

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

LAURA MONTERROSA-FLORES,

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Plaintiff-Petitioner,

§

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v.

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Case No. 1:18-cv-192

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DANIEL BIBLE, San Antonio  
Field Office Director, Office of  
Enforcement and Removal Operations,  
United States Immigration and  
Customs Enforcement;

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CHARLOTTE COLLINS, Warden,  
T. Don Hutto Residential Center,

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Defendants-Respondents,

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THE UNITED STATES  
IMMIGRATION AND  
CUSTOMS ENFORCEMENT;  
LYNDA M. PARKER

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Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF-PETITIONER'S  
PETITION FOR WRIT OF HABEAS CORPUS AND ALTERNATIVE EMERGENCY  
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

**INTRODUCTION**

Plaintiff-Petitioner Laura Monterrosa-Flores (“Ms. Monterrosa-Flores”) respectfully seeks an order releasing her from custody in order to obtain medical care. Ms. Monterrosa-Flores has been denied necessary medical care at the T. Don Hutto immigrant detention center in violation of her constitutional rights and her condition will continue to worsen if she remains

detained. Ms. Monterrosa-Flores has already attempted suicide and has engaged in additional acts of self-harm. Instead of evaluating Ms. Monterrosa-Flores and providing necessary treatment, Defendants instead have subjected Ms. Monterrosa-Flores to repeated, punitive administrative segregation. Only release will ensure that Ms. Monterrosa-Flores receives intensive treatment and remove the unreasonable risk that Ms. Monterrosa-Flores suffers new or worsening serious physical and mental health illnesses, injuries, and harm, including a repeated attempt at self-harm.

In the alternative, if the Court denies a writ of habeas corpus, Ms. Monterrosa-Flores respectfully moves for a temporary restraining order to compel Defendant-Respondents to provide adequate medical care to Ms. Monterrosa-Flores and to enjoin the placement of Ms. Monterrosa-Flores in solitary confinement. Immediate injunctive relief is necessary to prevent serious, imminent, irreparable physical, mental, and emotional injuries to Ms. Monterrosa-Flores if the Court denies habeas relief.

Defendant-Respondents hold Ms. Monterrosa-Flores in violation of the Fifth Amendment to the United States Constitution, which requires that the United States provide medical care to detainees, such as Ms. Monterrosa-Flores. Ms. Monterrosa-Flores suffers from Posttraumatic Stress Disorder and Major Depressive Disorder. On January 12, 2018, she attempted suicide by ingesting 55 potent pharmaceutical pills. She desperately and immediately needs a complete psychiatric evaluation and psychiatric treatment, which may include psychiatric medication. Ms. Monterrosa-Flores's mental suffering and symptoms will worsen if Respondents continue her detention and their practice of solitary confinement.

In support of these requests, Ms. Monterrosa-Flores provides the following facts and argument, which include medical records filed contemporaneously and under seal. Additionally,

Ms. Monterrosa-Flores's counsel is available immediately to present argument and evidence at a hearing.

### **FACTUAL BACKGROUND**

Ms. Monterrosa-Flores entered the United States without inspection on May 23, 2017. *See Ex. A.* On or about May 31, 2017, U.S. Immigration and Customs Enforcement ("ICE") transferred Ms. Monterrosa-Flores to the Hutto Detention Center in Williamson County, Texas. *See Ex. 1.* On June 8, 2017, Ms. Monterrosa-Flores was examined by an Asylum Officer who determined that Ms. Monterrosa-Flores had established a credible fear of persecution if she returned to El Salvador. Ms. Monterrosa-Flores subsequently filed an application for asylum.

At her initial intake to the Hutto Detention Center on May 31, 2017, Ms. Monterrosa-Flores requested mental health services. *See Ex. 1.* On June 6, 2017, the detention center's psychiatrist, Defendant Dr. Lynda Parker, met with Ms. Monterrosa-Flores and noted she had a history of receiving psychological treatment in her home country and of family members committing suicide. *See Ex. 2.*

On September 26, 2017, after more than three months of detention with neither a complete psychiatric evaluation nor treatment, Ms. Monterrosa-Flores presented her asylum claim to an immigration judge. On October 4, 2017, the immigration judge denied Ms. Monterrosa-Flores's asylum request and ordered her removed in a written decision. On January 31, 2018, Ms. Monterrosa-Flores appealed this decision to the Board of Immigration Appeals. Separately, Ms. Monterrosa-Flores was denied release on bond.

Ms. Monterrosa-Flores remains in custody at the Hutto Detention Center pursuant to civil immigration law. She is under the direct control of Respondents and their agents.

**I. Ms. Monterrosa-Flores Has Repeatedly Sought Mental Health Care while Detained**

Ms. Monterrosa-Flores has repeatedly sought mental health care from the medical staff at the Hutto Detention Center. At her initial intake to the Hutto Detention Center on May 31, 2017, Ms. Monterrosa-Flores requested mental health services. *See* Ex. 1. On June 6, 2017, Ms. Monterrosa-Flores was referred for an evaluation of abuse history. *See* Ex. 2. As noted above, the detention center's psychiatrist, Defendant Dr. Lynda Parker, met with Ms. Monterrosa-Flores and noted she had a history of receiving psychological treatment in her home country and of family members committing suicide. *See* Ex. 2. In the meeting, Ms. Monterrosa-Flores detailed her history of sexual and physical abuse. *See* Ex. 2.

On or about July 6, 2017, Respondents placed Ms. Monterrosa-Flores in solitary confinement. *See* Ex. 3. On July 19, 2017, Ms. Monterrosa-Flores filed a Civil Rights Complaint with the U.S. Department of Homeland Security's Office for Civil Rights and Civil Liberties regarding her isolation in solitary confinement. *See* Ex. 4, 5. In the complaint, Ms. Monterrosa-Flores stated that she felt "depressed and confused" after her time in solitary confinement. *See* Ex. 4. Ms. Monterrosa-Flores has not received notice of the results of that complaint.

On several occasions early in Ms. Monterrosa-Flores's detention, medical personnel at the Hutto Detention Center documented Ms. Monterrosa-Flores's poor mental health condition.

On July 21, 2017, Ms. Monterrosa-Flores met with one of the detention center's clinical social workers Catherine Olczak and reported to Ms. Olczak that, after Ms. Monterrosa-Flores spent time in administrative segregation, she felt depressed and forgetful. *See* Ex. 6, 7. Ms. Monterrosa-Flores further reported that she had lost interest in activities and only wanted to stay in bed. *See* Ex. 7. Ms. Olczak did not take Ms. Monterrosa-Flores's symptoms seriously and wrote instead that Ms. Monterrosa-Flores's "inappropriate" smiling meant that Ms. Monterrosa-Flores was "manipulating the medical/MH system[.]" *See* Ex. 7.

On July 27, 2017, Ms. Monterrosa-Flores met with staff Registered Nurse Dorene Acuna to obtain treatment for a physical ailment. *See* Ex. 8. Nurse Acuna noted that the "[p]atient's behavior during this visit is child like and is difficult to hold patient's attention. . . . Patient veering off topic during discussion about symptoms and treatment." *See* Ex. 8.

On July 28, 2017, Ms. Monterrosa-Flores reported to detention-center medical staff for follow-up care, reported that she was "nervous, anxious, feels stressed out," and asked to be seen by mental health professionals. *See* Ex. 9. Staff Family Nurse Practitioner Elena Babina made an appointment for Ms. Monterrosa-Flores with Dr. Parker on August 1, 2017, because Ms. Monterrosa-Flores reported wanting to be seen for "current symptoms of nervousness, anxiety." *See* Ex. 10.

On August 1, 2017, Ms. Monterrosa-Flores met with Dr. Parker. *See* Ex. 11. Ms. Monterrosa-Flores reported to Dr. Parker that her time in solitary confinement made her feel "anxious, lethargic, anhedonic, and she was now seeing ghosts." *See* Ex. 11. Ms. Monterrosa-

Flores claimed that detention-center officers in her dorm also saw ghosts. *See* Ex. 11.

Ms. Monterrosa-Flores stated that she had a court hearing the following day. Dr. Parker warned Ms. Monterrosa-Flores that sudden onset of hallucinations might result in hospitalization or psychotropic medications, at which point Ms. Monterrosa-Flores “quickly stated” that she was fine. *See* Ex. 11. Dr. Parker told Ms. Monterrosa-Flores that it was “not a good idea to tell the judge she is seeing ghosts” if that was not the case because her court date might be postponed until she is treated for psychosis. *Id.* Ms. Monterrosa-Flores stated that she was fine and Dr. Parker concluded that “there was no diagnosis and no need for continued treatment.” *Id.* Despite recording that Ms. Monterrosa-Flores was seeing ghosts, Dr. Parker wrote in her medical report: “there were no auditory, tactile or olfactory hallucinations.” *Id.*

Ms. Monterrosa-Flores spoke to staff Family Nurse Practitioner Joan Maxfield on August 2, 2017. *See* Ex. 12. Nurse Maxfield noted that collecting “[h]istory is difficult as patient talks rapidly and jumps from one subject to another.” *See* Ex. 12. On November 3, 2017, Ms. Monterrosa-Flores was referred to Mental Health regarding “a rumor that she was making threats of harming herself.” *See* Ex. 13. Ms. Olczak, the social worker, noted that Ms. Monterrosa-Flores “presented with sad mood and congruent affect” but did not take further action. *See* Ex. 13.

On January 12, 2018, Ms. Monterrosa-Flores attempted suicide by ingesting potent pharmaceutical pills. Ms. Monterrosa-Flores reported her suicide attempt to detention-center Nurse Renier X. Roman. *See* Ex. 14. Ms. Monterrosa-Flores told Nurse Roman that she

ingested the pills in an attempt to kill herself “because she was very anxious.” *See* Ex. 14. Hutto Detention Center employees transported Ms. Monterrosa-Flores to Baylor Scott & White Medical Center for emergency care. *See* Ex. 14. Baylor Scott & White Medical Center staff physician Dr. Samuel Austin Nicholson listed as the reason for Ms. Monterrosa-Flores’s visit an “intentional drug overdose.” *See* Ex. 38.

Upon her return to the Hutto Detention Center, detention-center medical staff placed Ms. Monterrosa-Flores in medical isolation. *See* Ex. 15. On an evaluation report made on January 13, 2018, while Ms. Monterrosa-Flores was in solitary, medical confinement, detention-center Registered Nurse Theresa Ingram wrote in her report that Ms. Monterrosa-Flores lacked suicide ideations in spite of the fact that Ms. Monterrosa-Flores had been hospitalized for a suicide attempt just hours before. *See* Ex. 16.

Ms. Olczak, the social worker, also evaluated Ms. Monterrosa-Flores on January 13, 2018. According to Ms. Olczak’s report, Ms. Monterrosa-Flores reported feeling restless, anxious and panicked. *See* Ex. 17. Ms. Olczak further stated that Ms. Monterrosa-Flores had a “poor” coping level. *See* Ex. 17. Ms. Olczak noted that Ms. Monterrosa-Flores should receive treatment in the form of acute crisis intervention, and medically-necessary brief supportive/solution-focused psychotherapy. *See* Ex. 17.

On January 14, 2018, detention-center social worker Preston Shumaker evaluated Ms. Monterrosa-Flores while she was still in mental health isolation. *See* Ex. 18. Mr. Shumaker recommended that Ms. Monterrosa-Flores see a mental health provider within the following 72

hours and receive treatment in the form of psychotherapeutic support, solutions-focused therapy, and safety planning. *See* Ex. 18.

On January 18, 2018, Ms. Olczak again saw Ms. Monterrosa-Flores recommended specified counseling. *See* Ex. 19. On January 20, 2018, Ms. Monterrosa-Flores met with Nurse Maxfield and stated that when she took the pills her “nerves got the best of her.” *See* Ex. 20. The examination by Nurse Maxfield noted that Laura had difficulty staying on subject. *See id.* On February 6, 2018, Ms. Olczak met with Ms. Monterrosa-Flores and suggested she use “coping skills” including “deep breathing with positive self-talk.” *See* Ex. 21.

On February 8, 2018, Nurse Acuna reported that Ms. Monterrosa-Flores made a “superficial cut to her left wrist” as “an attempt to relieve her emotions.” *See* Ex. 22. On February 9, 2018, Ms. Olczak evaluated Ms. Monterrosa-Flores and again provided “solution-focused therapy.” *See* Ex. 23.

On February 10, 2018, Ms. Monterrosa-Flores reported to the Hutto Detention Center clinic as a walk-in to report “thoughts of self harm[.]” *See* Ex. 24. Detention center staff placed Ms. Monterrosa-Flores into solitary confinement for an initial 23 hours. *See* Ex. 25.

Staff physician Dr. Leroy Soto examined Ms. Monterrosa-Flores in solitary confinement that same day. *See* Ex. 26. Dr. Soto determined that Ms. Monterrosa-Flores suffered from ongoing depression and suicidal ideation. *See* Ex. 26. He ordered continued solitary confinement with an evaluation in two days. *See* Ex. 26. During her solitary confinement, Ms.

Monterrosa-Flores exhibited panicked behavior and stated that she wanted to hurt herself. *See* Ex. 27.

On February 12, 2018, Dr. Soto cleared Ms. Monterrosa-Flores to return to general population but noted that Ms. Monterrosa-Flores has ongoing depression and should have follow-up treatment. *See* Ex. 29.

On February 19, 2018, Mr. Shumaker noted that Ms. Monterrosa-Flores should receive treatment in the form of acute crisis intervention and medically necessary brief supportive/solution-focused psychotherapy. *See* Ex. 32.

Respondents have not provided Ms. Monterrosa-Flores a complete psychiatric evaluation or treatment from a psychologist or psychiatrist. In fact, when facility social worker Ms. Olczak learned that Ms. Monterrosa-Flores had recently spoken to a psychologist arranged by Ms. Monterrosa-Flores's counsel, Ms. Olczak "encouraged [Ms. Monterrosa-Flores] to continue with this treatment, since it is helping her." *See* Ex. 30. Ms. Olczak wrote that Ms. Monterrosa-Flores's treatment should include talking to supportive people such as her psychologist. *See* Ex. 30.

**II. Ms. Monterrosa-Flores Needs Substantial Mental Health Care that the Detention Facility is Unable and Unwilling to Provide**

On January 28, 2018, a private clinical licensed psychologist, Dr. Martha Ramos Duffer, evaluated Ms. Monterrosa-Flores by phone, as arranged by Ms. Monterrosa-Flores's counsel. *See* Ex. 33. Ms. Monterrosa-Flores reported she has been struggling with strong feelings of

hopelessness and depression. *See* Ex. 33. Ms. Monterrosa-Flores reported that at times she is so overwhelmed with despair and terror, feels she is hearing voices shouting her name, and perceives people and objects in her room that others do not see. *See* Ex. 33.

Dr. Ramos Duffer diagnosed Ms. Monterrosa-Flores with Posttraumatic Stress Disorder (“PTSD”) and Major Depressive Disorder, recurrent and severe, with psychotic symptoms. *See* Ex. 33. Dr. Ramos Duffer reported that Ms. Monterrosa-Flores is “at a high risk for suicide due to the seeming hopelessness of her situation, both of her parents having committed suicide, her recent suicide [attempt] and the severity of her mental health disorders including depression. Her current detainment is exacerbating her mental health symptoms and increasing her risk. It is vital to her survival that she receive the needed mental health treatment for her mental health disorders and is given the opportunity to heal and recover.” *See* Ex. 33. Dr. Ramos Duffer made the following recommendations for Ms. Monterrosa-Flores:

- 1) Intensive outpatient treatment for Posttraumatic Stress Disorder and Major Depressive Disorder is strongly recommended.
- 2) A full psychiatric evaluation and continued psychiatric treatment is strongly recommended to provide medication to manage Ms. Monterrosa Flores’ severe psychiatric symptoms.
- 3) It is recommended that the use of solitary confinement be immediately stopped as this has been proven through research to exacerbate both Posttraumatic Stress Disorder as well as Major Depressive Disorder.
- 4) It is recommended that the findings from this assessment be taken into consideration as decisions regarding Ms. Monterrosa Flores’ detention status are made. It is my professional clinical opinion that her mental health would deteriorate further if she were not allowed to get the vital mental health treatment she needs. *See* Ex. 33.

On January 19, 2018, Ms. Monterrosa-Flores’s counsel sent Respondents a letter

requesting that Ms. Monterrosa-Flores be released immediately or, in the alternative, receive necessary medical treatment. *See* Ex. 34. Counsel also submitted a request for humanitarian parole to ICE on February 7, 2018. *See* Ex. 35. Respondents denied these requests on February 20, 2018. *See* Ex. 36.

Local Austin-area non-profit SAFE, which specializes in providing services to survivors of sexual assault and domestic violence, has offered Ms. Monterrosa-Flores lodging at its Kelly White Emergency Shelter should she be released. *See* Ex. 37. SAFE can also provide management services to help coordinate psychiatric treatment for Ms. Monterrosa-Flores with local mental health authority Integral Care. *See* Ex. 37.

## ARGUMENT

### **I. Respondents Violate Ms. Monterrosa-Flores's Fifth Amendment Rights**

The power to detain brings with it a responsibility to tend to the detainee's well-being. *See Hare v. City of Corinth, Miss.*, 74 F.3d 633, 638–39 (5th Cir. 1996) (en banc). Within this responsibility lies the government's obligation to provide medical care for those whom it detains. *See Estelle v. Gamble*, 429 U.S. 97 (1976). "A serious medical need may exist for psychological or psychiatric treatment, just as it may exist for physical ills." *See Hare*, 74 F.3d at 642 (citing *Partridge v. Two Unknown Police Officers*, 791 F.2d 1182 (5th Cir. 1986)). A detainee's right to adequate protection from known suicidal tendencies is clearly established. *See Flores v. Cnty. of Hardeman, Tex.*, 124 F.3d 736, 738 (5th Cir. 1997) (citing *Hare*, 74 F.3d at 644).

An immigrant detainee's medical care claims against federal officials arise under the Due Process Clause of the Fifth Amendment. *See Erumevwa v. Kelly*, CV H-17-1937, 2017 WL 6060672, at \*4 (S.D. Tex. Dec. 6, 2017) (citing *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir.

2000). The Eighth Amendment’s prohibition on cruel and unusual punishment is inapplicable because immigration detainees, like pretrial detainees, are not detained as a result of their conviction for a crime. *See Ortega v. Rowe*, 796 F.2d 765, 767 (5th Cir. 1986); *see also Oladipupo v. Austin*, 104 F. Supp. 2d 643, 648 n.2 (W.D. La. 2000) (“When addressing the rights of INS detainees, the Fifth Circuit instructs that the court should look to jurisprudence establishing the constitutional rights of pretrial detainees.”). “[T]he substantive limits on state action set by the Due Process Clause provide that the state cannot punish a pretrial detainee.” *Estate of Henson v. Wichita County, Tex.*, 795 F.3d 456, 462 (5th Cir. 2015) (citing *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). Consequently, a detainee’s due process rights are “at least as great as the Eighth Amendment protections available to a convicted prisoner.” *Hare*, 74 F.3d at 639 (citing *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)).

“[T]he essence of the inquiry as to whether a pretrial detainee has been deprived of his due process rights to medical care” is the standard for punishment announced by the Supreme Court in *Farmer v. Brennan*, 511 U.S. 825 (1994), an Eighth Amendment case. *Hare*, 74 F.3d at 649.<sup>1</sup> “Punishment is inflicted only when a prison official *was aware* of a substantial risk of serious harm to a convicted inmate but was deliberately indifferent to that risk.” *Id.* (emphasis original). In a suit for injunctive relief to prevent a substantial risk of serious injury from ripening into actual harm, “deliberate indifference[] should be determined in light of the prison authorities’ current attitudes and conduct. *Farmer*, 511 U.S. at 845 (quotations omitted). “If, for example, the evidence before a district court establishes that an inmate faces an objectively intolerable risk of serious injury, the defendants could not plausibly persist in claiming lack of

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<sup>1</sup> *See also Hare*, 74 F.3d at 650 (“[W]e hold [] that the State owes the same duty under the Due Process Clause and the Eighth Amendment to provide both pretrial detainees and convicted inmates with basic human needs, including medical care and protection from harm, during their confinement.”).

awareness, . . . and in deciding whether an inmate has established a continuing constitutional violation a district court may take such developments into account.” *Id.* at 845 n.9.

The Fifth Circuit allows Fifth Amendment challenges by detainees to be brought under two alternative theories: as an attack on a “condition of confinement” or as an “episodic act or omission.” *Shepherd v. Dallas Cnty.*, 591 F.3d 445 (5th Cir. 2009). Ms. Monterrosa-Flores brings her challenge under both theories. The standards for evaluating each theory are discussed below.

#### **A. Respondents Impose an Unconstitutional Condition of Confinement**

“A challenge to a condition of confinement is a challenge to ‘general conditions, practices, rules, or restrictions of pretrial confinement.’” *Estate of Henson*, 795 F.3d at 463 (quoting *Hare*, 74 F.3d at 644–45). “If the plaintiff has properly stated a claim as an attack on conditions of confinement, he is relieved from the burden of demonstrating a[n] . . . individual jail official’s actual intent to punish because . . . intent may be inferred from the decision to expose a detainee to an unconstitutional condition.” *Shepherd*, 591 F.3d at 452.<sup>2</sup> To prove a condition-of-confinement claim, a plaintiff must show: “(1) a rule or restriction, an intended condition or practice, or a *de facto* policy as evidenced by sufficiently extended or pervasive acts of jail officials, (2) not reasonably related to a legitimate governmental objective, and (3) that violated his constitutional rights.” *Edler v. Hockley County Com'rs Court*, 589 F. App’x. 664, 668 (5th Cir. 2014) (citing *Hare*, 74 F.3d at 645; *Shepherd*, 591 F.3d at 454).

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<sup>2</sup> “[A] true jail condition case starts with the assumption that the State intended to cause the [] detainee’s alleged constitutional deprivation.” *Hare*, 74 F.3d at 644–45. “This standard is functionally equivalent to a deliberate indifference inquiry . . . because, in a true jail conditions case, the plaintiff has shown either an official policy, intentionally adopted, or a series of acts or omissions . . . sufficiently extended or pervasive, or otherwise typical of extended or pervasive misconduct by other officials, to prove an intended condition.” *Shepherd*, 591 F.3d at 454–55 (quotations omitted).

Respondents have a written rule that limits the psychological and psychiatric treatment detainees receive at the Hutto Detention Center. The rule is stated on the Detention Center's medical appointment form and provides:

Due to the unpredictable nature of the immigration process including the length of detention stay, the purpose of psychological intervention will be the stabilization of presenting symptoms, acute crisis intervention, and medically necessary brief supportive/solution-focused psychotherapy.

*See Ex. 7, 13, 17, 18, 19, 21, 23, 28, 30, 32.*

This rule, which limits detainee psychological and psychiatric treatment, is not reasonably related to any legitimate governmental objective. “[A]mong the legitimate objectives recognized by the Supreme Court are ensuring a detainee’s presence at trial and maintaining safety, internal order, and security within the institution,” *Cleveland v. Gautreaux*, 198 F. Supp. 3d 717, 740 (M.D. La. 2016) (quoting *Collazo–Leon v. U.S. Bureau of Prisons*, 51 F.3d 315, 318 (1st Cir. 1995)). None of these aims can justify Respondents’ rule.

In fact, by this rule, Respondents abdicate their fundamental responsibility to provide medical care to detainees. Detainment requires the government to provide for detainees’ basic human needs. *See Shepherd*, 591 F.3d at 453. “When the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.” *Id.* at 453–54 (quoting *Hare*, 74 F.3d at 639).

Respondents’ rule violates Ms. Monterrosa-Flores’s constitutional right to medical care while in detention. Ms. Monterrosa-Flores has been in Respondents’ custody at the Hutto

Detention Center since May 31, 2017. *See* Ex. 1. Her nine-month detention is well within typical detention periods, which often stretch beyond two years.<sup>3</sup> During these nine months, Ms. Monterrosa-Flores’s serious psychological and psychiatric needs have not been met. *See, e.g.*, Ex. 7, 9, 11, 14, 22, 24, 32. Ms. Monterrosa-Flores’s needs are not met now. *See* Ex. 33. The assessment instruments Dr. Ramos Duffer administered indicate that Ms. Monterrosa-Flores’s “internal resources have been overwhelmed” to such a degree that at times she “feels she is hearing voices shouting her name and perceives people and objects in her room that others do not see.” *Id.* at 4. Ms. Monterrosa-Flores’s Major Depressive Disorder includes suicidal ideation and intent. *Id.* On January 12, 2018, Ms. Monterrosa-Flores attempted suicide by ingesting potent pharmaceutical pills. *See* Ex. 14. Ms. Monterrosa-Flores exhibits a serious medical need for psychological and psychiatric treatment that Respondents have failed to meet. *See* Ex. 33, at 6; *see also Hare*, 74 F.3d at 642. Respondents’ failure to provide necessary medical care exposes Ms. Monterrosa-Flores to a substantial risk of serious harm in violation of the Fifth Amendment. *See* Ex. 33, at 5 (“[Ms. Monterrosa-Flores] is an extremely high risk for a future suicide attempt.”); *Flores*, 124 F.3d at 738 (5th Cir. 1997) (“A detainee’s right to adequate protection from known suicidal tendencies [is] clearly established.”); *see also Grogan v. Kumar*, 873 F.3d 273, 279 (5th Cir. 2017) (determining genuine issue of material fact existed as to

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<sup>3</sup> The Supreme Court recently noted often lengthy detention periods when it surveyed membership in a class action lawsuit involving immigration detainees: “[D]etention is often lengthy. The classes before us consist of people who were detained for at least six months and on average one year. App. 92, 97. The record shows that the Government detained some asylum seekers for 831 days (nearly 2 & half; years), 512 days, 456 days, 421 days, 354 days, 319 days, 318 days, and 274 days—before they won their cases and received asylum. *Id.*, at 97, 228–236. It also shows that the Government detained one noncitizen for nearly four years *after* he had finished serving a criminal sentence, and the Government detained other members of this class for 608 days, 561 days, 446 days, 438 days, 387 days, and 305 days—all before they won their cases and received relief from removal. *Id.*, at 92, 213–220.” *Jennings v. Rodriguez*, No. 15-1204, 2018 WL 1054878, at \*27 (U.S. Feb. 27, 2018) (Breyer, J., dissenting).

whether prisoner attempted suicide and, if he did, whether doctor and nurses responded in a reasonable matter).

In sum, Ms. Monterrosa-Flores has satisfied the three-prong test to prove a condition-of-confinement Fifth Amendment claim. *See Edler*, 589 F. App'x. at 668.

**B. Respondents Acted and Continue to Act with Deliberate Indifference to Ms. Monterrosa-Flores's Serious Medical Needs**

An episodic-acts-or-omissions claim “faults specific jail officials for their acts or omissions.” *Estate of Henson*, 795 F.3d at 463. Here, Respondents failed to act to provide Ms. Monterrosa-Flores with needed medical care, despite their knowledge of a substantial risk of serious harm. Further, Respondents continue to deny medical care now, even after Ms. Monterrosa-Flores's medical need has been made obvious by her recent suicide attempt, written requests for treatment, and by this lawsuit. *See Farmer*, 511 U.S. at 845–46 (explaining that when an inmate seeks an injunction, deliberate indifference should be determined in light of the prison authorities' attitudes and conduct at the time suit is brought and persisting thereafter).

The relevant question with an episodic-act-or-omissions claim is “whether th[e] official breached his constitutional duty to tend to the basic human needs of persons in his charge.” *Estate of Henson*, 795 F.3d at 463–64 (internal quotations omitted). Intentionality is not presumed, as it is for condition-of-confinement claims. *Id.* at 464. “A jail official violates a pretrial detainee's constitutional right to be secure in his basic human needs only when the official had subjective knowledge of a substantial risk of serious harm to the detainee and responded to that risk with deliberate indifference.” *Id.* (internal quotations omitted). “In other words, the state official must know of and disregard an excessive risk to inmate health or safety.” *Id.* Deliberate indifference can be established when a detainee shows that detention officers “refused to treat [the detainee], ignored his complaints, intentionally treated him incorrectly, or

engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs.” *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985); *see also Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006) (“A prison official acts with deliberate indifference “only if [(A)] he knows that inmates face a substantial risk of serious bodily harm and [(B)] he disregards that risk by failing to take reasonable measures to abate it.”).

Respondents subjectively knew that Ms. Monterrosa-Flores suffered a substantial risk of serious harm. From early on in Ms. Monterrosa-Flores’s detention, her risk of mental health and related physical injury was obvious. *See Farmer*, 511 U.S. at 842 (“[A] factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.”). *See, e.g.*, Ex. 2, 7, 11, 22. In any event, Respondents could not have avoided knowledge of this risk after Ms. Monterrosa-Flores’s attempted suicide on January 12, 2018. *See, e.g.*, Ex. 14, 17, 18. In fact, after the attempted suicide, Ms. Monterrosa-Flores sent written notice of her risk of mental and physical harm to Respondents and attached the independent psychological evaluation of Dr. Ramos Duffer, which specified the harms Ms. Monterrosa-Flores risked without treatment. *See Ex. 33–35*. At the latest, Respondents now know the risk of harm Ms. Monterrosa-Flores faces through receipt of this lawsuit. *See Farmer*, 511 U.S. at 845–46.

Respondents were and are deliberately indifferent to Ms. Monterrosa-Flores’s substantial risk of harm. Respondents have refused to diagnose Ms. Monterrosa-Flores’s mental health conditions and follow up with appropriate treatment. Respondents’ employees and agents have continually disregarded or downplayed the mental health issues Ms. Monterrosa-Flores suffers. Respondents’ employee Dr. Parker suggested that Ms. Monterrosa-Flores ignore and keep to herself the hallucinations she suffers. *See Ex. 11*. Respondents have never had Ms. Monterrosa-Flores evaluated or treated by a psychologist, and they have never given Ms. Monterrosa-Flores

the psychological treatment she needs. Likewise, Respondents have never given Ms. Monterrosa-Flores a full psychiatric evaluation or psychiatric treatment, including medication, that she needs. *See* Ex. 33, at 6. Worse, Respondents have exacerbated Ms. Monterrosa-Flores's psychological suffering and related symptoms by placing her repeatedly in solitary confinement. *See* Ex. 33, at 5; 7, 11, 17, 23. Respondents' actions and omissions manifest Respondents' deliberate indifference to Ms. Monterrosa-Flores's ongoing and substantial risk of serious mental and physical harm. *See Johnson*, 759 F.2d at 1238; *Cleveland*, 198 F. Supp. 3d at 743 (holding that allegations that prison officials prevented prisoner from receiving recommended treatment established deliberate indifference, if true).

Respondents violate Ms. Monterrosa-Flores's Fifth Amendment right to medical care because they were and are aware of a substantial risk of serious harm to Ms. Monterrosa-Flores but were and are deliberately indifferent to that risk. *See Estate of Henson*, 795 F.3d at 463–64; *Hare*, 74 F.3d at 649.

## **II. Ms. Monterrosa-Flores Is Entitled to a Writ of Habeas Corpus**

28 U.S.C. § 2241(c)(3) provides that a district court may issue a writ of habeas corpus to remedy “custody in violation of the Constitution or laws or treaties of the United States.” A petition for writ of habeas corpus is the appropriate vehicle for relief if a favorable determination would automatically entitle the detainee to accelerated release. *See Carson v. Johnson*, 112 F.3d 818, 820–21 (5th Cir. 1997).<sup>4</sup> In a habeas petition involving a detained alien, the proper respondents are the ICE Field Office Director and the Warden of the detention facility in which the detainee is held. *See Maldonado v. Macias*, 150 F. Supp. 3d 788, 795–96 (W.D. Tex. 2015).

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<sup>4</sup> Ms. Monterrosa-Flores moves, in the alternative to her petition for a writ of habeas corpus, for a temporary restraining order. Injunctive relief in the form of a temporary restraining order is available to address unconstitutional conditions of confinement and other continuing constitutional wrongs whether or not habeas relief is available. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862–63 (2017); *see also* 5 U.S.C. § 702; 28 U.S.C. §§ 2201, 2202; Fed. R. Civ. P. 57, 65.

**A. Ms. Monterrosa-Flores Exhausted Administrative Remedies to the Extent Required.**

Once a petitioner has exhausted her possible administrative remedies, resorting to judicial review is proper. *See Lindsay v. Mitchell*, 455 F.2d 917, 918–19 (5th Cir. 1972). Ms. Monterrosa-Flores exhausted her potential administrative remedies or is excused from doing so. The Prison Litigation Reform Act (“PLRA”) and its corresponding administrative exhaustion requirements do not apply to “alien” detainees. *Edwards v. Johnson*, 209 F.3d 772, 776–77 (5th Cir. 2000). The INA requires only the exhaustion of administrative remedies for appeals on final orders of removal. *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007).

Nevertheless, in compliance with the 2011 ICE Performance Based National Detention Standards, Ms. Monterrosa-Flores filed a formal administrative complaint to the Department of Homeland Security on July 19, 2017, regarding her time spent in solitary confinement. *See*, Ex. 4, 5. Ms. Monterrosa-Flores also repeatedly made formal and informal requests to the medical staff at the detention facility for her release and necessary medical treatment. *See, e.g.*, Ex. 1, 6, 10, 24, 34, 35. In a letter dated January 19, 2017, Ms. Monterrosa-Flores informed Respondents that she was enduring continued psychological trauma and needed access to health care after her January 12, 2018 suicide attempt. *See* Ex. 34. In addition, Ms. Monterrosa-Flores submitted a request for release on humanitarian parole to Respondent Bible on February 7, 2018, that detailed Ms. Monterrosa-Flores’s necessary mental health treatment that medical staff at the Hutto Detention Center has failed to provide. *See* Ex. 35. Ms. Monterrosa-Flores’s request was summarily denied. *See* Ex. 36. It would be futile and dangerously time-consuming for Ms. Monterrosa-Flores to lodge additional administrative complaints because Respondents and their employees and agents have refused Ms. Monterrosa-Flores’s previous requests for release and necessary medical care. *See, e.g.*, Ex. 34, 35; *see also Edwards v. Johnson*, 209 F.3d 772, 777

(5th Cir. 2000) (noting that due to time constraints or where an administrative body has shown itself to be biased or to have predetermined the issue, administrative remedies are inadequate).

**B. A Writ of Habeas Corpus is Necessary to Remedy the Ongoing Constitutional Violation.**

Habeas relief is necessary to remedy the ongoing Fifth Amendment violations and to ensure that Ms. Monterrosa-Flores receives necessary medical care. Respondents have consistently shown that they and their employees and agents cannot or will not provide the medical care that Ms. Monterrosa-Flores needs. *See, e.g.*, Ex. 15, 25, 17, 26, 28. For example, Ms. Monterrosa-Flores described hallucinations to Defendant Dr. Parker, who then not only refused to conduct an evaluation of Ms. Monterrosa-Flores for psychosis or other psychological disorders, but also encouraged Ms. Monterrosa-Flores to recant and keep quiet about hallucinatory episodes or risk delays in her immigration case. *See* Ex. 11. After Ms. Monterrosa-Flores's January 12, 2018 suicide attempt, detention-center staff consistently downplayed or ignored Ms. Monterrosa-Flores's suicide risk, even when Ms. Monterrosa-Flores continued to inflict self-harm. *See, e.g.* Ex. 16, 18, 21, 23, 26, 29, 31. On the few occasions that staff recommended treatment, the recommendations were for brief and incomplete care and, in any event, treatment was not provided. *See* Ex. 7, 11, 17, 18, 19, 23, 28. This failure to treat comports with Respondents' written rule on limiting detainee psychological and psychiatric treatment regardless of detainee need or risk. *See* Ex. 7, 13, 17, 18, 19, 21, 23, 28, 30, 32.

Dr. Ramos Duffer performed an independent psychological evaluation of Ms. Monterrosa-Flores. *See* Ex. 33. Dr. Ramos Duffer noted obvious and highly concerning manifestations of mental disorder. *See, e.g., id.* at 5. Dr. Ramos Duffer determined that Ms. Monterrosa-Flores needs extensive follow-up evaluation and care that is only available outside of the Detention Center. *See id.* at 6. Ms. Monterrosa-Flores requires a full psychiatric evaluation

and psychiatric treatment, including medication as needed, and placement in intensive psychological treatment for Posttraumatic Stress Disorder and Major Depressive Disorder. Respondents do not have the capability to provide this treatment and, accordingly, Ms. Monterrosa-Flores has secured guarantees for this treatment outside of the Detention Center. *See* Ex. 37. Moreover, Respondents repeatedly have harmed Ms. Monterrosa-Flores by placing her in solitary confinement and have not repudiated this practice. *See* Ex. 3, 15, 25.

Ms. Monterrosa-Flores is entitled to a writ of habeas corpus to remedy her unconstitutional detention in violation of the Fifth Amendment. *See* 28 U.S.C. § 2241; *Carson*, 112 F.3d at 820–21.

### **III. Ms. Monterrosa-Flores Is Entitled to a Temporary Restraining Order if the Court Denies Her Petition for a Writ of Habeas Corpus**

To obtain preliminary injunctive relief, a movant must show he is “likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

#### **A. Ms. Monterrosa-Flores Is Likely to Succeed on Her Constitutional Claim**

For the reasons discussed above, Ms. Monterrosa-Flores is likely to prove that her Fifth Amendment rights have been violated, entitling her to declaratory and injunctive relief to enjoin the violation. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862–63 (2017); *see also* 5 U.S.C. § 702; 28 U.S.C. §§ 2201, 2202; Fed. R. Civ. P. 57, 65.

#### **B. Ms. Monterrosa-Flores Will Suffer Irreparable Injury Absent a Temporary Restraining Order**

“To show irreparable injury if threatened action is not enjoined, it is not necessary to demonstrate that harm is inevitable and irreparable. The plaintiff need show only a significant

threat of injury from the impending action, that the injury is imminent, and that money damages would not fully repair the harm.” *Humana, Inc. v. Avram A. Jacobson, M.D., P.A.*, 804 F.2d 1390, 1394 (5th Cir. 1986) (citations omitted). As a matter of law, the violation of a constitutional right alone constitutes irreparable harm. *De Leon v. Perry*, 975 F. Supp. 2d 632, 663 (W.D. Tex. 2014).

Under these standards, Ms. Monterrosa-Flores has established that she will suffer irreparable injury absent a temporary restraining order. Ms. Monterrosa-Flores is facing ongoing and irreparable harm because she is not receiving the mental health diagnosis and treatment she urgently needs. This denial of medical care rises to the level of a constitutional violation. Further, Ms. Monterrosa-Flores’s injury cannot be remedied through monetary damages.

**C. The Balance of Equities Tips in Ms. Monterrosa-Flores’s Favor**

The equities tip heavily in favor of granting Ms. Monterrosa-Flores’s application for a temporary restraining order. In a balance-of-equities inquiry, the protection of constitutional rights is a principal concern. *City of El Cenizo v. State*, 264 F. Supp. 3d 744, 811 (W.D. Tex. 2017). The denial of mental health care services for Ms. Monterrosa-Flores amounts to a constitutional violation. Without an injunction, Ms. Monterrosa-Flores’ mental health status will continue to deteriorate. Granting an injunction will not cause Respondents to suffer any injury because they have no interest in committing constitutional violations. *See ACLU v. Reno*, 929 F.Supp. 824, 866 (E.D. Pa. 1996).

**D. A Temporary Restraining Order Is in the Public Interest**

It is “always” in the public’s interest to prevent a violation of the United States Constitution and of an individual’s constitutional rights. *See Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338–39 (5th Cir. 1981). Ms. Monterrosa-Flores’s lack of access

to mental health care amounts to an ongoing constitutional due process violation. It is also in the public interest that Respondents fulfill their duty to care for the medical needs of individuals in their custody. “[I]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.” *Estelle v. Gamble*, 429 U.S. 97 (1976).

### CONCLUSION

For the foregoing reasons, Ms. Monterrosa-Flores respectfully requests that the Court issue a writ of habeas corpus or, in the alternative, issue a temporary restraining order as specified in Ms. Monterrosa-Flores’s Petition for Writ of Habeas Corpus and Complaint.

Dated: March 2, 2018

Respectfully submitted,

/s/ Jack Salmon

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ATTORNEYS FOR PLAINTIFF-PETITIONER  
LAURA MONTERROSA-FLORES

### **CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that he has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 2nd day of March, 2018. Pursuant to FRCP 65(b)(1)(B), the undersigned counsel further certifies that he sent a copy of the above and foregoing by electronic mail to counsel for Defendants-Respondents:

John Locurto  
john.locurto@usdoj.gov  
Office of the United States Attorney  
for the Western District of Texas  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216-5597

The electronic correspondence notified Defendants-Respondents that Plaintiff-Petitioner filed an emergency application for a temporary restraining order on this date and requested that Defendants-Respondents respond with their availability for an immediate hearing. That electronic correspondence also included a copy of the petition for writ of habeas corpus and complaint and the attachments to this memorandum of law, which are filed concurrently and under seal.

/s/ Jack Salmon  
Jack Salmon

### **CERTIFICATE OF CONFERENCE**

On the 2nd day of March, 2018, the undersigned counsel for Plaintiff-Petitioner telephoned Defendants-Respondents counsel at the Office of the United States Attorney for the Western District of Texas and spoke with a supervising attorney in the civil division, John Locurto. Mr. Locurto stated that he would accept a courtesy copy of the writ of habeas corpus and complaint and emergency application for temporary restraining order. Counsel for Plaintiff-

Petitioner sent the electronic correspondence as stated in the Certificate of Service above. Mr. Locurto further stated that he would forward the electronic correspondence to the attorney assigned this case. Mr. Locurto did not indicate whether Defendants-Respondents are opposed to this motion.

/s/ Jack Salmon  
Jack Salmon