officials in the New York City area have children living with them in the United States. Most of those parents have two children, and most of their children (86%) have some form of legal status, primarily U.S. citizenship. Extended detention separates children from their parents and can devastate families. Contact with families through phone calls and visits at these facilities are limited and often prohibitively expensive.

38. Detention also threatens people who need medical care. The medical and mental-health care available at ICE's New York City-area facilities is grossly inadequate and has led to severe negative consequences for detainees' health and, in some cases, has even led to death. ICE's New York City-area facilities have a track record of denying detainees access to vital medical treatment, including dialysis and blood transfusions; subjecting detainees to weeks- and months-long delays in providing access to necessary medications, care, and even vital surgeries; ignoring repeated complaints and requests for care from detainees with serious symptoms or acute pain; refusing to continue effective treatments that detainees were receiving prior to detention, including for people with chronic conditions such as HIV, cancer, or diabetes; and failing to provide interpretation and translation services for detainees with limited English proficiency who seek medical care.

39. Detention also has detrimental impacts on the mental health of many detainees. People are detained at New York City-area detention facilities who suffer from emotional distress including but not limited to anxiety, depression, bipolar disorder, schizophrenia, stress, and Post-Traumatic Stress Disorder, as well as cognitive impairments. Detention is also a stressor that often exacerbates pre-existing symptoms. A significant number of detainees report suicidal ideation. These harms are often compounded by the inherent and profound uncertainty about the length of detention as well as people's looming fear of deportation and permanent separation from their families and communities.

40. Despite these psychological harms, mental health services in New York City-area detention facilities are woefully inadequate. Many detained individuals with mental illnesses routinely are denied basic aspects of mental health care, such as access to regular professional mental health services. The situation is particularly dire for people without a diagnosis prior to detention, whose needs will often go unmet. And when individuals express suicidal thoughts, they may be placed in the equivalent of solitary confinement, which can dramatically exacerbate their conditions and place them at even greater risk.

41. This lack of care has tragic results. Hudson County Jail, where many putative class members are held, reported six inmate deaths between June 2017 and March 2018 alone, including four suicides. At Bergen County Jail in 2019, a serious mumps outbreak resulted in the quarantine of dozens of immigration detainees. A fourth jail that detains members of the putative class—Essex County Correctional Facility—was the subject of a recent shocking report by DHS's Inspector General documenting "serious issues relating to safety, security, and environmental health that require ICE's immediate attention." There have been two inmate deaths at the jail since 2018; over sixty detainees have been placed on suicide watch since 2015.

42. DHS's own Inspector General, as well as multiple local and national nonprofit organizations, have documented and recognized the serious inadequacies in ICE's New York City-area facilities' medical and mental-health care. Collectively, these deficiencies subject detainees to the risk of serious and even life-threatening medical complications during the weeks or months before they have any genuine opportunity to seek release from an Immigration Judge.

43. While ICE has the authority to release an individual on recognizance, administrative bond, or "humanitarian parole" for health-related reasons, it is incredibly difficult to secure the release of sick individuals from detention. In fact, ICE releases very few people for health-related reasons, even when ICE is clearly failing to meet medical needs. ICE frequently ignores advocate requests for better care for clients.

44. Even if an individual with unmet needs is subsequently released, serious and possibly irreversible damage to the person's health has often already occurred. This can result in need for emergency services, serious deterioration of an individual's mental health, extensive hospitalizations, intensive care upon an individual's release back into the community and permanent damage, often for issues that could have been managed with less injury, pain and cost if handled appropriately at the outset.

45. The unmet medical and mental health needs of individuals in immigration detention can also meaningfully harm their ability to apply for immigration relief, prepare a successful bond application, and participate in their removal proceedings. This includes but is not limited to excruciating pain from prior injuries like car accidents or assaults, failure to provide aids for visual or auditory disabilities, loss of teeth, severe rashes, fatigue, difficulty breathing, lack of necessary medication, severe insomnia, and dramatic weight loss caused by a medically-inappropriate diet.

These can significantly impair an individual's ability to perform day-to-day tasks, much less participate in the complex and difficult process of applying for bond or immigration relief.

46. The same is true with mental health disabilities or other cognitive impairments. Applying for some of the most common forms of immigration relief will often involve recalling and recounting past traumatic experiences of violence and persecution, including but not limited to gang violence, intimate-partner violence, and sexual assault. Because of the lack of adequate care, the conditions of detention, and the experience of detention itself, individuals with mental health disabilities can become increasingly symptomatic. In addition to making it hard for them to cope with even everyday activities, this decompensation makes it particularly difficult to participate effectively in their removal proceedings. In these situations it can become especially difficult and painful for people to both remember and discuss past trauma, particularly in the detail necessary to prepare a successful application for relief. Moreover, any inconsistencies or even gaps between an initial account of persecution and later accounts can result in their being found not credible, denied immigration relief, and deported.

47. Detention also has severe financial consequences for detainees. Approximately two-thirds (64%) of people arrested by the New York Field Office for removal proceedings report that they were employed at the time of their arrest by ICE, and many are the primary breadwinners for their families. Detention deprives people of their ability to earn a living and can result in losing employment and income that is necessary to support their families.

Facts Pertaining to the Petitioner-Plaintiff Jose Velesaca

48. Mr. Velesaca has lived in New York State for over a decade. He has two young children who are U.S. citizens. Several members of Mr. Velesaca's family are also U.S. citizens or green-card holders living in New York State.

49. On January 30, 2020, Mr. Velesaca was arrested by ICE's New York Field Office and, upon information and belief, he is being detained pursuant to Section 1226 of Title 8 of the United States Code. After being processed by the New York Field Office, in the Southern District of New York, Mr. Velesaca was ordered detained without bond and transferred to the Orange County Correctional Facility, where ICE rents bed space. He appeared before an Immigration Judge on February 24, 2020, and was given until March 2, 2020, to consult with his attorney and prepare the materials necessary for his bond hearing.

50. Mr. Velesaca was the victim of a physical assault in 2016, when an assailant slashed him right below the chin with a broken bottle. Mr. Velesaca has a scar from this attack.

51. Mr. Velesaca continues to suffer serious psychological harm from this assault. He feels nervous and anxious most of the time. This significantly interferes with his daily life and his ability to sleep. Mr. Velesaca will wake up in the middle of the night in fear at even small sounds. When he sees other people fighting, or even arguing loudly, it reminds him of being attacked, he feels afraid, and his leg will begin to shake uncontrollably.

52. Mr. Velesaca tries hard not to think about his assault and it is difficult for him to talk about it. It is also difficult for him to talk about the psychological harm that he suffers.

53. Mr. Velesaca's continued detention only makes these symptoms worse. He misses his children enormously and knows that they are afraid for him. His anxiety and nervousness have become significantly more severe. He experiences much more difficulty sleeping and every night he has trouble falling asleep. Some nights he is so anxious that he cannot sleep at all and will stay awake the entire night. There are a lot more noises at night in the jail where he is being held and he wakes up in fear almost every night.

54. Being detained is almost unbearable for Mr. Velesaca. He feels sad, hopeless, and trapped. He is so desperate to get out that at times he has seriously considered giving up on his immigration case and being deported just to get out of detention.

55. Mr. Velesaca also suffers from diabetes.

56. As such, Mr. Velesaca is a qualified individual with a disability as defined in the Rehabilitation Act and its implementing regulations.

CLASS ACTION ALLEGATIONS

57. The petitioner brings this representative habeas action pursuant to Section 2241 of Title 28 of the United States Code and, alternatively, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all other persons similarly situated.

58. The proposed class ("Petitioner Class") is defined as follows:

> All individuals eligible to be considered for bond or release on recognizance under 8 U.S.C. § 1226(a)(1)-(2) by ICE's New York Field Office who have been or will be detained without bond.

59. A proposed subclass of persons with disabilities bringing claims under the Rehabilitation Act of 1973 and its implementing regulations ("Rehabilitation Act Subclass") is defined as follows:

> All individuals with a disability, as defined by the Rehabilitation Act and its implementing regulations, who are eligible to be considered for bond or release on recognizance under 8 U.S.C. § 1226(a)(1)-(2) by ICE's New York Field Office and who have been or will be detained without bond.

60. The proposed Petitioner Class is so numerous, and membership in the class so fluid and transitory, that joinder of all members is impracticable. In 2018, the New York Field Office denied release to more than 1,800 people that it considered eligible for release; in the first nine months of 2019, the office detained over 760 such individuals.

61. The proposed Rehabilitation Act Subclass is so numerous, and membership in the class so fluid and transitory, that joinder of all members is impracticable. Internal ICE memos estimate that about 15% of the individuals it detains have mental health disabilities, which is consistent with reports by other organizations. The total number of people with all types of disabilities well exceeds this number.

62. Moreover, absent class certification, people in immigration detention would face a series of barriers in accessing the relief sought. A significant percentage of these people are unrepresented prior to their first appearance before an Immigration Judge. During this time period they do not receive any explanation of how they might apply for bond. Access to legal materials in detention is severely limited. A large percentage of the people do not speak and/or cannot read or write in English. Many of them have limited educational backgrounds. And a significant percent of them suffer from physical or mental impairments.

63. The petitioner's claims are typical of those of the proposed Petitioner Class. All proposed class members are subject to the same policy: ICE denies release or bond to virtually everyone detained at its New York Field Office under Section 1226(a) and the implementing regulations.

64. The petitioner's claims are also typical of those in the proposed Rehabilitation Act Subclass. All proposed class members are subject to the same uniform No-Release Policy and all have a disability under the definition of the Rehabilitation Act and its implementing regulations.

65. The petitioner will fairly and adequately protect the interests of both the proposed Plaintiff Class and the proposed Rehabilitation Act Subclass. The petitioner has no interests separate from those of the class with respect to the claims and issues in this case and seeks no relief other than the relief sought by the class. He is unaware of any conflicts that would preclude fair and adequate representation.

66. Common questions of law or fact exist as to all members of the proposed Petitioner Class, including but not limited to the following: (a) whether the respondents have instituted a policy or practice of denying bond or release to virtually all immigration detainees processed through ICE's New York Field Office without conducting individual assessment of their eligibility for release; (b) whether the respondents' policy or practice violates the Immigration and Nationality Act and its implementing regulations; (c) whether the respondents' policy or practice violates the Fifth Amendment to the United States Constitution; (d) whether the respondents' policy or practice violates the Administrative Procedure Act.

67. Common questions of law or fact exist as to all members of the proposed Rehabilitation Act Subclass, including but not limited to: (a) whether the respondents have instituted a policy or practice of denying bond or release to virtually all immigration detainees processed through ICE's New York Field Office without conducting individual assessment of their eligibility for release; (b) whether the respondents have instituted a policy or practice of denying bond or release to virtually all immigration detainees processed through ICE's New York Field Office without considering disability; (c) whether the respondents' policy or practice violates the Rehabilitation Act and its implementing regulations.

68. The petitioner's claims are typical of the claims of the Petitioner Class and the Rehabilitation Act Subclass because the petitioner and the class members are, have been, or will be similarly detained by ICE's New York Field Office subject to the same policy. Moreover, the petitioner and proposed class members will be directly injured by respondents' policy or practice to deny release which results in weeks, and even months, of unjustified and unnecessary detention.

69. Counsel for the petitioner are experienced in complex class action, civil rights, and immigrants' rights litigation.

70. The fact that vulnerable class members are unlikely to be able to challenge their pre-presentment detention individually, as well as considerations of judicial economy, also militate in favor of class certification.

JURISDICTION AND VENUE

71. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act); 28 U.S.C. § 1361 (mandamus); 5 U.S.C. § 701 *et seq.* (Administrative Procedure Act); and U.S. Const., art. I, § 9, cl. 2 (Suspension Clause).

72. Venue is proper under 28 U.S.C. § 2241; 28 U.S.C. § 1391(b); and 28 U.S.C. § 1391(e) because at the time of the filing of this action the petitioner is detained in the respondents' custody within the Southern District of New York; a substantial part of the events and omissions giving rise to these claims occurred, and continue to occur, in this district; respondents Decker and DuBois reside in this district; and the respondents are officers or employees of the United States acting in their official capacities.

CAUSES OF ACTION

FIRST CLAIM
Violation of the Immigration and Nationality Act & Implementing Regulations

73. The respondents' actions violate the Immigration and Nationality Act and its implementing regulations.

SECOND CLAIM
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

74. The respondents' actions violate the Due Process Clause of the Fifth Amendment to the United States Constitution.

THIRD CLAIM
Administrative Procedure Act

75. The respondents' actions violate the Administrative Procedure Act.

FOURTH CLAIM
Rehabilitation Act &
Implementing Regulations

76. The respondents' actions violate the Rehabilitation Act and its implementing regulations.

PRAYER FOR RELIEF

WHEREFORE, the petitioner respectfully requests that the Court:

A. Assume jurisdiction over this matter;

B. Certify this action as a class action on behalf of the proposed Petitioner Class and Rehabilitation Act Subclass, appoint the petitioner as a class representative, and appoint the undersigned counsel as class counsel;

C. Declare that the respondents' actions, practices, policies, and/or omissions violate the Immigration and Nationality Act and its implementing regulations, the Fifth Amendment to the United States Constitution, the Administrative Procedure Act, and the Rehabilitation Act;

D. Order the respondents to conduct an individualized custody determination for Jose Velesaca and each member of the proposed class and base the decision to release on recognizance, release on bond, or detain without bond solely on considerations of risk of flight, danger to the community, and special vulnerabilities such as disabilities;

E. Or, in the alternative, order the respondents to immediately release members of the proposed class;

F. Order regular and complete reporting on the petitioner class to class counsel, including, but not limited to, reporting on the results of the ICE New York Field Office's initial custody determinations;

G. Award reasonable attorneys' fees and costs for this action; and

H. Grant any further relief that the Court deems just and proper.

Respectfully submitted,

/s/ Amy Belsher

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Dated: February 28, 2020
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