

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KANAT UMARBAEV, JANE DOE, LEE)
ALEJANDRO ESPINOZA URBINA,)
ALFREDO HECHAVARRIA FONTEBOA,)
KIRK GOLDING, BEHZAD JALILI, JUAN)
FRANCISCO PORTILLO HERNANDEZ,)
EDGAR HARO OSUNA, OSITA)
NWOLISA, ENMANUEL FIGUEROA)
RAMOS, and PATRICIA ESTEBAN)
RAMON,)

Petitioners,)

v.)

MARC J. MOORE, Dallas Field Office)
Director, Immigration and Customs)
Enforcement, Department of Homeland)
Security; JIMMY JOHNSON, Warden,)
Prairieland Detention Center; MATTHEW T.)
ALBENCE, Deputy Director of Immigratoin)
and Customs Enforcement, Department of)
Homeland Security; and CHAD WOLF,)
Acting Secretary of Department of Homeland)
Security, in their official capacities,)

Respondents.)

Case No.

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

I. INTRODUCTION

In the midst of a highly contagious, once in a generation global pandemic that has brought air travel to a halt and led to the entire country essentially being placed on lockdown, ICE officials filled a plane with obviously sick individuals and flew them across the country to the Prairieland Detention Center (Prairieland) in Alvarado, Texas. The consequences of this decision are exactly as expected: Prairieland Detention Center quickly went from zero confirmed cases of COVID-19 to at least forty-five.

Petitioners Kanat Umarbaev, Jane Doe, Lee Alejandro Espinoza Urbina, Alfredo Hechavarria Fonteboa, Kirk Golding, Behzad Jalili, Juan Francisco Portillo Hernandez, Edgar Haro Osuna, Osita Nwolisa, Patricia Esteban Ramon, and Enmanuel Figueroa Ramos are medically vulnerable individuals who are being held at Prairieland. Each of them has already tested positive for COVID-19 or faces a high risk of dying or becoming seriously ill if they do become infected. Despite the ongoing outbreak and the dire circumstances on the ground, Respondents have failed to take the steps necessary to ensure that Petitioners are held in even minimally constitutionally sufficient conditions. Petitioners have all lived in the United States for years, have deep ties to the country, and present no risk to the community if they are released. Petitioners bring this Writ of Habeas Corpus to secure their release from this unconstitutional detention.¹

Social distancing is currently the only known way to contain COVID-19, and officials are not even meaningfully trying to facilitate social distancing inside Prairieland, let alone take other steps to prevent the disease from continuing to spread. To the contrary, cleaning supplies are

¹ ICE has informed Petitioner Alfredo Hechavarria Fonteboa and Behzad Jalili that they can be released upon posting \$5000 bond. Those petitioners have been unable to post the required bond, and because their continued detention violates the Constitution, they bring this action to secure their immediate release.

limited, and detainees who test positive for COVID-19 are placed in punitive segregation cells rather than medical facilities.

Recognizing the dire circumstances and the failure of ICE decisionmakers to ensure that detention satisfies minimal constitutional requirements, courts have begun to step in and order ICE to release detained individuals. *See, e.g., Vazquez Barrera v. Wolf*, 4:20-CV-1241, 2020 WL 1904497, at *8 (S.D. Tex. Apr. 17, 2020) (ordering release of medically vulnerable individual from facility with COVID-19 cases); *Kaur v. United States Dep't of Homeland Sec.*, 220CV03172ODWMRWX, 2020 WL 1939386, at *3 (C.D. Cal. Apr. 22, 2020) (ordering release of detainee and explaining that courts “across the country have recognized that the risk posed in immigration detention facilities of contracting and dying from the virus is so severe that it constitutes an irreparable harm supporting a TRO”).

On May 7, 2020, ICE confirmed the first death of a detainee from COVID-19. With social distancing impossible and facilities not appropriately responding to the crisis, it is only a matter of time before more detainees die. This Court should therefore join the other courts from “across the country” that have granted habeas and injunctive relief, and it should order Petitioners’ immediate release because their continued detention violates the Fifth Amendment’s Due Process Clause.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution (U.S. Const. art. 1, § 9, cl. 2).

2. “Where an individual is ‘challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release,’ the proper remedy is a writ of habeas corpus.” *Vazquez Barrera*, 2020 WL 1904497, at *4 (S.D. Tex. Apr. 17, 2020), quoting *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

3. Venue is proper in the Northern District of Texas because a substantial part of the events and omissions giving rise to this action occurred in the District. 28 U.S.C. § 1391(b)(2). Petitioners are currently detained at the Prairieland Detention Center in Alvarado, Texas.

III. PARTIES

4. Petitioner Alfredo Hechavarria Fonteboa is a 32-year-old citizen of Cuba who has applied for asylum in the United States. He suffers from lung disease, asthma, irregular hemoglobin, and high blood pressure. Mr. Hechavarria has had a fever and shortness of breath within the last week. He has also suffered an asthma attack since being detained at Prairieland, and his asthma is usually worse at this time of the year. In addition, Mr. Hechavarria was not treated promptly for his irregular hemoglobin at Prairieland, causing him to suffer headaches for a month.

5. Petitioner Kirk Golding is a 26-year-old citizen of Jamaica. At age 13, Mr. Golding came to the United States with a visitor visa, and he remained here after his brother died on a trip back to Jamaica. He first lived with an aunt in New York and then moved with his sister to Philadelphia. His sister became his guardian. He is married to a United States citizen, and together they have three children who are also United States citizens. They live in Philadelphia. Mr. Golding is the sole provider for his family. Mr. Golding has suffered from asthma for more than 20 years, and he uses an inhaler to help treat his condition. He requested an inhaler at Prairieland, but his request was denied. Mr. Golding's wife has filed an immediate relative immigration petition on his behalf, which has been approved.

6. Petitioner Behzad Jalili is 49 years old, and he has been a lawful permanent resident of the United States since 2002. Mr. Jalili entered the county as a refugee from Iran in 2001, as he feared persecution based on his conversion from Muslim to Christian. Mr. Jalili has been detained since July 2018 even though he has never been accused or convicted of a crime. Mr. Jalili was tortured for weeks by the Iranian army, during which he sustained back and neck injuries, a broken

nose and chest bone, and psychological torture. Mr. Jalili is currently appealing his order of removal to Iran. Mr. Jalili has been diagnosed with PTSD and suffers from panic attacks. He previously took prescription medication for his PTSD, but he has not been able to obtain that medication since being detained.

7. Petitioner Juan Francisco Portillo Hernandez is a 20-year-old citizen of El Salvador. He has been in the United States, and in Texas specifically, since November 2015. Mr. Portillo Hernandez has a 10-month old son who is a United States citizen and a 15-year old brother who is also a United States citizen. Mr. Portillo Hernandez received an approval notice for Special Immigrant Juvenile status in April 2017. Mr. Portillo Hernandez has displayed a number of COVID-19 symptoms since arriving at Prairieland.

8. Petitioner Edgar Haro Osuna is a 47-year-old citizen of Mexico. He has lived in the United States for 30 years. His wife, Rosalba Estrella, is a permanent resident, and their two children are United States citizens. He suffers from type 2 diabetes, as well as neuropathy, which causes numbness in the left side of his body. Mr. Haro Osuna's diabetes was successfully managed with medication before he was detained, but since being detained he has lost approximately 20 pounds and his diabetes has deteriorated to the point where he needs to inject himself with insulin to function. In addition, Mr. Haro Osuna is being treated for anxiety. Mr. Haro was a victim of sex trafficking in his youth, and he has a pending application for a visa based on that abuse.

9. Petitioner Osita Nwolisa is a 51-year-old citizen of Nigeria. He has lived in the United States since entering on a tourist visa in 2017. In 2018, he married his wife, a United States citizen, and he was living with her in Dallas before he was brought to Prairieland on March 3, 2020. Mr. Nwolisa's wife filed an immigration petition for him before he was arrested by ICE.

Mr. Nwolisa suffers from high blood pressure, and he is currently so sick that he had to cut short a meeting with lawyers during the first week in May.

10. Petitioner Patricia Esteban Ramon (a/k/a Patricia Esteban Ramos) is a 46-year-old citizen of Mexico who has lived in the United States for the past thirteen years. Her partner of approximately four years, Luz Cruz, is a United States citizen. Ms. Esteban Ramon and her partner live as a family with Ms. Esteban Ramon's daughter in Dallas, Texas. Ms. Esteban Ramon was diagnosed with diabetes at Prairieland, but the staff recently has not been checking her condition at all, and she does not know what she should be doing to take care of herself.

11. Petitioner Enmanuel Figueroa Ramos is a 21-year-old citizen of the Dominican Republic and a lawful permanent resident of the United States. He has lived in the United States since he was three years old. His father and sister are also lawful permanent residents, and he has a number of other family members who are United States citizens or permanent residents. Mr. Ramos has had asthma since he was a little kid, and he uses an inhaler to help him breathe. He is not currently receiving an inhaler. In 2017, he was a passenger in a car hit by a drunk driver. The accident caused internal bleeding and a back injury that makes it hard to take deep breaths.

12. Petitioner Lee Alejandro Espinoza Urbina has lived in the United States since he was one-and-a-half years old. He is married to a United States citizen, has three children who are United States citizens, and has three step-children who are United States citizens. In addition, Mr. Espinoza Urbina's parents and siblings are United States citizens. Before he was detained, Mr. Espinoza Urbina ran a moving company. Mr. Espinoza Urbina tested positive for COVID-19 at Prairieland and fears he will die there. He has high blood pressure, a history of bronchitis, and is overweight.

13. Petitioner Jane Doe is a 49-year-old citizen of Zimbabwe. She has lived in the United States for more than twenty-five years. Her 24-year old daughter is a United States citizen, as is her sister. Ms. Doe's parent are lawful permanent residents. Ms. Doe is HIV+ and suffers from Posttraumatic Stress Disorder (PTSD), among other health conditions. She has not received the necessary bloodwork for her HIV+ condition since arriving at Prairieland.

14. Petitioner Kanat Umarbaev is a 47-year-old native of Kyrgyzstan with high blood pressure and a family history of strokes. Mr. Umarbaev has lived in the United States for 20 years. His wife has lawful immigration status in the United States by virtue of a grant of withholding of removal to Kyrgyzstan based upon her fear of persecution on account of her religious beliefs. Mr. Umarbaev is the proud father of two U.S. citizen children, the oldest a high-school student with Asperger's syndrome, and the youngest a junior high student. On January 2, 2020, the United States Court of Appeals for the Second Circuit issued a stay of removal as Mr. Umarbaev continues to challenge his removal. Mr. Umarbaev was transferred to Prairieland from Pike County along with Mr. Espinoza Urbina and Mr. Golding. Mr. Umarbaev has tested positive for COVID-19.

15. Respondent Chad Wolf is the Acting Secretary of the Department of Homeland Security (DHS). He is sued in his official capacity. DHS is a cabinet department of the United States federal government that is responsible for administering and enforcing the nation's immigration laws.

16. Matthew T. Albence is the Deputy Director and a Senior Official Performing the Duties of the Director of the United States Immigration and Customs Enforcement (ICE). He is sued in his official capacity. ICE is an agency within DHS with the primary responsibility for enforcing immigration and customs laws, including by conducting operations to remove individuals from the United States.

17. Marc J. Moore is ICE's Dallas Field Office Director. He is sued in his official capacity.

18. Jimmy Johnson is Warden of Prairieland Detention Center. He is sued in his official capacity.

IV. STATEMENT OF FACTS

A. COVID-19 is an unprecedented risk to public health.

19. COVID-19, caused by a novel coronavirus never before seen in humans, is a global pandemic. It is a serious disease that can cause respiratory failure and death. App'x at 17 (Amon Decl. ¶6).²

20. The World Health Organization (WHO) first characterized the outbreak as a pandemic on March 11, 2020.³

21. President Trump formally declared a national emergency in response to the virus on March 13, 2020.⁴

22. As of May 11, 2020, more than 4 million people around the world have tested positive for COVID-19, and nearly 280,000 of them have died, with those numbers rising every day. App'x at 17 (Amon Decl. ¶5).

² Cites to "App'x" refer to the appendix that Petitioners are filing contemporaneously with this petition.

³ Tedros Adhanom Ghebreyesus, *WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020* (March 11, 2020), available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁴ Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (March 13, 2020), available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

23. Less than two months ago, when the Northern District of Texas first issued a special order regarding operations during the pandemic, there were only 1,600 confirmed cases in the United States.⁵

24. There are now more than 1,345,000 confirmed cases in the United States and more than 80,000 confirmed deaths. App'x at 17 (Amon Decl. ¶5).

25. The numbers of COVID-19 infections and deaths continue to rise every day at a rapid pace both in the United States and around the world.

26. Individuals with serious cases often require advanced support in the intensive care unit. App'x 17 (Amon Decl. ¶6). And people who survive serious cases of COVID-19 may require long-term rehabilitation. App'x at 17 (Amon Decl. ¶6).

27. Both the World Health Organization (WHO) and the United States Centers for Disease Control and Prevention (CDC) have identified groups of people who face a higher risk of suffering serious adverse effects from COVID-19.

28. The WHO identifies individuals at highest risk to include those over 60 years of age and those with cardiovascular disease, diabetes, chronic respiratory disease, and cancer. App'x at 17-18 (Amon Decl. ¶7).

29. The WHO further states that the risk of severe disease increases with age starting from around age 40. App'x at 17-18 (Amon Decl. ¶7).

30. The CDC identifies “older adults [65 and older] *and* people of any age who have serious underlying medical conditions” as at higher risk of severe disease and death. App'x at 17-18 (Amon Decl. ¶7) (emphasis added).

⁵ See United States District Court, Northern District of Texas, Special Order No. 13-5 at 1, available at <http://www.txnd.uscourts.gov/sites/default/files/documents/COVID19.pdf> (last visited on April 30, 2020).

31. The CDC identifies underlying medical conditions to include: blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders including diabetes, metabolic disorders, heart and lung disease, neurological and neurodevelopmental conditions, and current or recent pregnancy. App'x at 18 (Amon Decl. ¶8).

32. In addition, the CDC published data showing that hospitalization rates and intensive care unit (ICU) admission rates were nearly identical for individuals aged 45-54 and individuals aged 55-64. App'x at 18 (Amon Decl. ¶9). The CDC's data suggests that adults of any age can suffer from severe illness or death. App'x at 18 (Amon Decl. ¶9).

33. Moreover, a federal court recently ordered ICE to identify, track, and consider for release anyone having the following risk factors: "being over the age of 55; being pregnant; or having chronic health conditions, including: cardiovascular disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery); high blood pressure; chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases); diabetes; cancer; liver disease; kidney disease; autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus); severe psychiatric illness; history of transplantation; and HIV/AIDS." *Fraihat v. U.S. Immigration & Customs Enf't*, EDCV191546JGBSHKX, 2020 WL 1932570, at *16 n. 20 (C.D. Cal. Apr. 20, 2020); *see also* App'x at 17-18 (Amon Decl. ¶¶7-8) (discussing risk factors generally).

34. In addition to causing severe illness and death, COVID-19 is particularly dangerous because it is highly contagious.

35. It appears that the disease is transmitted primarily between people who are within approximately 6 feet of one another, via respiratory droplets that are produced when an infected person coughs or sneezes. App'x at 22 (Amon Decl. ¶13).

36. The evidence also supports the theory that asymptomatic people are also spreading the disease. App’x at 22 (Amon Decl. ¶¶13-14).⁶

37. Indeed, on May 6, 2020, the CDC released a study about COVID-19 in prisons and detention settings that indicated, among other things, “symptom screening alone is inadequate to promptly identify and isolate infected persons in congregate settings such as correctional and detention facilities” because of the likelihood that asymptomatic individuals can infect others.⁷

38. It may also be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes. App’x at 22 (Amon Decl. ¶13).

39. As has been widely reported, there is no vaccine to prevent COVID-19, and there is no known cure or treatment for COVID-19. App’x at 17 (Amon Decl. ¶6).

40. Moreover, it is unclear whether individuals who become infected and recover will develop immunity from further infection, how long any such immunity might last, and whether they may still be able to infect others. App’x at 19 (Amon Decl. ¶12(a)).

41. Although hand washing and disinfecting surfaces may be helpful in preventing the spread of COVID-19, the main strategy for limiting transmission is social distancing. App’x at 22 (Amon Decl. ¶13).

⁶ See also Nathan W. Furukawa, John T. Brooks, and Jeremy Sobel, Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic, *Emerg Infect Dis.* July 2020 [Epub ahead of print], available at https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article (last checked on May 5, 2020).

⁷ See Megan Wallace, et al., COVID-19 in Correctional and Detention Facilities — United States, February–April 2020. [Early Release, May 6, 2020], available at https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm?s_cid=mm6919e1_x (last check on May 6, 2020).

42. Social distancing is effective only when it occurs before individuals display symptoms. App'x at 22 (Amon Decl. ¶13).

43. Recognizing the importance of social distancing, public health officials have recommended extraordinary measures to combat the spread of COVID-19. Schools, courts, collegiate and professional sports, theater and other congregate settings have been closed as part of risk mitigation strategy. All 50 states, 7 territories, and the District of Columbia have taken some type of formal executive action in response to the COVID-19 outbreak. App'x at 23 (Amon Decl. ¶15).

44. Epidemiologists and public health experts expect cases of COVID-19 to continue growing exponentially around the globe, absent effective public health interventions. *See, e.g.*, App'x at 17 (Amon Decl. ¶5). Indeed, the federal government expects the daily death toll to nearly double by June, with approximately 3,000 people dying from COVID-19 every day by June 1.⁸

B. COVID-19 is spreading throughout Texas.

45. Texas has not escaped the devastation of COVID-19 or its exponential spread. To the contrary, Texas has seen the type of exponential growth that epidemiologists and public health experts predicted.

46. More than 43,000 people in Texas have tested positive for COVID-19, and more than 1,200 of those people have died from the disease.⁹

⁸ *See* “As Trump Pushes to Reopen, Government Sees Virus Toll Nearly Doubling,” available at <https://www.nytimes.com/2020/05/04/us/politics/trump-coronavirus-death-toll.html> (last visited on May 5, 2020).

⁹ *See* <https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83> (last visited May 14, 2020).

47. To combat the spread of COVID-19, save lives, and avoid hospitals becoming overwhelmed, the Governor of Texas signed an Executive Order on March 19, 2020 that limited social gatherings, closed school, and encouraged working from home and social distancing in all situations.¹⁰ Two weeks later, the Governor signed what is commonly referred to as a stay-at-home order.¹¹ In short, the stay-at-home order shut down non-essential businesses through April 30, 2020, and again encouraged social distancing.¹²

48. Starting May 1, 2020, businesses were permitted to reopen in Texas, but with significant restrictions that recognize the continued threat that COVID-19 poses.¹³

49. Under the Governor's most recent order, social distancing is still required, and people are strongly encouraged not to socialize with anyone who does not live in their immediate household.¹⁴

50. Indeed, a model from a leading health institute at the forefront of tracking COVID-19 shows that the risk continues in Texas, such that the state should not even consider relaxing its social distancing requirements until mid-June.¹⁵

C. People in immigration detention such as Prairieland face a severe risk of infection, illness, and death because detention centers are vulnerable to COVID-19.

51. Detention centers are particularly vulnerable to the spread of COVID-19.

¹⁰ See Executive Order GA-08, available at https://gov.texas.gov/uploads/files/press/EO-GA_08_COVID-19_preparedness_and_mitigation_FINAL_03-19-2020_1.pdf.

¹¹ See Executive Order GA-14, available at https://gov.texas.gov/uploads/files/press/EO-GA-14_Statewide_Essential_Service_and_Activity_COVID-19_IMAGE_03-31-2020.pdf (last visited April 30, 2020).

¹² See *id.*

¹³ See Executive Order GA-18, available at https://gov.texas.gov/uploads/files/press/EO-GA-18_expanded_reopening_of_services_COVID-19.pdf (last visited on April 30, 2020).

¹⁴ See *id.*

¹⁵ See <https://covid19.healthdata.org/united-states-of-america/texas> (last visited on April 30, 2020).

52. The only way to slow the rapid spread of COVID-19 is through social distancing; meticulous, frequent hand-washing with soap and water (or alcohol-based sanitizer if soap is not available); quarantine for people who may have been exposed; and isolation for people who have been infected. App'x at 3 (Greifinger Decl. ¶11); *see also* App'x at 22 (Amon Decl. ¶13) (social distancing is the primary means to stop COVID-19 from spreading)

53. Surfaces such as doorknobs and light switches that are frequently touched should be cleaned and disinfected with bleach frequently. App'x at 3 (Greifinger Decl. ¶11).

54. Detention centers, however, often do not have enough cleaning supplies or people to perform the type of intensive cleaning necessary to help slow or stop the spread of COVID-19, and detainees are typically not given hand sanitizer. App'x at 3-4 (Greifinger Decl. ¶19).

55. Immigration detention facilities are often overcrowded environments, in which individuals, including those with high risk of serious illness or death if they contract COVID-19 cannot practice social distancing or readily access adequate medical care. App'x at 24 (Amon Decl. ¶22).

56. People detained in immigration facilities sleep and eat in close quarters, and use toilets, showers, and sinks together without proper disinfectant or sanitizing measures. App'x at 24 (Amon Decl. ¶22).

57. Staff members regularly enter and leave the facility without proper screening for asymptomatic or pre-symptomatic infection, and detainees have no way to socially distance themselves from staff members. App'x at 25 (Amon Decl. ¶23).

58. In addition, food preparation and food service is communal, with little opportunity for surface disinfection. App'x at 3 (Greifinger Decl. ¶19).

59. Personal and shared spaces in immigration detention centers are often poorly ventilated, increasing the transmissibility of airborne infectious diseases. App'x at 3 (Greifinger Decl. ¶17).

D. Detention centers are ill-equipped to handle COVID-19 outbreaks.

60. Detention centers are unable to effectively and safely respond to COVID-19 outbreaks.

61. Once the presence of COVID-19 is confirmed in a detention facility, everyone in that facility should be tested. App'x at 4 (Greifinger Decl. ¶22).

62. Anyone who tests positive for COVID-19 in a detention facility should be isolated in a negative pressure room (which rarely exist in detention facilities), and health care providers should have adequate PPE, including masks. App'x at 4 (Greifinger Decl. ¶22). Individuals in isolation should also be provided their own bathroom space. App'x at 25 (Amon Decl. ¶25).

63. Detention facilities, however, typically lack adequate testing abilities and have insufficient physical and medical infrastructure to handle a COVID-19 outbreak. App'x at 25 (Amon Decl. ¶24).

64. Detention facilities similarly often lack adequate personal protective equipment (PPE). App'x at 4 (Greifinger Decl. ¶22).

65. Individuals in close contact of a confirmed or suspected COVID-19 case—defined by the CDC as having been within approximately 6 feet of the individual for a prolonged period of time or having had direct contact with secretions of a COVID-19 case (e.g., have been coughed on)—should be quarantined for a period of 14 days. The same precautions should be taken for housing someone in quarantine as for someone who is a confirmed or suspected COVID-19 case put in isolation. App'x at 25 (Amon Decl. ¶26).

66. Where COVID-19 cases are identified in an immigration detention facility, such as in Prairieland, close contact and the inability of detention facilities to implement social distancing policies due to overcrowding and the physical limitations of the facility means that many individuals have been exposed and will need to be quarantined. This is all but impossible when you reach the levels of infection now being reported at Prairieland. App’x at 29-30 (Amon Decl. ¶47). Indeed, at Prairieland it appears the same medical staff are assigned to care for detainees with confirmed cases of COVID-19 and detainees who have not tested positive. *See* App’x at 82 (Doe Decl. ¶13).

67. CDC guidance for detention facilities specifically recommends implementing social distancing strategies to increase the physical space between incarcerated/detained persons “ideally 6 feet between all individuals, regardless of the presence of symptoms” including: 1) increased space between individuals in holding cells, as well as in lines and waiting areas such as intake; stagger time in recreation spaces; restrict recreation space usage to a single housing unit per space; stagger meals; rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table); provide meals inside housing units or cells; limit the size of group activities; reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. App’x at 27 (Amon Decl. ¶32).

68. The CDC guidance also describes necessary disinfection procedures including to thoroughly clean and disinfect all areas where a confirmed or suspected COVID-19 case spent time. App’x at 27 (Amon Decl. ¶33).

69. Detention facilities were not built to implement the CDC guidance or more generally to respond to this type of pandemic. App’x at 28 (Amon Decl. ¶35).

70. It is highly likely that once COVID-19 enters a detention center, the center will not have enough safe spaces to isolate everyone who needs isolation, and keeping large groups of potentially infected individuals in a communal space will help continue spreading the disease. App'x at 28 (Amon Decl. ¶35).

71. If officers and medical personnel are significantly affected by COVID-19, large numbers will also be unavailable to work due to self-quarantine or isolation, at the same time that large numbers of detainees who are potentially exposed will need to be put into individual isolation or transferred to advanced medical care, putting tremendous stress on detention facilities. App'x at 28 (Amon Decl. ¶36).

72. As COVID-19 spreads through detention centers, it is likely that detained individuals will need to be transferred to outside hospitals, and those hospitals may not be able to provide care for everyone who needs that care, putting a significant strain on the local health care system and increasing the health risk for both detained individuals and the surrounding communities. App'x at 28 (Amon Decl. ¶37).

E. Detainees, including Petitioners, face significant health risks at Prairieland.

73. COVID-19 has not spared Prairieland.

74. There are currently at least 45 confirmed cases among the detainees at Prairieland. See ICE Guidance on COVID-19, Confirmed Cases (listing 45 cases among detainees), available at <https://www.ice.gov/coronavirus> (last visited on May 8, 2020). Moreover, although the facility is supposed to be on lockdown, it appears that Prairieland continues to accept new detainees, including some who are sick.

75. There is every reason to believe that COVID-19 will continue to spread in Prairieland.

76. On information and belief, approximately 480 people are currently detained in Prairieland.

77. Detainees sleep in large, open dorm rooms on cots or bunk beds packed together tightly. As the following pictures show, social distancing is impossible in these rooms unless they are nearly empty:



78. Detained individuals sleep in communal spaces with many other detainees. For example, Ms. Doe currently sleeps in a room with approximately 22 other women. Doe Decl. ¶7. Mr. Hechavarria Fonteboa was detained in a room with 72 men upon arriving at Prairieland. App'x at 85 (Hechavarria Fonteboa Decl. ¶10).

79. Although he was visibly ill and had arrived from a facility with a COVID-19 outbreak, Mr. Umarbaev was placed in a dorm with approximately 50 people when he arrived at Prairieland. App'x at 94 (Umarbaev Decl. ¶16).

80. When detained individuals sit on their beds, they are only a few feet apart, meaning that their knees almost touch. App'x at 81-82 (Doe Decl. ¶7); App'x at 100 (Haro Osuna Decl. ¶15).

81. The detained individuals currently eat their meals in their dorms, either on their beds or on communal tables that do not permit social distancing. App'x at 81-82 (Doe Decl. ¶7) (women eat their meals on their beds); App'x at 86 (Hechavarria Fonteboa Decl. ¶13) (men in his dorm eat on their beds or at communal tables).

82. As noted above, detained individuals cannot practice social distancing when eating in their dorms. The other potential option available at Prairieland, eating in the cafeteria, would be even worse, as the tables are bolted down with fixed chairs that are even closer together than the bunk beds.



83. Thus, there is no reasonable way for detainees to engage in social distancing while they eat.

84. Detained individuals also share a small bathroom space. For example, Ms. Doe and all of the other women in her dorm share one bathroom that has six toilet stalls. Doe Decl. ¶8. Soap is not kept near the sinks, so the women must touch multiple surfaces just to wash their hands, potentially increasing their exposure to COVID-19. App'x at 82 (Doe Decl. ¶8). Similarly, there is one shared bathroom in the men's dorms as well. App'x at 100 (Haro Osuna Decl. ¶17) (one

shared bathroom with nine stalls); App'x at 63-64 (Portillo Hernandez Decl. ¶¶7-9) (living in dorm with approximately 60 people).

85. The bathrooms are generally cleaned at most only once each day, by a detained individual, and cleaning supplies are kept locked up. *See, e.g.*, App'x at 82 (Doe Decl. ¶9); App'x at 94 (Umarbaev Decl. ¶16) (bathroom cleaned once).

86. Disinfectant wipes are not made available to detained individuals. App'x at 82 (Doe Decl. ¶10).

87. Even the telephones in the dorms are packed together, such that it would be impossible for more than one person to use a telephone and still engage in any semblance of social distancing.



88. Telephones, tablets, and other surfaces are not disinfected regularly. *See, e.g.*, App'x at 82 (Doe Decl. ¶10); App'x at 100 (Haro Osuna Decl. ¶16).

89. Detained individuals are provided with a mask, but they are required to reuse the mask, and they are not given any instructions on how to use the mask. *See* App'x at 82 (Doe Decl. ¶11); App'x at 73 (Esteban Ramon Decl. ¶13). Detained individuals are not provided with gloves.

90. Moreover, most detained individuals do not wear masks in their dorms. *See* App'x at 68 (Golding Decl. ¶13); App'x at 90 (Figueroa Ramos Decl. ¶17) (only a few people wear the mask in the dorm).

91. Given the above-described failure to ensure or even allow social distancing and the failure to provide for any reasonable opportunity to properly clean communal spaces, it should come as no surprise that COVID-19 is spreading rapidly in Prairieland.

F. Respondents greatly increased the likelihood that detained individuals would get sick, and they have failed to adequately treat detained individuals who are infected.

92. In March 2020, Mr. Espinoza Urbina was detained at the Pike County Correctional facility in Pennsylvania. While there, one of his cellmates tested positive for COVID-19. A few days later, Mr. Espinoza Urbina began feeling ill, and he showed many of the symptoms most commonly associated with COVID-19: high fever, chills, body shakes, dry cough, and body aches. App'x at 57 (Espinoza Urbina Decl. ¶8).

93. Less than one week after Mr. Espinoza Urbina became sick, he, along with Mr. Umarbaev, Mr. Golding, Mr. Figueroa Ramos, and dozens of others were loaded into vans and taken on an hours-long bus ride before being put onto an airplane and flown to Dallas. App'x at 58 (Espinoza Urbina Decl. ¶¶11-14); App'x at 92-94 (Umarbaev Decl. ¶¶6, 10, 13-15); App'x at 89-90 (Figueroa Ramos Decl. ¶¶8-12).

94. Mr. Espinoza Urbina, Mr. Umarbaev, and other detainees were obviously sick at the time, and multiple people at Pike County had already tested positive for COVID-19. App'x at 56-58 (Espinoza Urbina Decl. ¶¶4-14); App'x at 93-94 (Umarbaev Decl. ¶¶8-15).

95. Mr. Jalili, who was transported from a detention center in Buffalo on the same plane as the detainees from Pike County, was also exposed to many people who had tested positive for COVID-19 before they were moved to Prairieland. *See* App'x at 77-78 (Jalili Decl. ¶¶8-11).

96. Approximately 75-80 detainees were flown from the East Coast to Dallas, and many of them were sick. App'x at 58 (Espinoza Urbina Decl. ¶¶13-14). In fact, Mr. Umarbaev was seated next to a man who had COVID-19 at the time, a fact that a doctor confirmed to Mr.

Umarbaev. App'x at 94 (Umarbaev Decl. ¶14). They could not move around on the plane because they were shackled for the entire flight. App'x at 67 (Golding Decl. ¶8).

97. When the plane landed in Dallas, the detainees were bussed to Prairieland, and it appears that no one wore masks on those buses. App'x at 67 (Golding Decl. ¶8). They remained shackled on the buses. App'x at 67 (Golding Decl. ¶8).

98. After arriving at Prairieland, Mr. Espinoza Urbina and the others were placed in holding cells with ten to fifteen people while waiting for the intake process. App'x at 59 (Espinoza Urbina Decl. ¶16).

99. After the intake process, Mr. Espinoza Urbina and the other detainees were placed in large dorms, except for a Jamaican man who was sent directly to the hospital from intake. App'x at 59 (Espinoza Urbina Decl. ¶16).

100. After approximately 4 or 5 days passed, officials at Prairieland decided to test approximately 12 of the detained individuals who had recently transferred from the East Coast, including Mr. Espinoza Urbina and Mr. Golding. App'x at 60 (Espinoza Urbina Decl. ¶19); App'x at 68 (Golding Decl. ¶10). Other detained persons requested testing, but their requests were denied. App'x at 60 (Espinoza Urbina Decl. ¶19).

101. Mr. Espinoza Urbina tested positive for COVID-19, after which he was sent to a segregation unit that is typically used for punitive purposes and to a cell that did not have a shower. App'x at 60 (Espinoza Urbina Decl. ¶¶19-20).

102. Mr. Espinoza Urbina is unable to receive or make confidential legal calls while he is in the segregation unit, and it has been difficult for him to communicate with his attorneys at all, even on recorded lines. App'x at 60 (Espinoza Urbina Decl. ¶21).

103. ICE claims publicly that it “places detainees with fever and/or respiratory symptoms in a single medical housing room, or in a medical airborne infection isolation room specifically designed to contain biological agents, such as COVID-19,” but that is not true with respect to Mr. Espinoza Urbina.¹⁶

104. In addition to the above-described transfer from the East coast, Mr. Haro Osuna was transferred to Prairieland on a bus packed with approximately 50 people on April 7, 2020. App’x at 99-100 (Haro Osuna Decl. ¶9). A number of people on the bus appeared sick, including multiple people who were coughing. App’x at 99-100 (Haro Osuna Decl. ¶9). All of the detainees were cuffed and shackled, so not only could they not practice social distancing, but no one who coughed could even cover their mouth. *See* App’x at 99-100 (Haro Osuna Decl. ¶9). No one wore a mask or gloves. App’x at 99-100 (Haro Osuna Decl. ¶9).

105. After arriving at Prairieland, Mr. Haro Osuna and the others who were transferred with him were placed into communal dorms. App’x at 100 (Haro Osuna Decl. ¶10). Their temperatures were taken but no other medical tests were performed, so Respondents had no way of knowing whether any of those detainees had COVID-19. *See* App’x at 100 (Haro Osuna Decl. ¶10).

G. Respondents are needlessly putting Petitioners’ health at risk by refusing to release them despite their medical vulnerability.

106. Petitioners’ continued detention subjects them to a severe risk of contracting COVID-19 from other individuals, including staff and officers, at Prairieland.

107. The risks of introducing a new person into a detention setting, both for that person, for fellow detainees, and for ICE officers and guards was widely known by experts and could and

¹⁶ *See* How does ICE mitigate the spread of COVID-19 within its detention facilities?, available at <https://www.ice.gov/coronavirus> (last visited on April 30, 2020).

should have been easily avoided if government officials had not filled an airplane with sick people and flown them to Prairieland.

108. Beyond that, as described above, Respondents have woefully failed to take reasonable steps to ensure the health and safety of Petitioners while they are detained at Prairieland.

109. Although ICE has agreed to release certain detained individuals, it has refused to release Petitioners despite their increased risk of becoming seriously ill or dying if they contract COVID-19.

110. Ms. Doe has a compromised immune system because she is HIV+ and has PTSD, which is the result of an abusive relationship. App'x at 81 (Doe Decl. ¶4).

111. Despite the fact that patients with HIV need to have their blood taken to monitor their condition, Ms. Doe's bloodwork has not been taken at Prairieland. App'x at 81 (Doe Decl. ¶5).

112. In addition, Ms. Doe has a cough, which is a classic COVID-19 symptom. App'x at 81 (Doe Decl. ¶6). Although she reported that cough to a nurse at intake, she has not been seen by any medical provider. App'x at 81 (Doe Decl. ¶6).

113. At least one woman in Ms. Doe's dorm became sick with flu-like symptoms. Doe Decl. ¶14. For a short period of time, officers took the temperature of the women in Ms. Doe's dorm, but they stopped without explanation. App'x at 82 (Doe Decl. ¶14).

114. And one woman from Ms. Doe's dorm was placed in isolation, suggesting that she was sick, but then returned to the communal dorm. *See* App'x at 82 (Doe Decl. ¶15).

115. Mr. Portillo Hernandez is in a dorm with approximately 60 men, right next to a room where nearly 30 people were infected with COVID-19. App'x at 64 (Portillo Hernandez

Decl. ¶13). He has seen people taken out of his dorm, placed into quarantine, and then returned to the communal dorm. App'x at 64 (Portillo Hernandez Decl. ¶13).

116. Moreover, Mr. Portillo Hernandez himself had a strong, stabbing pain in the back of his head approximately a week ago, which was extremely painful and made him dizzy. App'x at 64 (Portillo Hernandez Decl. ¶12).

117. Mr. Golding has long suffered from asthma, and Prairieland has refused to give him an inhaler even though he is having trouble breathing and his chest feels as though it is locking up. App'x at 67 (Golding Decl. ¶¶2, 6-7). Moreover, after Mr. Golding arrived at Prairieland, he was placed in an isolation cell – the type typically used for punitive segregation – with another sick detainee despite the fact that the detainee had not been tested for COVID-19. App'x at 68 (Golding Decl. ¶9). As of May 7, 2020, Mr. Golding was quarantined in a dorm with 12 other people, where he was unable to have any confidential communications with attorneys. App'x at 68 (Golding Decl. ¶¶17-18).

118. Mr. Jalili, who was tortured in Iran and who suffers from PTSD, has not been given his PTSD medication. App'x at 77 (Jalili Decl. ¶¶ 6, 8). He has, however, been exposed to and quarantined with detainees who tested positive for COVID-19. App'x at 78 (Jalili Decl. ¶¶9-14). Moreover, Mr. Jalili has been unable to have any confidential legal communications with his attorneys. App'x at 78 (Jalili Decl. ¶¶14-15).

119. Mr. Nwolisa has high blood pressure. He also had such a bad headache and chest pain that he was unable to finish meeting with his lawyers during the first week in May. App'x at 104 (Nwolisa Decl. ¶4).

120. Ms. Esteban Ramon has diabetes, which is not being properly monitored. App'x at 72 (Esteban Ramon Decl. ¶¶8, 10). She also has high blood pressure and high cholesterol. App'x

at 72 (Esteban Ramon Decl. ¶8). Moreover, multiple women have become sick in her dorm, and some of them were permitted to remain in the dorm or were returned to the dorm while still sick, making it more likely that Ms. Esteban Ramon will become sick. *See* App'x at 71 (Esteban Ramon Decl. ¶6).

121. After arriving at Prairieland from Pike County, Mr. Figueroa Ramos was placed in an isolation cell with another detainee for 14 days. App'x at 90 (Figueroa Ramos Decl. ¶14). His cellmate began coughing, and then Mr. Figueroa Ramos began coughing as well. App'x at 90 (Figueroa Ramos Decl. ¶14). They were both tested for COVID-19, and after initially being told they both tested positive, they were subsequently told that they had tested negative. App'x at 90 (Figueroa Ramos Decl. ¶15). To this day, Mr. Figueroa Ramos does not know whether he had or has COVID-19. App'x at 90 (Figueroa Ramos Decl. ¶15). He does know, however, that is not receiving the inhaler that he needs to help him breathe given his asthma. App'x at 89-90 (Figueroa Ramos Decl. ¶¶3-4, 16).

122. Mr. Umarbaev began feeling sick while still in Pike County, which had its own outbreak of COVID-19 before Mr. Umarbaev was transferred to Prairieland. He exhibited many classic COVID-19 symptoms, such as shortness of breath, a persistent cough, headache, fatigue, and dizziness, and pain. App'x at 93, 95 (Umarbaev Decl. ¶¶11, 19). Staff eventually confirmed that Mr. Umarbaev had a fever, and they placed him in an isolation cell with another detainee, where he has remained since April 19. App'x at 95-96 (Umarbaev Decl. ¶¶20-25). Mr. Umarbaev is not able to have confidential legal calls while in isolation. App'x at 96 (Umarbaev Decl. ¶26).

123. Mr. Hechavarria Fonteboa, who suffers from asthma and other conditions, and who has not received proper medical care at Prairieland, was for a time placed in the same segregation unit that houses people with confirmed COVID-19 cases. App'x at 85-86 (Hechavvaria Fonteboa

Decl. ¶¶3-6, 11). He is now back in a dorm with multiple people who are coughing and sneezing. App'x at 86 (Hechavvaria Fonteboa Decl. ¶12). He is currently so scared about his health that he cannot sleep. App'x at 86 (Hechavvaria Fonteboa Decl. ¶19).

124. Mr. Haro Osuna suffers from diabetes that is not being controlled at Prairieland, and he also suffers from neuropathy that causes numbness and pain. App'x at 99-100 (Haro Osuna Decl. ¶¶2, 13-14). Mr. Haro Osuna's diabetes has gotten so bad that he has lost 20 pounds and must take insulin just to function. App'x at 100 (Haro Osuna Decl. ¶13).

125. Finally, as a general matter, the health of the detainees is not being regularly monitored. App'x at 72 (Esteban Ramon Decl. ¶10).

H. Petitioners should be released immediately.

126. Each of the Petitioners should be released immediately because their continued detention risks their health and violates the Fifth Amendment.

127. Petitioners can be released in a manner that is safe for them and the surrounding communities, as well as the communities to which they will return.

128. Releasing individuals, giving priority to the most vulnerable detained individuals, is safest for those individuals, the others who detained along with them, and the surrounding locality. Release of such individuals lowers the risk that COVID-19 will continue to spread among the group of detained individuals and the staff. App'x at 4 (Greifinger Decl. ¶24).

129. Petitioners should all be released immediately because, at a minimum, they have likely all be exposed to COVID-19 or will with near certainty in the imminent future. Indeed, a number of the Petitioners are confirmed positive cases.

130. As Dr. Greifinger explains, detainees who have been exposed to COVID-19 should be tested. App'x at 6 (Greifinger Decl. ¶31). Those who test negative should be released to self-

quarantine. App'x at 6 (Greifinger Decl. ¶31). Those who test positive should be released to isolation until recovered. App'x at 6 (Greifinger Decl. ¶31).

131. Individuals whose families or friends can arrange for their transportation from detention centers, and who do not test positive for COVID-19 should be released immediately and should then quarantine for 14 days. App'x at 6 (Greifinger Decl. ¶33). Individuals who test negative but whose family or friends cannot immediately arrange for their transportation should be placed in alternative housing venues until such time as they can be placed with their families. App'x at 6 (Greifinger Decl. ¶34). And individuals who have tested positive should be released to self-isolation. App'x at 6 (Greifinger Decl. ¶35).

132. Ms. Doe, who also has not tested positive for COVID-19, has a daughter who is ready and willing to pick her up from Prairieland and take her to Garland, Texas, where she will be able to self-isolate in her own room in her daughter's home. App'x at 83 (Doe Decl. ¶17).

133. Mr. Espinoza Urbina, who contracted COVID-19 but has since tested negative, will be picked up by a cousin and driven to his mother's house in Newark, California. App'x at 60-61 (Espinoza Urbina Decl. ¶¶22-24). Arrangements have been made for Mr. Espinoza Urbina to isolate in a studio apartment if he is released. App'x at 60-61 (Espinoza Urbina Decl. ¶24). Ms. Espinoza has actively participated in his immigration case, and he will continue to do so if released. App'x at 60-61 (Espinoza Urbina Decl. ¶24).

134. Mr. Portillo Hernandez has not tested positive for COVID-19. His uncle is willing to pick him up and drive Mr. Portillo Hernandez back to his home, so that he can return to living with his wife and 10-month old son. App'x at 64 (Portillo Hernandez Decl. ¶15).

135. Mr. Umarbaev will be able to return to his home in Feasterville, Pennsylvania if he is released, but he will quarantine himself before travelling to avoid potentially infecting others.

App'x at 96 (Umarbaev Decl. ¶28). Mr. Umarbaev has medical care and will be able to get the medical care that he needs if he is released. App'x at 96 (Umarbaev Decl. ¶28).

136. Mr. Hechavarría Fonteboa's girlfriend is willing and able to pick him so that he can return to his home in Grand Prairie, Texas. App'x at 86 (Hechavarría Fonteboa Decl. ¶20).

137. Mr. Golding's wife or a close family friend (who helped raise Mr. Golding and who he refers to as his mom) would pick him up from Prairieland if he is released. *See* App'x at 67, 69 (Golding Decl. ¶¶1, 23). He would then return to Philadelphia to live with his wife and children. App'x at 69 (Golding Decl. ¶23).

138. Mr. Jalili will live with a friend in Buffalo, New York if he is released. App'x at 79 (Jalili Decl. ¶20).

139. If Mr. Nwolisa is released, either his wife or a family friend will pick him up, and he would return to living with his wife in Dallas. App'x at 104 (Nwolisa Decl. ¶6). In addition, he will be able to obtain health insurance through his wife's employment. App'x at 104 (Nwolisa Decl. ¶6).

140. Ms. Esteban Ramon's daughter and partner would be able to pick her up if she is released, and she would return to live with them in Dallas, Texas. App'x at 74 (Esteban Ramon Decl. ¶26).

141. Mr. Figueroa Ramos could return to Pennsylvania to live with his dad if he is released. App'x at 90 (Figueroa Ramos Decl. ¶19). His dad would pay for a bus or plane ticket to get him home. App'x at 90 (Figueroa Ramos Decl. ¶19).

142. Mr. Haro Osuna's wife is ready and willing to pick him up from Prairieland if he is released, after which she will take him back to live with her and their kids in California. App'x at 101 (Haro Osuna Decl. ¶21).

143. Under these circumstances, with each Petitioner facing a serious health risk at Prairieland, and with a safe and effective plan for their release, there is no justification for Respondents' refusal to agree to their release. But given their refusal, the Court should order the release.

CAUSES OF ACTION

COUNT ONE

FIFTH AMENDMENT – DUE PROCESS CLAIM

144. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

145. The Due Process Clause provides that no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

146. The Due Process Clause applies to everyone in the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693-694(2001).

147. As immigration detainees, Petitioners “are civil detainees, and thus, entitled to the same constitutional due process protections as pretrial detainees.” *Vazquez Barrera*, 2020 WL 1904497, at *5 (S.D. Tex. Apr. 17, 2020), citing *Zadvydas*, 533 U.S. at 690 and *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000) (“We consider a person detained for deportation to be the equivalent of a pretrial detainee; a pretrial detainee’s constitutional claims are considered under the due process clause instead of the Eighth Amendment.”).

148. Because “the State does punish convicted prisoners, but cannot punish pretrial detainees, a pretrial detainee’s due process rights are said to be at least as great as the Eighth Amendment protections available to a convicted prisoner.” *Id.* (internal quotation omitted).

149. “The constitutional rights of a pretrial detainee ... flow from both the procedural and substantive due process guarantees of the Fourteenth Amendment.” *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir. 1996).

150. The government violates the Due Process Clause when it holds immigration detainees in conditions that amount to punishment if the conditions are not reasonably related to a “legitimate, non-punitive governmental objective.” *See Cadena v. El Paso Cty.*, 946 F.3d 717, 727 (5th Cir. 2020).

151. In addition, detainees are unable to care for themselves, and so the Due Process Clause requires that the government provide for their “basic needs such as medical care and safety.” *Hare*, 74 F.3d at 639.

152. When the government is unable to provide for a detainee’s basic needs such as medical care and safety, a petition for writ of habeas corpus seeking immediate relief is the appropriate remedy. As the court in *Vazquez* recently explained, when petitioners seeking release because of the dangers of COVID-19 and the failure and inability of officials to respond to that danger, the “are challenging the fact of their detention as unconstitutional and seek relief in the form of immediate release” which means that “their claims fall squarely in the realm of habeas corpus.” *Id.*

153. As set forth in detail above, Respondents are subjecting Petitioners to an unreasonable risk of contracting and suffering serious illness or death from COVID-19, for which there is no vaccine and no cure.

154. Petitioners 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.

155. With respect to the Petitioners who have already tested positive for COVID-19, Respondents have failed and are failing to take reasonable steps to treat them, including, but not limited to, placing them in punitive segregation cells rather than in medically appropriate settings.

106. Respondents are violating the Due Process Clause by holding Petitioners in custody while simultaneously failing to take any reasonable steps to protect Petitioners from the serious risk that COVID-19 presents to their health.

COUNT TWO
ACCESS TO COUNSEL ON BEHALF OF PETITIONERS UMARBAEV, ESPINOZA,
GOLDING, and JALILI

106. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

107. Petitioners have constitutional and statutory rights to counsel pursuant to the Fifth Amendment, the First Amendment, and the Immigration and Nationality Act, 8 U.S.C. §1362.

108. Immigrants challenging efforts to remove them from the United States have a right to counsel, at their own expense, pursuant to the Fifth Amendment. *See United States v. Campos-Asencio*, 822 F.2d 506, 509 (5th Cir. 1987).

109. Moreover, “[t]here is also a long-recognized First Amendment right to hire and consult an attorney.” *Nat’l Fed’n of Indep. Bus. v. Perez*, 5:16-CV-00066-C, 2016 WL 3766121, at *31 (N.D. Tex. June 27, 2016). “[T]he scope of the First Amendment’s right is determined by balancing the [plaintiff’s] interests in communication with the government’s interest in preventing communication.” *Jacobs v. Schiffer*, 204 F.3d 259, 265 (D.C. Cir. 2000).

110. “Restrictions on speech between attorneys and their clients directly undermine the ability of attorneys to offer sound legal advice. As the common law has long recognized, the right to confer with counsel would be hollow if those consulting counsel could not speak freely about their legal problems.” *Martin v. Lauer*, 686 F.2d 24, 32 (D.C. Cir. 1982).

111. Petitioners have all retained counsel, either to challenge their removal from the United States, or for this action, or both.

112. Prairieland has enacted a policy whereby no confidential legal calls are permitted with people placed in isolation because of COVID-19, and there are no reasonable alternatives for attorneys to communicate with Petitioners while Petitioners remain in quarantine.

113. Moreover, Prairieland is recording calls between lawyers and individuals in isolation.

114. Petitioners Umarbaev, Espinoza Urbina, Jalili, and Golding are in isolation or otherwise quarantined within Prairieland and therefore may not speak to counsel confidentially.

115. Prairieland's policy of denying Petitioners the ability to have confidential communications with their lawyers violates their rights to access of counsel under the Fifth Amendment, the First Amendment, and the Immigration and Nationality Act.

V. PRAYER FOR RELIEF

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

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioners;
- (2) Enter a judgment declaring that Respondents' detention of Petitioners is unauthorized by statute and contrary to law;
- (3) Alternatively, issue an order to Respondents to show cause within three days as to why this Petition for a Writ of Habeas Corpus should not be granted;
- (4) Award Petitioners reasonable costs and attorneys' fees; and
- (5) Grant any other and further relief that this Court deems fit and proper.

Dated: May 15, 2020

Respectfully submitted by

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

The undersigned counsel submits this verification on behalf of the Petitioners. Undersigned counsel or co-counsel have discussed with Petitioners the events described in this Petition for Writ of Habeas Corpus and Complaint and, on the basis of those discussions, verifies that the statements in the Petition and Complaint are true and correct to the best of my knowledge and belief.

/s/ Fatma Marouf
Fatma Marouf

Certificate of Service

On May 15, 2020, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic filing system of the court. I hereby certify that I have served all parties electronically or by another means authorized by the Federal Rule of Civil Procedure 5(b)(2)

/s/ Fatma Marouf

Fatma Marouf

Attorney for Petitioners