

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

HERAUD ST. LOUIS; LUIS MACIAS ARREDONDO;
THEOPHILUS BUCKNOR, WILKENS DORIVAL;
ROBERTO CABRERA LOPEZ; MARK ANTHONY
MONTAQUE; LENNOX ROBINSON; and ROMAIN
ODEAN WILSON,

Petitioners-Plaintiffs,

v.

JIM MARTIN, in his official capacity as Field Office
Director, Enforcement and Removal Operations, Miami
Field Office, U.S. Immigration and Customs
Enforcement; CHAD WOLF, in his official capacity as
Acting Secretary, U.S. Department of Homeland
Security; MATTHEW ALBENCE, in his official
capacity as Deputy Director and Senior Official
Performing the Duties of the Director, U.S. Immigration
and Customs Enforcement; and U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

Case No. 1:20-cv-21670

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

INTRODUCTION

1. Across the globe, we have collectively withdrawn due to COVID-19, physically isolating ourselves in our homes to protect ourselves from a potentially lethal interaction or touch. But the eight people who bring this lawsuit cannot retreat to safety. Petitioners-Plaintiffs (“Plaintiffs”) are detained at Immigration and Customs Enforcement’s (“ICE”) Glades County Detention Center (“Glades”) in Moore Haven, Florida. They live, sleep, shower, eat, and wash

their hands close to other people—typically more than 90 other people. They have no face masks; they do not even always have soap. And yet they are precisely the people who most urgently need protection from the pandemic: due to their preexisting medical conditions and/or age, they are highly vulnerable to serious illness and death from COVID-19.

2. Detainees at Glades live in extremely close quarters and lack access to basic hygiene items. It is impossible for them to follow the risk mitigation instructions provided by public health authorities, including maintaining a distance of at least six feet from others and practicing heightened hygiene. Nevertheless—despite the enormous risk that the disease poses to the health and safety of vulnerable individuals like Plaintiffs—ICE continues to hold Plaintiffs in custody.

3. Keeping vulnerable detainees like Plaintiffs in Glades and waiting for COVID-19 to explode at the facility creates not only a humanitarian crisis, but also a constitutional one. As courts have long recognized, the Constitution forbids the government from allowing the people in its custody to suffer and die from infectious disease. The nature of the pandemic and the conditions of confinement at Glades make it impossible for Respondents-Defendants (“Defendants”) to protect vulnerable individuals like Plaintiffs from risk of infection. That risk of harm is “so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk.” *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

4. Plaintiffs are squarely at risk of severe illness and death from COVID-19. All have preexisting medical conditions—including emphysema, diabetes, high blood pressure, obesity, neurological disorders, and asthma—that make them particularly vulnerable to serious complications or death from COVID-19. It is impossible for them to take adequate social distancing measures or practice the hygiene measures necessary to protect themselves from

contracting COVID-19 at Glades. Some of the Plaintiffs currently struggle to receive adequate medical care at Glades.

5. This Court has the authority and the obligation to order Defendants to comply with the Fifth Amendment and release Plaintiffs from civil detention. Courts across the country have issued similar orders, requiring the immediate release of medically vulnerable individuals like Plaintiffs from ICE detention facilities in light of the potentially fatal consequences of the continuing constitutional violation. *See, e.g., Hope v. Doll*, No. 1:20-cv-00562, ECF No. 22 (M.D. Pa. Apr. 10, 2020) (denying motion for reconsideration of TRO grant and ordering immediate release of 22 medically vulnerable immigrant detainees); *Toma v. Adducci*, No. 2:20-cv-10829-JEL-APP, ECF No. 29 (E.D. Mich. Apr. 9, 2020) (ordering release of one detainee on due process grounds); *Basank v. Decker*, --- F. Supp. 3d ----, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020) (same, because “[t]he nature of detention facilities makes exposure and spread of the [coronavirus] particularly harmful”). And courts in this district have already granted motions for compassionate release to prisoners, citing the “extraordinary and compelling reasons” presented in light of COVID-19. *United States v. Hernandez*, 1:16-cr-20091, ECF No. 561 (S.D. Fla. Apr. 3, 2020) (granting release for individual because he is a primary caregiver); *United States v. Oreste*, 1:14-cr-20349, ECF No. 200 (S.D. Fla. Apr. 6, 2020) (granting release for individual because of his advanced age and incredibly poor health).

6. For the reasons discussed below, this Court should require Defendants to release Plaintiffs from custody immediately, which is the only means for them to avoid infection by a lethal virus with no vaccine or cure. Plaintiffs implore this Court to issue an order to protect their lives.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 2241 (habeas jurisdiction), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

8. Venue lies in the United States District Court for the Southern District of Florida because Defendants' Miami Field Office is located in this judicial district. 28 U.S.C. § 1391(b) and (e).

PARTIES

Petitioners-Plaintiffs

9. Petitioner-Plaintiff Heraud St. Louis is a 40-year-old man who was born in the Bahamas and whose family is originally from Haiti. He has been detained by ICE at Glades since June 2019. Mr. St. Louis suffers from diabetes, high blood pressure, and kidney failure. As a consequence of his health conditions, Mr. St. Louis has a high risk of serious illness or death if he contracts COVID-19.

10. Petitioner-Plaintiff Luis Macias Arredondo is a 41-year-old man originally from Colombia who has been detained by ICE at Glades since February 2020. Mr. Arredondo, a former smoker, suffers from problems with his spine. As a consequence of his health conditions, Mr. Arredondo has a high risk of serious illness or death if he contracts COVID-19.

11. Petitioner-Plaintiff Theophilus Bucknor is a 62-year-old man originally from Nigeria who has been detained by ICE at Glades since March 2020. Mr. Bucknor suffers from diabetes. As a consequence of his health conditions and age, Mr. Bucknor has a high risk of serious illness or death if he contracts COVID-19.

12. Petitioner-Plaintiff Wilkens Dorival is a 24-year-old man originally from Haiti who has been detained by ICE at Glades since March 2020. Mr. Dorival suffers from high blood pressure, obesity, anxiety, major depressive disorder, and schizophrenia. As a consequence of his health conditions, Mr. Dorival has a high risk of serious illness or death if he contracts COVID-19.

13. Petitioner-Plaintiff Roberto Cabrera Lopez is a 54-year-old man originally from Cuba who has been detained by ICE at Glades since March 2020. Mr. Lopez suffers from asthma, hypertension, and leg swelling. As a consequence of his health conditions and age, Mr. Lopez has a high risk of serious illness or death if he contracts COVID-19.

14. Petitioner-Plaintiff Mark Anthony Montaque is a 54-year-old man originally from Jamaica who has been detained by ICE at Glades since February 2020. Mr. Montaque is HIV positive and suffers from emphysema. As a consequence of his health conditions and age, Mr. Montaque has a high risk of serious illness or death if he contracts COVID-19.

15. Petitioner-Plaintiff Lennox Robinson is a 26-year-old man originally from Jamaica who has been detained by ICE at Glades since December 2019. Mr. Robinson suffers from moderate to severe asthma. As a consequence of his health conditions, Mr. Robinson has a high risk of serious illness or death if he contracts COVID-19.

16. Petitioner-Plaintiff Romaine Odean Wilson is a 26-year-old man originally from Jamaica who has been detained by ICE since October 2019. Mr. Wilson suffers from grand mal seizures caused by a traumatic brain injury, and has difficulty breathing. As a consequence of his health conditions, Mr. Wilson has a high risk of serious illness or death if he contracts COVID-19.

Respondents-Defendants

17. Respondent-Defendant Jim Martin is the Acting Director of the Field Office for Enforcement and Removal Operations (“ERO”) in the Miami Field Office of ICE, an agency within the U.S. Department of Homeland Security (“DHS”). ERO is a division of ICE that manages and oversees the immigration detention system. In his capacity as Acting Field Office Director for ERO, Defendant Martin exercises control over and is a custodian of immigration detainees held at all of the Florida facilities that house ICE detainees, including Glades County Detention Center. At all times relevant to this Complaint, Defendant Martin was acting within the scope and course of his employment with ICE. He is sued in his official capacity.

18. Respondent-Defendant Chad Wolf is the Acting Secretary for DHS. In this capacity, he has responsibility for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a), has authority over ICE and its field offices, and has authority to order the release of Plaintiffs. At all times relevant to this complaint, Mr. Wolf was acting within the scope and course of his position as the Acting Secretary for DHS. He also is a legal custodian of Plaintiffs. He is sued in his official capacity.

19. Respondent-Defendant Matthew T. Albence is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. Defendant Albence is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of immigrants. Defendant Albence is a legal custodian of Plaintiffs. At all times relevant to this complaint, Defendant Albence was acting within the scope and course of his position as an ICE official. He is sued in his official capacity.

20. Respondent-Defendant ICE is a federal law enforcement agency within DHS. ICE is responsible for the criminal and civil enforcement of immigration laws, including the detention

and removal of immigrants. ERO, a division within ICE, manages and oversees the immigration detention system. Defendant ICE is a legal custodian of Plaintiffs.

STATEMENT OF FACTS

I. COVID-19 Poses a Grave Risk of Harm, Including Serious Illness or Death, to Persons with Certain Medical Conditions.

21. In the United States, as of April 20, 2020, at least 786,968 people have already tested positive for COVID-19, and at least 39,083 have died. The United States now has more reported cases than any other country in the world. In Florida, as of April 21, 2020, there have been at least 27,495 reported cases and 839 deaths.

22. Outcomes from COVID-19 vary from a mild upper respiratory infection to respiratory failure and death. Ex. 1 (Amon Decl.) ¶ 6. Individuals with serious underlying medical conditions and above the age of 45 are at higher risk of severe disease if they are infected with COVID-19 and increased risk of both serious disease and death if they are over the age of 55. *Id.* ¶ 9.

23. COVID-19 can severely damage lung tissue, which requires extensive rehabilitation, and in some cases can still cause a permanent loss of respiratory capacity. Ex. 2 (Graves Decl.) ¶ 10. Those who are seriously ill but do not die from COVID-19 are likely to have permanent disability from loss of lung capacity. *Id.* The heart itself can be infected, and kidneys and the nervous system can also be impacted and damaged permanently. *Id.*

24. According to recent estimates, the fatality rate of COVID-19 (2.3%) is significantly greater than that of a severe seasonal influenza (usually 0.1%). Graves Decl. ¶ 9. For people in the highest-risk populations, the fatality rate of COVID-19 is over 13 percent—or approximately one in eight people. *Id.* ¶ 8.

25. The extensive degree of support that COVID-19 patients need can quickly exceed local healthcare resources, *see* Graves Decl. ¶ 5 requiring doctors and public health authorities to allocate scarce resources and decide who receives care.

26. By far the best way to avoid further burdening an already over-taxed healthcare system is to enable individuals, particularly those who are highly vulnerable to serious complications from COVID-19, to avoid infection in the first place. *See* Amon Decl. ¶ 56.

II. Minimizing the Risks of COVID-19 Requires Social Distancing and Heightened Hygiene.

27. There is no vaccine or treatment for COVID-19. Graves Decl. ¶ 11. There is no known cure or FDA-approved treatment for COVID-19 at this time. Amon Decl. ¶ 6; Ex. 12 (Schriro Decl.) ¶ 14. The only way to protect vulnerable people from serious health outcomes, including death, is to prevent them from being infected with the coronavirus in the first place. Graves Decl. ¶ 11.

28. COVID-19 is highly contagious. *Id.* ¶ 9. The disease mainly infects people who are in close contact with one another—within about six feet—via respiratory droplets. *Id.* ¶ 11. The droplets are most commonly transmitted when an infected person coughs or sneezes, but can also be generated when they simply talk. Amon Decl. ¶ 20. People can spread the virus even when they do not exhibit symptoms themselves. Graves Decl. ¶ 9. New data suggest the droplets may travel and infect individuals as far away as 4 meters or about 13 feet. Amon Decl. ¶ 19. In addition, the virus that causes COVID-19 can survive for long periods on hard surfaces, and it is possible that an individual who touches an infected surface will contract the virus by then touching their own mouth, nose, or possibly eyes. *Id.*

29. Given the way the virus spreads, the only known means of minimizing the risk of infection—and therefore the risk of grave illness or death from COVID-19—are maintaining a

distance of at least six feet from other people, a practice known as “social distancing,” and increased sanitization, including frequent handwashing. Graves Decl. ¶ 11.

30. Recognizing the need for social distancing, public health officials have recommended extraordinary measures to combat the spread of COVID-19, closing schools, courts, and other congregate settings and ordering individuals to stay at home. The Governor of Florida—one of the hardest hit states—issued a month-long “stay-at-home” order on April 1, 2020, in an attempt to control the spread of the disease. Ex. 1 to Kacou Decl. (Fla. Exec. Order No. 20-91 (Apr. 1, 2020)).

31. To halt the spread of COVID-19, CDC guidance instructs all people to maintain a distance of six feet from others. The same guidance applies to those who are incarcerated or detained. Graves Decl. ¶ 18. The CDC emphasizes that this guidance “is especially important for people who are at higher risk of getting very sick.” Ex. 2 to Kacou Decl. (*How to Protect Yourself and Others*, Centers for Disease Control and Prevention (Apr. 13, 2020)).

32. Inside detention facilities, the CDC recommends increasing the space between individuals in holding cells, as well as in lines and waiting areas; staggering time in recreation spaces and at meals; seating people further apart at meals; and reassigning bunks to provide more space to individuals. Amon Decl. ¶ 28.

33. Because of the risk of airborne spread, the CDC now recommends that everyone who is coming into contact with the air that others may breathe cover their face with a mask, although the CDC recognizes that a face covering is not a substitute for social distancing. *Id.* ¶ 40 (citing <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>).

34. CDC guidance also instructs everyone—including people who are incarcerated or detained—to wash their hands often, with soap and water for at least 20 seconds, and, absent

soap and water, to use a hand sanitizer that is at least 60% alcohol. CDC guidance directs detention centers to provide detainees with no-cost access to soap, running water, and hand dryers, Graves Decl. ¶ 20, as well as disposable paper towels, and, where permissible, hand sanitizer. Ex. 3 to Kacou Decl. (*Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention (Apr. 18, 2020)). It also directs those who are incarcerated or detained, like all others, to cover their mouths and noses with a disposable tissue when coughing or sneezing. *Id.*

35. In addition, the CDC instructs that all areas where an individual who has tested positive for, or is suspected of having, COVID-19 has been must be thoroughly cleaned and disinfected. Amon Decl. ¶ 29. CDC guidance further provides that those detained must wear personal protective equipment, including masks and gloves, while cleaning in an area where a person with a confirmed or suspected case of COVID-19 has been present. *Id.* ¶ 39.

III. Conditions at Glades Increase the Risk of COVID-19 Infection.

36. Immigrant detainees at Glades face a serious risk of infection with COVID-19. Because it is not only enclosed, but also crowded and communal, Glades presents the ideal environment for the rapid spread of COVID-19. More than 400 detainees are held at Glades, and they lack sufficient access to necessary hygiene items, like soap, hand sanitizer, and masks.

37. Enclosed group environments, like cruise ships, nursing homes, and jails have become the sites of the most severe outbreaks of COVID-19. Amon Decl. ¶ 27; Schriro Decl. ¶ 17 (“[j]ails, prisons, and immigration detention facilities are known notorious amplifiers of infectious disease”). Marion County Prison in Ohio has become the site of the single largest COVID-19 outbreak in the country, with at least 1,828 confirmed cases among inmates—73 percent of those incarcerated at the facility—as of April 20, 2020. Ex. 4 to Kacou Decl. (*Cases*

Surge in an Ohio Prison, Making it a Top U.S. Hot Spot, N.Y. Times (Apr. 20, 2020)). At Cook County Jail in Chicago, there were more than 700 confirmed cases as of April 21, 2020. That number continued to grow even after the release of several hundred individuals, and, as of April 21, 2020, six detainees and one correctional officer have *died*. Ex. 5 to Kacou Decl.

(*Coronavirus In Illinois: Correctional Officer At Cook County Jail Dies*, WBEZ (Apr. 21, 2020)). At Federal Correctional Institution Oakdale I in Louisiana, at least seven of the approximately 970 prisoners have *died* of COVID-19 since March 28. Ex. 6 to Kacou Decl. (Janet Reitman, *'Something is Going to Explode': When Coronavirus Strikes a Prison*, N.Y. Times (Apr. 18, 2020)). The Legal Aid Society in New York reports that the infection rate at local jails is more than seven times higher than the city rate, and 87 times higher than the country at large. Amon Decl. ¶ 43.

38. Closer to home, as of April 20, 2020, eight employees (excluding contractors) and at least two detainees at the Krome Service Processing Center (“Krome”) in Miami had tested positive for the coronavirus, while 350 others were cohorted together after they were exposed to the coronavirus. *See Gayle v. Meade*, Case No. 20cv21553, Dkt. 53-1 (S.D. Fl. Apr. 21, 2020); *id.*, Dkt. 33-1 (S.D. Fl. Apr. 16, 2020).

39. Detainees have been regularly transferred from Krome to Glades. Ex. 3 (Conlin Decl.) ¶ 14. As of April 20, 2020, in related litigation, Defendants have refused to commit to ceasing transfers between Glades and Krome, among other facilities. *Gayle*, Case No. 20cv21553, Dkt. 51 (S.D. Fla. Apr. 20, 2020).

40. Many Plaintiffs were initially detained at Krome before being transferred to Glades. Ex. 4 (St. Louis Decl.) ¶ 3; Ex. 6 (Bucknor Decl.) ¶ 3; Ex. 7 (Dorival Decl.) ¶ 3; Ex. 8 (Lopez Decl.) ¶ 3; Ex. 9 (Montaque Decl.) ¶ 3. For example, Mr. Lopez was transferred to

Glades from Krome with 20 other detainees on March 30, 2020; prior to his transfer, he was quarantined with 65 other people for 14 days at Krome, but he was not tested for COVID-19 at either facility. Lopez Decl. ¶ 8. At least 20 new detainees were transferred to Glades from Krome on April 1. Conlin Decl. ¶ 14. Additional detainees were brought to Glades from Krome on April 4, and 40 people traveled to Krome for deportation, but then returned to Glades on April 15. *Id.*

41. In addition, the removal cases of Glades detainees are routinely assigned to immigration judges at Krome, where detainees have been required to appear in person. Ex. 7 to Kacou Decl. (Southern Poverty Law Center & Americans for Immigrant Justice, *Prison by Any Other Name: A Report on South Florida Detention Facilities* (2019) at 17 [hereinafter “SPLC & AIJ Report”]). And ICE is continuing to arrest and jail non-criminal immigration law violators in South Florida, thus continuing to frequently transport new detainees to Glades. Ex. 8 to Kacou Decl (Monique O. Madan, *Amid COVID-19 Fears, Keys Jail Ends Lucrative Contract, Gives ICE Back Its Detainees*, Miami Herald (April 6, 2020)). These and other conditions at Glades constantly introduce new potential vectors of COVID-19.

42. Failure to regularly test staff, transfers, and other detainees presents a daily risk of spread of the virus throughout the facility. *See* Amon Decl. ¶¶ 34-35. The possibility of asymptomatic transmission means that monitoring staff or detainees for fever, by taking their temperatures, is also inadequate to identify all who may be infected and prevent transmission. *Id.* This is also true because not all individuals infected with COVID-19 have a fever or other symptoms in early stages of infection. Graves Decl. ¶ 15.

43. In addition to increasing the risk of infection through a congregate setting, the conditions at Glades make the social distancing and hygiene that are necessary to minimize the risk of COVID-19 infection impossible. *See generally* Schriro Decl. ¶ 26.

44. Maintaining a distance of at least six feet from others is physically impossible in dorms, and also during meals, transportation, calls, and counts. At Glades, each detainee is housed in a single dorm with more than 90 other people. St. Louis Decl. ¶ 9; Bucknor Decl. ¶ 5; Conlin Decl. ¶ 3; Dorival Decl. ¶ 10; Ex. 10 (Robinson Decl.) ¶ 7. They often sleep on bunk beds, with only about three feet between the top and bottom bunks, and a mere foot between the beds. Bucknor Decl. ¶ 6, St. Louis Decl. ¶ 9; Lopez Decl. ¶ 9; Montaque Decl. ¶ 9; Dorival Decl. ¶ 10; Ex. 5 (Arredondo Decl.) ¶ 13. They typically sleep in cubicles within the dorms; those cubicles do not have doors that separate them from the rest of the dorm. Lopez Decl. ¶ 9.

45. At meal times, detainees must sit at a table with at least three other people, who are typically all less than two feet away from one another. Bucknor Decl. ¶ 9; St. Louis Decl. ¶ 10; Montaque Decl. ¶ 11; Arredondo Decl. ¶ 15.

46. It is equally impossible for individuals at Glades to engage in the hygiene recommended by the CDC. Detainees never receive more than two small bottles of liquid soap per week; they must use this limited washing liquid for all handwashing and showering. St. Louis Decl. ¶ 13; Bucknor Decl. ¶ 10; Lopez Decl. ¶ 12; Arredondo Decl. ¶ 16; Dorival Decl. ¶ 11; Robinson Decl. ¶ 9; Ex. 11 (Wilson Decl.) ¶ 13. Only one bathroom of one dorm has a soap dispenser, Conlin Decl. ¶ 9; *see also* Bucknor Decl. ¶ 10, and only some people are able to buy soap at the commissary. Montaque Decl. ¶ 12. Nor do detainees have access to hand sanitizer. Bucknor Decl. ¶ 10; Lopez Decl. ¶ 12; Dorival Decl. ¶ 11; Wilson Decl. ¶ 13.

47. All of the 90+ people in one dorm share at most six—and, in some cases, only one—working toilets, sinks, and showers. Bucknor Decl. ¶ 10; Arredondo Decl. ¶ 16; Dorival Decl. ¶ 11. Detained individuals report that bathrooms are either frequently broken or extremely filthy, sometimes with maggots all around the toilets. Conlin Decl. ¶ 8; Dorival Decl. ¶ 11.

48. The water that detainees in Glades use for drinking and handwashing has a yellow color and an odd taste and odor. SPLC & AIJ Report at 30. Sanitary and other environmental conditions at the facility are reportedly “the worst” out of all South Florida immigrant detention centers. *Id.* Glades was recently cited by DHS’ Inspector General in a list of facilities where ICE is failing to adequately use oversight tools to track deficiencies such as “those that jeopardize the safety and rights of detainees.” Ex. 9 to Kacou Decl. (Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, 1 (Jan. 29, 2019)).

49. Common areas—including shared bathrooms and meal areas—are only cleaned two to three times per day. Bucknor Decl. ¶ 10; Lopez Decl. ¶ 12; Dorival Decl. ¶ 11. Detainees assigned cleaning tasks regularly refuse to clean. Wilson Decl. ¶ 13. This means detainees must share common spaces and touch common objects that have not been cleaned. Lopez Decl. ¶ 12; Dorival Decl. ¶ 11.

50. Conditions are unsanitary and cleaning procedures have long been inadequate. Dorms reportedly have mold on the walls, ceilings, and emergency sprinklers. Bleach is not used to clean the facility, and detained individuals report having to clean surfaces with their own shampoo instead of cleaning products. Conlin Decl. ¶ 3; *see also* Schriro Decl. ¶ 32 (“[s]anitation practices at immigration detention facilities generally do little to curb the spread of illness”).

51. Guards conduct random searches almost every day of multiple bunks, using the same pair of gloves from bunk to bunk. St. Louis Decl. ¶ 15; Bucknor Decl. ¶ 8; Conlin Decl. ¶ 13; Wilson Decl. ¶ 14.

52. Detainees have reported that a number of people in the dorms are coughing and complaining of COVID-19 symptoms, like fevers and aches. St. Louis Decl. ¶ 14; Lopez Decl. ¶ 10; Conlin Decl. ¶ 11; Arredondo Decl. ¶¶ 14-15; Dorival Decl. ¶¶ 12, 14; Wilson Decl. ¶ 15. Nevertheless, no detainees are being tested for COVID-19 at Glades. St. Louis Decl. ¶ 14; Bucknor Decl. ¶ 11; Arredondo Decl. ¶ 15; Dorival Decl. ¶ 13. Nor are guards providing information to detainees about COVID-19, including precautions they can or should be taking. Bucknor Decl. ¶ 11; St. Louis Decl. ¶ 14; Conlin Decl. ¶ 17; Dorival Decl. ¶ 17; Arredondo Decl. ¶ 15.

53. Individuals with suspected COVID-19 exposure or infection are being held in group quarantines. They have not received masks or screening for medical vulnerabilities. Individuals from those group quarantines are sent back into the general population after receiving only a check of vital signs. Conlin Decl. ¶¶ 10, 16, 18.

54. Moreover, detainees including Plaintiffs have received inadequate medical care, including lack of treatment for ailments that Glades medical staff identified as requiring treatment. Lopez Decl. ¶ 7; Wilson Decl. ¶ 8. Reports of inadequate medical care remain routine, despite the well-known risks associated with the pandemic. One man who was supposed to see a doctor twice weekly reports going for three weeks without receiving care. Other detainees have reported difficulty in receiving their medication as scheduled. Conlin Decl. ¶ 11.

55. Glades also lacks adequate medical care infrastructure to address the strain of a COVID-19 outbreak.

56. Detainees report that on April 2, the facility ran out of antibiotics and medicine for colds, pain, and diabetes and did not receive a new supply for at least seven days. *Id.* There is

only one doctor at the facility, and that doctor is only available four days a week. SPLC & AIJ Report at 31.

57. One detainee, who is assigned to distribute food trays in the facility, recalled being in contact with food trays while feeling ill. He went to the medical unit to report his illness but was not provided with adequate medical care. He ultimately decided not to continue his work assignment because he was afraid to expose other detained individuals to his illness, and he had not received extra sanitizing materials, which he needed. *Id.*

58. In addition, individuals detained at Glades have long been malnourished. Many people have reported going hungry due to small portions or food that is spoiled or has bugs in it. *Id.* ¶ 3.

59. The guidance, protocols, and memoranda ICE has issued in response to COVID-19 are entirely inadequate to prevent or mitigate the rapid transmission of COVID-19 at Glades. Schriro Decl. ¶¶ 16, 40. ICE's guidance merely recommends, but does not require, social distancing, and it recognizes that this necessary measure "may not be possible" given the crowding in and physical infrastructure of facilities. Amon Decl. ¶ 32(c). The guidance also contemplates cohorting sick individuals together, which actually increases the risk of spread. Amon Decl. ¶ 38. At Glades, such distancing is not physically possible, and such cohorting is occurring.

60. In addition, it does not appear that the ICE guidance is being followed at Glades. Other than suspending all community visitation as of March 13, 2020, Glades has not made any significant changes to protocols or procedures in light of COVID-19. Conlin Decl. ¶¶ 5-6. Contrary to ICE's April 10, 2020 guidance, detained individuals have not been given masks, hand sanitizer, or tissues; staff cough and do not cover their mouths; and medical care continues

to be inadequate, with staff failing to provide individuals with necessary medication. *Compare* Amon Decl. ¶ 40(b) *with* Conlin Decl. ¶ 18. There is no indication that Glades is even staggering detainee access to activities like recreation, law library, and meals to limit the number of interactions between detainees from other housing units, as called for by the new ICE Guidance. *Compare* Amon Decl. ¶ 32(a) *with* Conlin Decl. ¶ 18.

61. Because the risk of infection is at its zenith in detention centers, public health experts with experience in detention and correctional settings have recommended release of vulnerable individuals from custody. Amon Decl. ¶ 56. Indeed, two medical experts for the DHS have concluded that COVID-19 poses an “imminent risk to the health and safety of immigration detainees,” in light of the nature of detention facilities and have recommended release of vulnerable people, both to mitigate their risk and to lessen the strain on local healthcare systems. Ex. 10 to Kacou Decl. (Scott A. Allen, MD, FACP & Josiah Rich, MD, MPH, *Letter to House and Senate Committees on Homeland Security*, at 3, 5-6 (Mar. 19, 2020) [hereinafter “Allen and Rich Letter”]).

III. Plaintiffs Must Be Released from ICE Custody Because They Are Particularly Vulnerable to Serious Illness or Death If Infected by COVID-19.

62. Plaintiffs in this case are all individuals who are especially vulnerable to serious illness and death if they are infected with COVID-19, but ICE nonetheless continues to detain each of them in one of four dorms at Glades while they await adjudication or release in their immigration proceedings.

63. **Heraud St. Louis.** Mr. St. Louis is a 40-year-old man born in the Bahamas. He has been detained by ICE at Glades for close to 10 months. He was transferred to Glades from Krome. St. Louis Decl. ¶¶ 1, 3.

64. Mr. St. Louis has four children, all of whom are U.S. citizens. He arrived in the United States when he was a year old and has never known any other country. He has been a lawful permanent resident since 2016. *Id.* ¶¶ 1, 2.

65. Mr. St. Louis has significant health problems. He suffers from diabetes and high blood pressure and has a history of kidney failure. He must take medication daily to help manage his high blood pressure and kidney problems; he must also take insulin injections three times per day. *Id.* ¶¶ 5–7.

66. Less than two weeks ago, Mr. St. Louis went into a diabetic coma and was taken to the emergency room. He was hospitalized for three days, but has since been returned to detention. *Id.* ¶ 5.

67. Mr. St. Louis is at high risk of severe illness or death from COVID-19 due to his significant health problems. Graves Decl. ¶ 25; Amon Decl. ¶ 17.

68. It is impossible for Mr. St. Louis to maintain a distance of six feet from other people at Glades. He lives in a dorm with more than 90 other people. They all share only two working urinals and toilets and three metal sinks. St. Louis Decl. ¶ 11.

69. Mr. St. Louis sleeps in a cubicle with five other people: four people sleep on bunk beds and two on singles. He sleeps in a bottom bunk, and is less than six feet from the person above him. He has no choice but to sleep within an arm's length of some of his cellmates. *Id.* ¶ 9.

70. Mr. St. Louis is also unable to maintain a safe distance from others at meal times. He eats at a table with three other people, also all within arm's length. *Id.* ¶ 10.

71. Mr. St. Louis is not able to maintain good, much less heightened, hygiene at Glades. He receives two four-ounce bottles of mixed shampoo and shower gel—the equivalent of

one cup—per week. He must use this single mixture for showers, handwashing, and all other hygiene during the week. *Id.* ¶ 13.

72. If Mr. St Louis is released, he can isolate or quarantine safely at his mother’s house, which has four bedrooms. *Id.* ¶ 18.

73. **Luis Macias Arredondo.** Mr. Arredondo is a 41-year-old man originally from Colombia. He has been detained by ICE for two months and is currently detained at Glades. Arredondo Decl. ¶¶ 1, 3.

74. Mr. Arredondo has a wife and three children, all of whom depend on him financially and one of whom is a U.S. citizen. *Id.* ¶ 2.

75. Mr. Arredondo has significant health problems. He suffers from spinal disorders for which he has been hospitalized and had surgery. He is also a former smoker. *Id.* ¶¶ 5-6.

76. A few weeks ago, Mr. Arredondo’s face became partially paralyzed, he suspects due to his high blood pressure. The nurses laughed at him. *Id.* ¶¶ 10-11.

77. For the past few weeks, Mr. Arredondo has had a cough, fever, severe headaches, and shortness of breath. Due to his shortness of breath, he has had trouble sleeping. *Id.* ¶ 8.

78. Mr. Arredondo is at high risk of severe illness or death from COVID-19 due to his significant health problems. Graves Decl. ¶ 27; Amon Decl. ¶ 12.

79. It is impossible for Mr. Arredondo to maintain a distance of six feet from other people at Glades. He sleeps in the same cell as five other people. His bed is one foot away from others. In recent weeks, his cellmates have changed ten times. Three of those individuals were sick with a cough, fever, and aches. Arredondo Decl. ¶¶ 13-14.

80. Mr. Arredondo is also unable to maintain a safe distance from others at meal times. He eats at a table with three other people, who are often coughing and sick. *Id.* ¶ 15.

81. Mr. Arredondo is not able to maintain good, much less heightened, hygiene at Glades. He must share only one working sink and toilet with nearly 100 people. He receives two travel-size bottles of mixed shampoo and shower gel per week. *Id.* ¶ 16.

82. If Mr. Arredondo is released, he can isolate or quarantine safely at the home he shares with his wife. *Id.* ¶ 19.

83. **Theophilus Bucknor.** Mr. Bucknor is a 62-year-old man originally from Nigeria. He has been detained by ICE at Glades for several weeks. He was transferred to Glades from Krome. Bucknor Decl. ¶¶ 1, 3.

84. Before being detained, Mr. Bucknor worked for a utilities company. He has a sister who is a U.S. citizen. *Id.* ¶ 2.

85. Mr. Bucknor has significant health problems. He has type II diabetes, for which he must take a medication twice a day and insulin. *Id.* ¶ 4.

86. Mr. Bucknor is at high risk of severe illness or death from COVID-19 due to his significant health problems and age. Graves Decl. ¶ 29; Amon Decl. ¶ 11.

87. Mr. Bucknor has had a cough for the last ten days, but he remains in his cell. Bucknor Decl. ¶ 11.

88. It is impossible for Mr. Bucknor to maintain a distance of six feet from other people at Glades. He is housed in a dorm with more than 80 other people. *Id.* ¶ 5. They all share only three toilets and three sinks. *Id.* ¶¶ 5, 10.

89. Mr. Bucknor sleeps in a cell with five other people. He sleeps in a bottom bunk, and the person who sleeps above him is less than four feet away. The person sleeping in the next bed over is one foot away. Since he arrived at Glades less than a month ago, three new people have been brought to his cell. *Id.* ¶¶ 6-7.

90. Mr. Bucknor is also unable to maintain a safe distance from others at meal times. He has to sit at a table with three other people, all less than two feet from each other. *Id.* ¶ 9.

91. Mr. Bucknor is not able to maintain good, much less heightened, hygiene at Glades. He receives a small bottle of gel to wash with only twice per week. There are no soap dispensers in the bathrooms that he shares with more than 80 other people, and the three toilets and sinks they share are cleaned only two to three times per day. Notwithstanding the lack of soap, he is not given hand sanitizer. *Id.* ¶ 10.

92. If Mr. Bucknor is released, he can isolate or quarantine safely at his apartment in Hollywood. *Id.* ¶ 14.

93. **Wilkins Dorival.** Mr. Dorival is a 24-year-old man originally from Haiti. He has been detained by ICE at Glades for the last month. He was transferred to Glades from Krome. Dorival Decl. ¶¶ 1. 3.

94. Mr. Dorival has a five-year-old son, two siblings, and two grandparents who are U.S. citizens. *Id.* ¶ 2.

95. Mr. Dorival has significant health problems. He suffers from obesity and high blood pressure. He takes two medications daily to manage his blood pressure. *Id.* ¶¶ 4-5.

96. Mr. Dorival also takes three medications to treat his anxiety, depression, and schizophrenia. *Id.* ¶ 6.

97. Mr. Dorival is at high risk of severe illness or death from COVID-19 due to his significant health problems. Graves Decl. ¶ 30; Amon Decl ¶ 13.

98. It is impossible for Mr. Dorival to maintain a distance of six feet from other people at Glades. There are over 90 people in his dorm. All of them have to share the same three toilets. Dorival Decl. ¶¶ 9-11.

99. Mr. Dorival sleeps in a room with six other people. He sleeps one foot away from the neighboring bed. His cell has included five new people in recent weeks. *Id.* ¶ 10.

100. Mr. Dorival is not able to maintain good, much less heightened, hygiene at Glades. He must share three toilets with more than 90 other people, and he only receives a small bottle of soap twice per week. *Id.* ¶ 11.

101. Mr. Dorival has heard a lot of people, including staff, coughing heavily, but he is not aware of any of them being tested for COVID-19. *Id.* ¶¶ 12-14.

102. If Mr. Dorival is released, he can isolate or quarantine safely in his mother's home or his brother's home. *Id.* ¶ 15.

103. **Roberto Cabrera Lopez.** Mr. Lopez is a 54-year-old man originally from Cuba. He has been detained by ICE at Glades for almost a month. He was transferred to Glades from Krome. Lopez Decl. ¶¶ 1, 3.

104. Mr. Lopez is married and has two sons. He and his wife have been together for eighteen years. He has worked hard to raise his children, and also to get his position at work. He is the head maintenance supervisor at two hotels. *Id.* ¶ 2.

105. Mr. Lopez has significant health problems. He has had asthma since he was a child and has suffered from hypertension for about fifteen years. He also has a medical condition that causes him to retain liquid in his legs, causing swelling. Mr. Lopez must take medication multiple times per day for his asthma and once daily for his hypertension. *Id.* ¶¶ 5-7.

106. Mr. Lopez has been hospitalized for his asthma throughout his life—most recently, two or three years ago. He has also received oxygen therapy in the past. In recent days, his asthma has gotten worse, and he has been using a small nebulizer for his shortness of breath. *Id.* ¶ 5.

107. Although medical staff at Glades recommended medication for the retained liquid and swelling in his legs, Mr. Lopez has not yet received any. In addition, on April 17, 2020, when he asked for his hypertension medication, medical staff at Glades told him they had run out. *Id.* ¶¶ 6, 7.

108. Mr. Lopez is at high risk of severe illness or death from COVID-19 due to his significant health problems and age. Graves Decl. ¶ 28; Amon Decl. ¶¶ 9, 14.

109. Before Mr. Lopez was transferred from Krome, he was put into a quarantine with 65 other people for two weeks. He had cold symptoms, but was not tested for anything. Not long after that, he was transferred to Glades in a bus with 20 other detainees from different dorms. Lopez Decl. ¶ 8.

110. It is impossible for Mr. Lopez to maintain a distance of six feet from other people at Glades. He is housed in a dorm with more than 95 other people. They all share only six toilets, six sinks, and six showers. *Id.* ¶¶ 9, 12.

111. Mr. Lopez sleeps in a cubicle within the dorm; it has six beds, and there are no doors on the cubicle separating it from the rest of the dorm. Mr. Lopez sleeps in a bottom bunk, and the person who sleeps above him is less than four feet away. The person sleeping in the next bed over is one foot away. *Id.* ¶ 9.

112. Mr. Lopez is also unable to maintain a safe distance from others at meal times. He has to sit at a table with three other people, inches away from each other. *Id.* ¶ 11.

113. Mr. Lopez is not able to maintain good, much less heightened, hygiene at Glades. He receives a small bottle of gel to wash with only twice per week and does not have access to hand sanitizer. He and the more than 95 other people with whom he shares only six toilets, sinks,

and showers share common spaces a lot and touch common objects that have not been cleaned.

Id. ¶ 12.

114. A lot of people in Mr. Lopez's dorm are coughing and complaining about fevers and headaches. But they remain housed with Mr. Lopez and the more than 95 other people in his dorm. *Id.* ¶ 9-10.

115. If Mr. Lopez is released, he can isolate or quarantine safely in the two-bedroom apartment he shares with his wife. *Id.* ¶ 17.

116. **Mark Anthony Montaque.** Mr. Montaque is a 54-year-old man originally from Jamaica. He has been detained by ICE at Glades for more than two months. He was transferred to Glades from Krome. Montaque Decl. ¶¶ 1, 3.

117. Mr. Montaque is married to a U.S. citizen and has two teenage children. *Id.* ¶ 2.

118. Mr. Montaque has significant health problems. He has emphysema and is HIV positive. He takes medication every morning and evening to manage his conditions. *Id.* ¶¶ 5, 6.

119. Mr. Montaque was hospitalized for his emphysema three years ago. Now, he uses an inhaler three to four times per day to help him clear his lungs. *Id.* ¶ 5.

120. Mr. Montaque is at high risk of severe illness or death from COVID-19 due to his significant health problems and age. Graves Decl. ¶ 26; Amon Decl. ¶¶ 9, 15.

121. It is impossible for Mr. Montaque to maintain a distance of six feet from other people at Glades. There are roughly 95 people in his dorm, which is only about 20 feet by 20 feet in size. All of them have to share the same toilet. Montaque Decl. ¶¶ 8, 12.

122. Mr. Montaque sleeps in a room with six other people, with three bunks on each side of the room. He sleeps on the bottom bunk, below another bed, and one foot away from the neighboring bed. *Id.* ¶ 9.

123. Mr. Montaque is also unable to maintain a safe distance from others at meal times and during the 30 minutes of recreation he is allowed. He has to sit at a table with three other people, and the table is roughly three feet by three feet. Occasionally, other people come close by while he is eating in order to clean the floor around the table. *Id.* ¶¶ 10, 11.

124. Mr. Montaque is not able to maintain good, much less heightened, hygiene at Glades. He must share a single toilet with more than 90 other people, and he does not have access to paper towels or regular soap. Only some people are able to buy soap at the commissary. *Id.* ¶ 12.

125. Mr. Montaque has heard a lot of people coughing heavily, but he is not aware of any of them being tested for COVID-19. *Id.* ¶ 14.

126. If Mr. Montaque is released, he can isolate or quarantine safely in his wife's home in Tampa. *Id.* ¶ 17.

127. **Lennox Robinson.** Mr. Robinson is a 26-year-old man originally from Jamaica. He has been detained by ICE at Glades for more than four months and was transferred from Krome. Robinson Decl. ¶¶ 1, 3.

128. Mr. Robinson is engaged to a U.S. citizen, and he and his fiancée have a three-year old child together who is a U.S. citizen. Mr. Robinson owns a business. *Id.* ¶ 2.

129. Mr. Robinson has significant health problems. He has had moderate to severe asthma since childhood, and has been hospitalized multiple times for his condition. Before he was detained, he used a nebulizer machine. At Glades, he must use an inhaler every night. *Id.* ¶ 6.

130. Mr. Robinson is at high risk of severe illness or death from COVID-19 due to his significant health problems. Graves Decl. ¶ 31; Amon Decl. ¶ 16.

131. It is impossible for Mr. Robinson to maintain a distance of six feet from other people at Glades. There are close to 100 people in his dorm. All of them have to share the same one working toilet, one working urinal, two sinks, and three showers. Robinson Decl. ¶¶ 7, 9.

132. Mr. Robinson sleeps in a cubicle within his dorm, along with five other people. He sleeps on a bottom bunk, with a person inches away from him sleeping at his feet. *Id.* ¶ 7.

133. A lot of new people were transferred to his dorm from Krome on April 17, 2020. He has had four new cellmates since arriving at Glades, including one who coughed a lot for an entire week. That cellmate was eventually transferred—but only after, having learned of the man’s symptoms, guards returned him to Mr. Robinson’s cell. *Id.* ¶ 8.

134. Mr. Robinson is also unable to maintain a safe distance from others at meal times. He has to sit at a four-sided table with five people. *Id.* ¶ 7.

135. Mr. Robinson is not able to maintain good, much less heightened, hygiene at Glades. He receives a small bottle of gel to wash with only twice per week. He must use that small bottle for everything, including showers and handwashing. *Id.* ¶ 9.

136. If Mr. Robinson is released, he can isolate or quarantine safely with his fiancée at their apartment in Broward County. *Id.* ¶ 11.

137. **Romaine Odean Wilson.** Mr. Wilson is a 26-year-old man originally from Jamaica. He has been detained by ICE since October 2019 and is currently detained at Glades. Wilson Decl. ¶¶ 1, 4.

138. Mr. Wilson is engaged and has one child who is a U.S. citizen. Prior to being detained, he and his fiancée planned to move to be closer to his child. *Id.* ¶ 2.

139. Mr. Wilson has significant health problems. Due to a traumatic brain injury he suffered after being shot in the head in June 2015, he suffers from grand mal seizures. He takes

medication for his seizures and has also been hospitalized due to them numerous times since arriving at Glades. *Id.* ¶¶ 6, 7.

140. Mr. Wilson also occasionally has trouble breathing and uses an asthma pump when necessary. *Id.* ¶ 6.

141. Mr. Wilson is at high risk of severe illness or death from COVID-19 due to his significant health problems. Graves Decl. ¶ 32; Amon Decl. ¶ 18.

142. Earlier this month, notwithstanding Mr. Wilson's medical condition, a guard hit Mr. Wilson's head against a wall. Mr. Wilson was then placed in solitary confinement and denied the medications he requested when he started feeling ill. Shortly after that, he had a seizure and fell down, hitting his head and face. He woke up the next day in the medical unit, with a painful injury that became infected. Wilson Decl. ¶ 8. Since being discharged from the medical unit, Mr. Wilson has been in solitary confinement because he used an extra towel without permission. *Id.* ¶ 11.

143. It is impossible for Mr. Wilson to maintain a distance of six feet from other people in his regular dorm. He usually sleeps in a cubicle with five other people, with at least one person within an arm's length. *Id.* ¶ 12.

144. Mr. Wilson is not able to maintain good, much less heightened, hygiene at Glades. As of April 9, 2020, he and the many detainees with whom he shares the bathroom had access to only two working sinks and two working toilets. He receives a small bottle of gel to wash with only twice per week. He must use that small bottle for everything, including showers and handwashing. He does not have access to hand sanitizer. *Id.* ¶ 13.

145. If Mr. Wilson is released, he can isolate or quarantine safely at his mother's house, which has four bedrooms, in Fort Lauderdale. *Id.* ¶ 16.

LEGAL FRAMEWORK

I. Immigrant Detainees Are Entitled to Due Process Protections from Exposure to Serious Illness and Potential Death.

146. Immigrant detainees are civil detainees entitled to at least the same Fifth Amendment due process protections as pretrial detainees. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (immigration detainees are civil detainees held pursuant to civil immigration laws and are entitled to due process under the Fifth Amendment); *Jordan v. Doe*, 38 F.3d 1559, 1564 (11th Cir. 1994) (“While the conditions under which a prisoner is held are subject to scrutiny under the Eighth Amendment, the conditions under which a pretrial detainee is confined are scrutinized under the Due Process Clauses of the Fifth and Fourteenth Amendments.”).

147. Civil detainees, including those held in federal immigration detention, are entitled to “more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *see also Dolihite v. Maughon By and Through Videon*, 74 F.3d 1027, 1041 (11th Cir. 1996).

148. “Due process requires that a pretrial detainee not be punished” *Magluta v. Samples*, 375 F.3d 1269, 1273 (11th Cir. 2004); *see also Bell v. Wolfish*, 441 U.S. 520, 535 (1979). To determine whether treatment of a pretrial detainee constitutes punishment, “[f]irst a court must ask whether any ‘legitimate goal’ was served by the prison conditions. Second, it must ask whether the conditions are ‘reasonably related’ to that goal.” *Jacoby v. Baldwin Cty.*, 835 F.3d 1338, 1345 (11th Cir. 2016). “[A]n intent to punish suffices to show unconstitutional pretrial punishment,” and such an intent “may be inferred when a condition of pretrial detention is not reasonably related to a legitimate government goal[.]” *McMillian v. Johnson*, 88 F.3d 1554, 1564 (11th Cir. 1996), *opinion amended on reh’g*, 101 F.3d 1363 (11th Cir. 1996); *see also Magluta*, 375 F.3d at 1273.

149. Failure to provide detained individuals with basic necessities, such as adequate medical care, violates due process. *Hamm v. DeKalb Cty.*, 774 F.2d 1567, 1573 (11th Cir. 1985); *Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cty.*, 402 F.3d 1092, 1115 (11th Cir. 2005).

150. In addition, it is cruel and unusual punishment under the Eighth Amendment, and therefore necessarily a violation of civil detainees' rights under the Fifth Amendment's Due Process Clause, for a federal official to show "deliberate indifference to a substantial risk of serious harm" to a detainee. *Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1582 & n.4 (11th Cir. 1995); *see also Farmer v. Brennan*, 511 U.S. 825, 828 (1994). This occurs, for example, when a prisoner is confined "in conditions lacking basic sanitation." *Chandler v. Baird*, 926 F.2d 1057, 1063, 1065–66 (11th Cir. 1991). Conditions "conducive to spreading . . . infectious disease" are also constitutionally suspect. *See Novak v. Beto*, 453 F.2d 661, 665–66 (5th Cir. 1971) (noting that "the deprivation of basic elements of hygiene" is "a common thread" running through "several cases that have concluded that certain prison conditions were so 'base, inhuman, and barbaric' that they violate the Eighth Amendment," including one case where conditions were "conducive to spreading and did spread infections disease") (citing *Holt v. Sarver*, 300 F. Supp. 825 (E.D. Ark. 1969)).

151. Detention conditions that pose an unreasonable risk of future harm violate the Eighth Amendment's prohibition against cruel and unusual punishment, and therefore also civil detainees' rights under the Fifth Amendment, even if the harm has not yet come to pass. *See Helling*, 509 U.S. at 33 ("It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.").

II. Defendants Are Violating Plaintiffs' Constitutional Due Process Rights.

152. Due process requires that the nature of civil confinement bear “some reasonable relation to the purpose for which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Jacoby*, 835 F.3d at 1345. The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person’s attendance for a legal hearing adjudicating their status or potential removal, to detain prior to an ordered removal, or to ensure the safety of the community. *See Zadvydas*, 533 U.S. at 711.

153. The detention of medically vulnerable people in conditions that expose them to a lethal virus with no vaccine or cure, for which social distancing and hygiene is the only means of preventing transmission, serves no legitimate purpose. Nor is detention under these circumstances reasonably related to the enforcement of immigration laws.

154. Plaintiffs’ due process rights are also violated because their confinement places them at serious risk of being infected with COVID-19 and Defendants are being deliberately indifferent to this critical safety concern.

155. There is no question that COVID-19 poses a serious risk to Plaintiffs. COVID-19 is highly contagious and can cause severe illness and death. *See supra* ¶¶ 21-26. Plaintiffs are at a heightened risk because of their age and/or underlying health conditions, as described above. *See supra* ¶¶ 62-145.

156. Defendants have knowledge of, but are disregarding, the serious risk that COVID-19 poses to people like Plaintiffs who have underlying health conditions. Plaintiffs—all of whom are at high risk of serious illness or death from COVID-19—continue to be detained. At least five Plaintiffs have sent ICE written requests for humanitarian release.

157. Defendants have long been on notice of the risk that COVID-19 poses to Plaintiffs and others with serious medical conditions. Indeed, as early as February 25, 2020, two medical experts for DHS raised concerns about the specific risk posed to immigrant detainees as a result of COVID-19 with the agency. On March 19, 2020, they brought their concerns to the House and Senate Committees on Homeland Security and warned of the danger of rapid spread of COVID-19 in immigration detention facilities. *See* Allen and Rich Letter at 2. They explained that in order to save both the lives of detainees and lives in the community at large, “[m]inimally, DHS should consider releasing all detainees in high risk medical groups[.]” *Id.* at 5.

158. John Sandweg, a former acting director of ICE, has written publicly about the need to release detainees because ICE detention centers “are extremely susceptible to outbreaks of infectious diseases” and “preventing the virus from being introduced into these facilities is impossible.” Ex. 11 to Kacou Decl. (John Sandweg, *I Used to Run ICE. We Need to Release the Nonviolent Detainees*, The Atlantic (Mar. 22, 2020)).

159. Release is the only means to protect Plaintiffs’ due process rights.

III. ICE Regularly Uses Its Authority to Release People Detained in Custody Because They Suffer from Serious Medical Conditions.

160. ICE has a longstanding practice of humanitarian releases from custody. The agency has routinely exercised its authority to release particularly vulnerable detainees. Schriro Decl. ¶ 22.

161. ICE has a range of highly effective tools at its disposal to ensure that released individuals report for court hearings and other appointments, including conditions of supervision while released. *Id.* ¶¶ 43-44. For example, ICE’s conditional supervision program, called Intensive Supervision Appearance Program (“ISAP”), relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification,

and in-person reporting to supervise participants. A government-contracted evaluation of this program reported a 99% attendance rate at all immigration court hearings and a 95% attendance rate at final hearings. *See* Ex. 12 to Kacou Decl. (U.S. Gov't Accountability Off., GAO-15-26, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* 30 (2014)); Schriro Decl. ¶ 46.

162. ICE's authority to release individuals on medical grounds is based on a range of statutory and regulatory provisions; in addition, a long line of directives explicitly instruct officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities. For example, under 8 C.F.R. § 212.5(b)(1), ICE has routinely exercised its discretion to release particularly vulnerable detainees. *See also* 8 U.S.C. §§ 1182(d)(5), 1225(b), 1226; 8 C.F.R. §§ 212.5, 235.3, 236.2(b).

163. Moreover, ICE has released noncitizens on medical grounds regardless of the statutory basis for a noncitizen's detention. Schriro Decl. ¶ 22.

164. The Due Process Clause of the Fifth Amendment to the U.S. Constitution requires ICE to release detainees where civil detention has become punitive and where release is the only remedy to prevent this impermissible punishment. Plaintiffs seek release on constitutional grounds, and not in the exercise of ICE's discretion. However, the fact that ICE has the authority to release immigrants from custody and has exercised this authority in the past indicates that the remedy Plaintiffs request is neither unprecedented nor unmanageable for the agency.

IV. This Court Has Authority to Order Plaintiffs' Release to Vindicate Their Fifth Amendment Rights, and Such Relief Is Necessary Here.

165. Courts have broad power to fashion equitable remedies to address constitutional violations in prisons. *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978); *see also Bing v. Roadway Exp., Inc.*, 485 F.2d 441, 448 (5th Cir. 1973) ("We must remember that the power of the district

court to fashion an equitable remedy is broad.”). “When necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011); *Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond pretrial detainees as necessary to reach a population cap).

166. Plaintiffs challenge the fact of their detention in violation of the Fifth Amendment Due Process Clause and seek immediate release, under conditions the Court deems proper. The writ of habeas corpus under 28 U.S.C. § 2241 is an appropriate vehicle for granting this relief. *See Medberry v. Crosby*, 351 F.3d 1049, 1053 (11th Cir. 2003) (a challenge to the “fact or duration of physical imprisonment” is properly treated as a petition for writ of habeas corpus) (citation omitted).

167. In light of the imminent threat posed by COVID-19, courts across the country have recognized immediate release as an appropriate and necessary remedy and have accordingly ordered the release of particularly vulnerable detainees in ICE facilities. *See, e.g., Vazquez Barrera v. Wolf*, No. 4:20-cv-01241, ECF No. 41 (S.D. Tex. Apr. 17, 2020) (granting TRO releasing medically vulnerable plaintiff because of the risk of COVID-19); *A.R. v. Decker*, No. 20-3600, ECF No. 27 (D.N.J. Apr. 12, 2020) (granting TRO releasing five medically vulnerable detainees because of the risk of COVID-19); *Hope v. Doll*, No. 1:20-cv-00562, ECF No. 22 (M.D. Pa. Apr. 10, 2020) (denying motion for reconsideration of TRO grant and ordering immediate release of 22 medically vulnerable immigrant detainees); *Bent v. Barr*, No. 4:19-cv-06123, ECF No. 26 (N.D. Cal. Apr. 9, 2020) (granting TRO releasing medically vulnerable immigrant detainee because of the risk of COVID-19); *Malam v. Adducci*, No. 5:20-cv-10829-JEL-APP, ECF No. 29 (E.D. Mich. Apr. 9, 2020) (same for one detainee); *Liriano Olivo v.*

Tsoukaris, No. 2:20-cv-03481-JMV, ECF No. 24 (D.N.J. Apr. 9, 2020) (same for three detainees); *Bahena Ortuno v. Jennings*, No. 3:20-cv-02064-MMC, ECF No. 38 (N.D. Cal. Apr. 8, 2020) (same for four detainees); *Savino v. Souza*, No. 20-10617-WGY, --- F. Supp. 3d ---, 2020 WL 1703844 (D. Mass. Apr. 8, 2020) (granting motion for class certification resulting in release of at least 49 detainees as of this filing); *Nguyen v. Marin*, No. 20-00646, ECF No. 10, (C.D. Cal. Apr. 3, 2020); *Robles Rodriguez v. Wolf*, No. 5:20-cv-00627-TJH-GJS, ECF Nos. 32, 35-39 (C.D. Cal. Apr. 2, 2020) (granting TRO releasing six medically vulnerable detainees because of the risk of COVID-19); *Thakker v. Doll*, --- F. Supp. 3d ---, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020) (same for eleven detainees); *Avendaño Hernandez v. Decker*, No. 20-cv-1589 (JPO), 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020); *Frailhat v. Wolf*, No. 20-00590, ECF No. 18 (C.D. Cal. Mar. 30, 2020) (ordering release of eleven detainees); *Coronel v. Decker*, --- F. Supp. 3d ---, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020) (same for four detainees); *Basank v. Decker*, --- F. Supp. 3d ---, 2020 WL 1481503 at *3 (S.D.N.Y. Mar. 26, 2020) (same, because “[t]he nature of detention facilities makes exposure and spread of the [coronavirus] particularly harmful”); *see also Xochihua-Jaimes v. Barr*, 2020 WL 1429877, at *1 (9th Cir. Mar. 24, 2020) (sua sponte ordering the release of an immigrant petitioner “[i]n light of the rapidly escalating public health crisis, which . . . authorities predict will especially impact immigration detention centers”); *Barbecho v. Decker*, 20-cv-02821, ECF No. 20 (S.D.N.Y. Apr. 15, 2020); *J.G. v. Decker*, No. 20-cv-03644-KM, ECF No. 36 (D.N.J. Apr. 15, 2020); *Fofana v. Albence*, No. 20-cv-10869, ECF No. 15 (E.D. Mich. Apr. 15, 2020). And courts in this district have already granted motions for compassionate release in light of COVID-19, citing “extraordinary and compelling reasons.” *United States v. Hernandez*, 1:16-cr-20091, ECF No.

561 (S.D. Fla. Apr. 3, 2020); *United States v. Oreste*, 1:14-cr-20349, ECF No. 200 (S.D. Fla. Apr. 6, 2020).

168. The circumstances of this case make clear that release is the only means to ensure compliance with the Fifth Amendment's prohibition on punitive detention.

169. Plaintiffs' medical conditions put them at grave risk of serious illness or death if they contract COVID-19. COVID-19 is exceptionally likely to spread quickly through Glades. By continuing to detain Plaintiffs, Defendants are subjecting Plaintiffs to unreasonable harm, and to unconstitutional punishment. Where risk mitigation is impossible, as here, the only course of action that can remedy these unlawful conditions is release from detention.

CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Substantive Due Process (Substantive Due Process; Unlawful Punishment; Objectively Unreasonable Risk to Health and Safety; Freedom from Cruel Treatment and Conditions of Confinement)

170. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment.

171. The federal government violates this substantive due process right when it fails to satisfy its affirmative duty to provide conditions of reasonable health and safety to the people it holds in its custody, and violates the Constitution when it fails to provide for basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety for those in custody. The federal government also violates substantive due process when the conditions of confinement it imposes are not reasonably related to any legitimate government goal. And, finally, it also violates substantive due process when, acting with deliberate indifference, it subjects civil detainees to objectively unreasonable risks to their health and safety, to cruel treatment, or to conditions of confinement that amount to punishment.

172. By detaining Plaintiffs at Glades, Defendants are subjecting Plaintiffs to an unreasonable risk of contracting COVID-19, for which there is no vaccine and no cure, and which can be lethal. Plaintiffs are particularly vulnerable to serious medical complications from COVID-19 infection and are at unreasonable risk of illness and death as long as they are held in detention.

173. By subjecting Plaintiffs to this risk, Defendants are maintaining detention conditions that amount to punishment and are failing to ensure safety and health in violation of Plaintiffs' due process rights. Likewise, Defendants' continued detention of Plaintiffs at Glades is deliberately indifferent to Plaintiffs' health and safety because only releasing Plaintiffs from custody can adequately protect them from COVID-19. Defendants are aware of the serious risk posed by COVID-19 and are failing to take the only action that can respond to Plaintiffs' medical needs, which is to release Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE Petitioners-Plaintiffs request that the Court grant the following relief:

- a. Issue a Writ of Habeas Corpus on the ground that Plaintiffs' continued detention violates the Due Process Clause, and order Plaintiffs' immediate release, with appropriate precautionary public health measures;
- b. 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 of Plaintiffs violates the Due Process Clause;

d. Award Plaintiffs their costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act ("EAJA"), 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.

Dated: April 21, 2020

Respectfully Submitted,

David C. Fathi**
Eunice H. Cho**
Joseph Longley**
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION, NATIONAL PRISON
PROJECT
915 15th St. N.W., 7th Floor
Washington, DC 20005
202-548-6616
dfathi@aclu.org
echo@aclu.org
jlongley@aclu.org

Michael Tan*
Omar C. Jadwat*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION, IMMIGRANTS'
RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2600
mtan@aclu.org
ojadwat@aclu.org

/s/ Daniel B. Tilley
Amien Kacou, Fla. Bar No. 44302
Daniel Tilley, Fla. Bar No. 102882
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF FLORIDA
4343 West Flagler Street, Suite 400
Miami, FL 33134
(786) 363-2714
akacou@aclufl.org
dtalley@aclufl.org

Vera Eidelman*
Rebecca Ojserkis*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2600
veidelman@aclu.org
rojserkis@aclu.org

* *Motions to appear pro hac vice forthcoming.*

** *Motions to appear pro hac vice forthcoming; not admitted in DC; practice limited to federal court.*

Verification by someone acting on Petitioners' behalf pursuant to 28 U.S.C. § 2242

We are submitting this verification on behalf of the Petitioners because we are some of the Petitioners' attorneys. We have each discussed with one or more Petitioner and collectively have discussed with all Petitioners the events described in this Petition. On the basis of those discussions, we hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of our knowledge.

Dated: April 21, 2020

/s/ Amien Kacou

Amien Kacou, Attorney for Petitioners

/s/ Joseph Longley

Joseph Longley, Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing motion via the Court's ECF filing system and via email courtesy copy to the office of the United States Attorney for the Southern District of Florida.

Dated: April 21, 2020

/s/ Daniel B. Tilley

Daniel B. Tilley