

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

GREGORIO CASTILLO MENJIVAR,

Petitioner-Plaintiff,

v.

ERIC STAIGER, Warden, Pine Prairie ICE Processing Center; DIANNE WITTE, Interim Field Office Director, New Orleans Field Office, U.S. Immigration and Customs Enforcement; MATTHEW T. ALBENCE, Acting Director of U.S. Immigration and Customs Enforcement; CHAD WOLF, Acting Secretary, U.S. Department of Homeland Security; and UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

CIVIL ACTION NO. _____

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

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

This is a petition for a writ of habeas corpus and complaint filed on behalf of Petitioner-Plaintiff Gregorio Castillo Menjivar (“Petitioner”). Petitioner is uniquely vulnerable to contracting the novel coronavirus disease (“COVID-19”) while in the physical custody of Respondents-Defendants (“Respondents”) at the Pine Prairie ICE Processing Center (“Detention Center” or “PPPC”) in Louisiana.

There are 30 confirmed cases of COVID-19 among detainees at the Detention Center.¹ By continuing to detain Petitioner in conditions that expose him to an impermissibly high risk of contracting COVID-19, Respondents violate Petitioner’s rights under the Fifth Amendment to the

¹ IMMIGR. AND CUSTOMS ENFORCEMENT, ICE GUIDANCE ON COVID-19: CONFIRMED CASES (2020), <https://www.ice.gov/coronavirus> (accessed June 23, 2020).

U.S. Constitution. Petitioner also brings a claim under the Rehabilitation Act of 1973, 29 U.S.C. § 794. Petitioner seeks a declaration and injunction to redress Respondents' unlawful civil detention and to ameliorate all conditions that preclude Petitioner from implementing the only known means of preventing his contraction of COVID-19 including, if necessary, an order requiring his immediate release from detention.

INTRODUCTION

1. COVID-19 is a global pandemic that has infected over 2,302,000 people in the United States and over 51,500 people in Louisiana.² In response to the COVID-19 pandemic, Governor Edwards declared a Public Health Emergency on March 11, 2020 and issued a Stay At Home Order on March 22, 2020.³ COVID-19 can have devastating effects on individuals' physical health; it can cause severe damage to lung tissue, kidney damage, liver damage, sepsis, respiratory failure, acute cardiac injury, heart failure, and death. Over 10% of infected people require hospitalization. COVID-19 has killed over 120,000 people in the United States since March, including over 3,000 Louisianians.⁴ Louisiana ranks tenth in total deaths and fifteenth in total cases among the 50 states.⁵

² CENTERS FOR DISEASE CONTROL AND PREVENTION, CORONAVIRUS DISEASE 2019 CASES IN THE U.S. (2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (accessed June 18, 2020) [hereinafter CDC CASES IN THE U.S.]; LA. DEP'T OF HEALTH, COVID-19 (2020), <http://ldh.la.gov/Coronavirus/> (accessed June 23, 2020) [hereinafter LA. COVID-19 INFORMATION].

³ LA. EXECUTIVE DEP'T, PROCLAMATION NUMBER 25 JBE 2020 PUBLIC HEALTH EMERGENCY - COVID-19 (2020), <https://gov.louisiana.gov/assets/ExecutiveOrders/25-JBE-2020-COVID-19.pdf> (accessed June 23, 2020) [hereinafter LA. COVID-19 HEALTH EMERGENCY PROCLAMATION]; LA. EXECUTIVE DEP'T, PROCLAMATION NUMBER 33 JBE 2020 ADDITIONAL MEASURES FOR COVID-19 STAY AT HOME (2020) *available at*: <https://gov.louisiana.gov/assets/Proclamations/2020/JBE-33-2020.pdf> (accessed June 23, 2020) [hereinafter LA. STAY AT HOME ORDER].

⁴ CDC CASES IN THE U.S., *supra* note 2; LA. COVID-19 INFORMATION, *supra* note 2.

⁵ CENTERS FOR DISEASE CONTROL AND PREVENTION, COVID DATA TRACKER (2020), <https://www.cdc.gov/covid-data-tracker/index.html> (accessed June 23, 2020).

2. Older individuals, immunocompromised individuals, and people with certain chronic health conditions including diabetes, asthma, heart conditions, and lung disease are at greater risk of contracting severe cases of COVID-19. Many fatalities in the United States due to COVID-19 have been older individuals and individuals with chronic underlying medical conditions.

3. There is no vaccine or cure for COVID-19. The U.S. Centers for Disease Control and Prevention (“CDC”) recommends preventative strategies like social distancing, intensive hand washing, decontamination of surfaces, wearing of masks or face coverings, and isolation of people who are ill as the only known ways to avoid COVID-19.⁶

4. Petitioner is at heightened risk of severe illness from COVID-19 due to his chronic underlying health conditions. Respondents prevent Petitioner from being able to practice even the most basic precautions while detained. Petitioner urges this Court to enjoin Respondents’ ongoing unlawful detention so that Petitioner can practice the preventative strategies necessary to avoid becoming a victim of this historic global pandemic.

CUSTODY

5. Petitioner-Plaintiff Gregorio Castillo Menjivar is detained at the Detention Center in the physical and legal custody of the following Respondents: Eric Staiger, Warden of the Pine Prairie ICE Processing Center; Dianne Witte, Interim Field Office Director, New Orleans Field Office, U.S. Immigration and Customs Enforcement (“ICE”); Matthew T. Albence, Acting Director of ICE; Chad Wolf, Acting Secretary, U.S. Department of Homeland Security (“DHS”). Petitioner-Plaintiff Gregorio Castillo Menjivar is under the direct control of Respondents and their agents.

⁶ CENTERS FOR DISEASE CONTROL AND PREVENTION, HOW TO PROTECT YOURSELF (2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> (accessed June 23, 2020).

JURISDICTION

6. This case arises under the United States Constitution and the Rehabilitation Act of 1973, 29 U.S.C. § 794(a).

7. The Court has jurisdiction over this habeas petition and complaint pursuant to 28 U.S.C. § 2241 (habeas corpus statute), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 1331 (federal questions), 28 U.S.C. § 1361 (Mandamus Act), and Article 1, Section 9, clause 2 of the United States Constitution.

8. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015).

9. The Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. P. 57.

10. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies, and that agency's officers are sued in their official capacities. 5 U.S.C. § 702; 29 U.S.C. § 794.

VENUE

11. Venue in the Western District of Louisiana is proper pursuant to 28 U.S.C. § 1391(b), because the Warden of the detention center where Petitioner is detained resides in this District, Petitioner is currently detained in this District, and a substantial part of the events and omissions giving rise to Petitioner's claims occurred in this District.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

13. There is no statutory obligation for Petitioner to exhaust his administrative remedies prior to filing this habeas petition and complaint, since he is not requesting review of a final order of removal. 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies prior to challenging a removal order in circuit court).

14. Petitioner has no administrative remedies to exhaust through ICE because no process exists to challenge the unconstitutional conditions of his detention. Even if meaningful administrative remedies were available, Petitioner, as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust them under 8 U.S.C. § 2241.

PARTIES

15. Petitioner-Plaintiff Gregorio Castillo Menjivar is an immigration detainee at the PPPC in Pine Prairie, Louisiana. He is a 26-year old asylum seeker who has a serious medical condition. He requested asylum at the port of entry in Roma, Texas on or about August 5, 2019, and has been detained ever since. Mr. Castillo Menjivar was detained at the Tallahatchie County Correctional Facility in Mississippi from August 10, 2019 until September 2019 when ICE transferred him to the PPPC.

16. If he contracts COVID-19, Mr. Castillo Menjivar is at high risk of serious injury or death. As there is no vaccine or cure for COVID-19, the CDC recommends self-isolation, staying six feet apart from other people, and following strict hygienic precautions. Mr. Castillo Menjivar cannot employ these precautions while detained at the PPPC, where he must eat communally, use shared bathrooms, and sleep in a communal space with seven other individuals, some of whom are

within arm's reach. Although frequent handwashing is necessary to prevent COVID-19, Respondents and their agents provide him with limited access to soap and other hygienic materials such as disposable paper towels. Despite the serious threat to his life and his need for disability accommodations, officials have denied Mr. Castillo Menjivar's request to be released.

17. Mr. Castillo Menjivar has suffered from chronic asthma since he was a young child. This condition substantially limits his major life activities including, but not limited to, breathing and sleeping. Mr. Castillo Menjivar has a record of and is regarded as having such impairment and limitations. He is at high risk for severe illness and death, exacerbated by the imminent risk of exposure to COVID-19 and the lack of precautions at the PPPC.

18. Respondents are aware of Mr. Castillo Menjivar's health condition. On April 10, 2020, Mr. Castillo Menjivar's counsel advised ICE Officer Carl Rupard of Mr. Castillo Menjivar's serious health condition and requested his immediate release. That same day, Respondent Rupard denied Mr. Castillo Menjivar's request for release stating that the PPPC was not releasing detainees due to COVID-19 concerns. To date, Respondents have not released Mr. Castillo Menjivar.

19. Respondent-Defendant ERIK STAIGER is sued in his official capacity as Warden of the PPPC. He is an employee of the GEO Group. As the Warden of the PPPC, he is the immediate physical custodian of Mr. Castillo Menjivar.

20. Respondent-Defendant DIANNE WITTE is sued in her official capacity as the Interim Field Office Director for the New Orleans ICE office. She oversees all ICE/ERO functions and detainees in the New Orleans area, including detainees at the PPPC. She has legal custody over Petitioner and is authorized to release him.

21. Respondent-Defendant MATTHEW T. ALBENCE is sued in his official capacity as the Acting Director of ICE. In that capacity, he exercises authority over all ICE policies,

procedures, and practices relating to ICE enforcement operations and detention facilities. He is responsible for ensuring that all people held in ICE custody are detained in accordance with law.

22. Respondent-Defendant CHAD WOLF is sued in his official capacity as the acting Secretary of DHS. He is responsible for enforcing federal laws concerning border control and immigration. Defendant Wolf has direct authority over ICE, which is responsible for the civil detention of immigrants in the United States.

23. Defendant U.S. Immigration and Customs Enforcement is a component agency of DHS. ICE detains Petitioner at the Detention Center as part of a program or activity of an Executive agency and pursuant to federal immigration law.

STATEMENT OF FACTS

i. COVID-19 is Spreading Quickly and Poses a Grave Risk of Serious Illness or Death, Especially for Particularly Vulnerable People.

24. COVID-19 is a highly infectious disease caused by a novel coronavirus, officially known as SARS-CoV-2.

25. On March 11, 2020, the World Health Organization declared that the outbreak of COVID-19 had reached pandemic status.

26. COVID-19 is easily transmitted. The numbers of confirmed cases and deaths in the United States continues to grow. At the time of filing, the total number of confirmed cases of COVID-19 in the United States has doubled in the past fifty-one days.⁷

27. All persons in the United States are at some risk of COVID-19 given the increase in community transmission throughout the United States.⁸

⁷ Max Roser, Hannah Ritchie, and Esteban Ortiz-Ospina, *Coronavirus Pandemic (COVID-19) – Statistics and Research*, Our World in Data (June 23, 2020), <https://ourworldindata.org/coronavirus> (accessed June 23, 2020).

⁸ CENTERS FOR DISEASE CONTROL AND PREVENTION, PUBLIC HEALTH GUIDANCE FOR COMMUNITY-RELATED EXPOSURE (2020), <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html> (accessed June 23, 2020).

28. Any adult who contracts the virus may experience life-threatening symptoms and death. The fatality rate is higher in men and increases significantly for people with advanced age and certain pre-existing medical conditions.

29. COVID-19 can severely damage lung tissue, which requires an extensive period of hospitalization and rehabilitation, and in some cases, can cause permanent loss of respiratory capacity.

30. COVID-19 may also target the heart, causing cardiac injury such as myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure.

31. People with serious cases of COVID-19 describe painful symptoms, including vomiting, severe diarrhea, relentless shivering, and suffocating shortness of breath. Those infected with COVID-19 may only experience a fever intermittently, however, and fever may not be present at all for some people such as the elderly, immunosuppressed, or those taking certain medications.⁹

32. COVID-19 may also cause permanent kidney and neurological injury.

33. These complications can manifest at an alarming pace. Individuals can show the first symptoms of COVID-19 infection in as little as two days after exposure, and conditions can seriously deteriorate in five days or sooner.

34. People experiencing no symptoms can still spread COVID-19, making testing or seclusion of only those who are symptomatic an ineffective solution.

35. Most people who develop serious COVID-19 illness will need advanced medical support. This level of supportive care requires highly specialized equipment that is in limited

⁹ *Id.*

supply, even in non-detention settings, and a team of dedicated medical care providers. People who recover from serious cases may need extensive rehabilitation.

36. There is no vaccine against COVID-19 nor is there any known medication to prevent or treat infection.

37. The only known effective measures to reduce the risk of illness, injury, or death from COVID-19 are to prevent individuals from being infected in the first place. The CDC advises that COVID-19 spreads mainly between people who are in close contact with another, through respiratory droplets produced when someone speaks, coughs, or sneezes, and through aerosolized fecal contact, as well as through the touching of shared surfaces. The virus may remain viable from hours to days on surfaces made from a variety of materials.¹⁰

38. The primary effective measures for protecting people from COVID-19 are (1) social distancing, *i.e.*, remaining physically separated from others regardless of their symptoms or lack of symptoms; and (2) vigilant sanitation and hygiene, including frequent hand washing with soap and water. The CDC now recommends that individuals who are in close proximity to others should wear cloth face coverings to mitigate the risk of transmission.

39. The CDC recommends that those at higher risk for severe illness from COVID-19 stay home, wash their hands often, avoid close contact (within 6 feet), and clean and disinfect frequently touched services.¹¹ The CDC also recommends that people with moderate to severe asthma have an action plan to keep their asthma under control, and take care of their bodies, such as through balanced meals, regular exercise, and sufficient sleep.¹²

¹⁰ *Id.*

¹¹ CENTERS FOR DISEASE CONTROL AND PREVENTION, CORONAVIRUS DISEASE 2019 (COVID-19): PEOPLE WITH MODERATE TO SEVERE ASTHMA (2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html> (accessed June 23, 2020).

¹² *Id.*

40. Usage of personal protective equipment (“PPE”) is only effective if accompanied by adequate training, including proper donning and doffing procedures.

41. The number of reported cases of COVID-19 infection in many parts of the country, including the State of Louisiana and Evangeline Parish, has continued to increase.¹³ The State of Louisiana moved to phase two of the White House’s plan for reopening on June 5, 2020, on that date LDH reported 41,989 cases.¹⁴ Since the lifting of restrictions, Louisiana has seen a rise in COVID-19 infections after declines and stabilization of case levels before the restrictions were lifted.¹⁵ There was an increase of 9,606 additional infections from June 5, 2020 to June 23, 2020.¹⁶ On June 23, 2020, the total number of COVID-19 cases increased to 51,595.¹⁷ There are 646 individuals with confirmed cases of COVID-19 in hospitals across Louisiana.¹⁸ This is an increase of 104 patients since June 14, 2020.¹⁹ This spike of COVID-19 cases in Louisiana has led Governor Edwards to continue Louisiana in phase two, with occupancy limitations and other restrictions, for an additional 28 days.²⁰

42. Even when prevention and mitigation techniques are implemented, the Centers for Disease Control and Prevention estimate that there will likely be between 129,000 and 145,000

¹³ CDC CASES IN THE U.S., *supra* note 2; LA. COVID-19 INFORMATION, *supra* note 2.

¹⁴ LA. EXECUTIVE DEP’T, PROCLAMATION NUMBER 74 JBE 2020 RENEWAL OF STATE OF EMERGENCY FOR COVID-19 EXTENSION OF EMERGENCY PROVISIONS <https://gov.louisiana.gov/assets/Proclamations/2020/74-JBE-2020-State-of-Emergency-COVID-19-Resilient-Louisiana-Phase-2.pdf> (accessed June 23, 2020) [hereinafter LA. PHASE 2]; LA. COVID-19 INFORMATION, *supra* note 2 (Download: Case Counts Over Time).

¹⁵ Julie Bosman and Mithc Smith, Coronavirus Cases Spike Across Sun Belt as Economy Lurches into Motion, N.Y. TIMES, June 14, 2020, <https://www.nytimes.com/2020/06/14/us/coronavirus-united-states.html> (accessed June 23, 2020).

¹⁶ LA. COVID-19 INFORMATION, *supra* note 2; LA. COVID-19 INFORMATION, *supra* note 2 (Download: Case Counts Over Time).

¹⁷ LA. COVID-19 INFORMATION, *supra* note 2.

¹⁸ *Id.*

¹⁹ Seán Brennan and Kevin Dupuy, Louisiana COVID-19 hospitalizations increase for a third straight day, 4WWLT, June 16, 2020, <https://www.wvltv.com/article/news/health/coronavirus/covid-19-hospitalizations-increase-for-third-day-1st-time-since-april-peak/289-3296db4a-8014-4f45-bd21-45dfa2c09a08> (accessed June 23, 2020).

²⁰ LA. EXECUTIVE DEP’T, As COVID-19 Cases Increase, Louisiana Will Stay in Phase Two (June 22, 2020) <https://gov.louisiana.gov/index.cfm/newsroom/detail/2561> (accessed June 23, 2020).

total reported COVID-19 deaths in the U.S. by July 4, 2020.²¹ On June 15, 2020 the CDC estimated that there will likely be between 3,067 and 3,909 total reported COVID-19 deaths in Louisiana by July 4, 2020.²²

43. At the time of filing, there are more than 2,302,000 confirmed COVID-19 cases in the United States and over 120,000 deaths.²³ The LDH reports that there are more than 51,500 confirmed COVID-19 cases in Louisiana with 139 of those cases and one death in Evangeline Parish.²⁴

44. Confirmation of COVID-19 cases is subject to the availability of accurate tests and the use of sufficiently inclusive testing protocols. Only 3,400 people have received COVID-19 tests in Evangeline Parish and the number of individuals infected by COVID-19 may be much higher.²⁵

45. States have taken extraordinary and unprecedented measures to ensure residents practice “social distancing” in order to halt the spread of COVID-19. To protect the public from the threat of COVID-19, on March 13, 2020 Governor Edwards increased the measures taken under his declaration of a Public Health Emergency.²⁶ On March 22, 2020, Governor Edwards issued a Stay at Home Order, closing some establishments, prohibiting events with over 10 people in attendance, and instructing people to stay at home unless conducting essential activities.²⁷ Governor Edwards extended the Stay at Home Order through May 15, 2020, and the declaration

²¹ CENTERS FOR DISEASE CONTROL AND PREVENTION, CORONAVIRUS DISEASE 2019 (COVID-19): FORECASTS OF TOTAL DEATHS (2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html> (accessed June 23, 2020).

²² *Id.*

²³ CDC CASES IN THE U.S., *supra* note 2.

²⁴ LA. COVID-19 INFORMATION, *supra* note 2.

²⁵ *Id.*

²⁶ LA. EXECUTIVE DEP’T, PROCLAMATION NUMBER JBE 2020 – 30 ADDITIONAL MEASURES FOR COVID-19 PUBLIC HEALTH EMERGENCY (2020), <https://gov.louisiana.gov/assets/ExecutiveOrders/JBE-EO-30.pdf> (accessed June 23, 2020).

²⁷ LA. STAY AT HOME ORDER, *supra* note 3.

of Public Health Emergency through June 5, 2020.²⁸ The State of Louisiana moved to phase one of re-opening on May 15, 2020, which allowed some establishments to open to the public at 25% of total occupancy.²⁹ On June 4, 2020 Governor Edwards extended the declaration of Public Health Emergency through June 26, 2020 and moved Louisiana to phase two of re-opening.³⁰ Phase two imposes a limit of 50% of total occupancy on restaurants, barber shops, shopping malls, and certain other public accommodations.³¹

46. Recognizing the extraordinary circumstances of COVID-19 and its major risk of spreading throughout institutionalized settings, the Louisiana Department of Public Safety and Corrections (“LA DPS&C”) has “limited new intakes to only those who must be housed in state prison.”³² LA DPS&C also created a COVID-19 Furlough Review Panel to consider certain “inmates, who are within the last six months of their prison sentence, for temporary furloughs.”³³ On April 2, 2020 the Chief Justice of the Louisiana Supreme Court published a letter asking each judge to “conduct a comprehensive and heightened risk-based assessment of all [criminal] detainees (except those who have been convicted of felony offenses and remanded to the Department of Corrections)” based on certain guidelines to reduce inmate populations.³⁴

²⁸ LA. EXECUTIVE DEP’T, PROCLAMATION NUMBER 52 JBE 2020 RENEWAL OF STATE OF EMERGENCY FOR COVID-19 EXTENSION OF EMERGENCY PROVISIONS (2020), <https://gov.louisiana.gov/assets/Proclamations/2020/52-JBE-2020-Stay-at-Home-Order.pdf> (accessed June 23, 2020).

²⁹ LA. EXECUTIVE DEP’T, PROCLAMATION NUMBER 58 JBE 2020 RENEWAL OF STATE OF EMERGENCY FOR COVID-19 EXTENSION OF EMERGENCY PROVISIONS <https://gov.louisiana.gov/assets/Proclamations/2020/58-JBE-2020.pdf> (accessed June 23, 2020).

³⁰ LA. EXECUTIVE DEP’T, PROCLAMATION NUMBER 74 JBE 2020 RENEWAL OF STATE OF EMERGENCY FOR COVID-19 EXTENSION OF EMERGENCY PROVISIONS <https://gov.louisiana.gov/assets/Proclamations/2020/74-JBE-2020-State-of-Emergency-COVID-19-Resilient-Louisiana-Phase-2.pdf> (accessed June 23, 2020).

³¹ *Id.*

³² LA. DEP’T OF PUBLIC SAFETY AND CORRECTIONS, SUMMARY OF COVID-19 RESPONSE (2020) <https://doc.louisiana.gov/wp-content/uploads/2020/04/DOC-Summary-of-COVID-19-Response-for-WEBSITE.pdf> (accessed June 23, 2020).

³³ SECRETARY JAMES M. LE BLANC, DOC CREATES COVID-19 FURLOUGH REVIEW PANEL (April 14, 2020), <https://myemail.constantcontact.com/DOC-Creates-COVID-19-Furlough-Review-Panel.html?soid=1125804998217&aid=wmjU0Lgveg0> (accessed June 23, 2020).

³⁴ CHIEF JUSTICE BERNETTE J. JOHNSON, LETTER TO LOUISIANA DISTRICT JUDGES (April 2, 2020), <https://www.lasc.org/COVID19/2020-04-02-LASC-ChiefLetterReCOVID-19andjailpopulation.pdf> (accessed June 23, 2020).

ii. Respondents Expose Petitioner to COVID-19 Infection, Serious Illness, and Possible Death by Detaining Petitioner at the Detention Center.

47. Immigration detention facilities are “congregate environments” — places where people live and sleep in close proximity to each other. Infectious diseases that are communicated by air or touch are quickly spread in these confined settings. Respondents’ ongoing detention of Petitioner in these crowded environments during the COVID-19 pandemic presents an imminent danger of severe infection, illness and death to Petitioner.

48. The CDC has issued guidance for correctional facilities and detention centers for preventing and managing the COVID-19 pandemic to ensure the safety of detained individuals, staff, contractors, and visitors to detention centers.³⁵

49. The CDC recommends that detention centers practice “intensified cleaning and disinfecting procedures” including disinfecting commonly used surfaces and objects “several times per day.”³⁶ Respondents do not follow these directives at the Detention Center. Detention Center staff do not disinfect the pay phones, tablets, toilets, and showers in between uses by the detainees. The CDC recommends that detention centers provide adequate soap and hand sanitizer at no cost to detained individuals to encourage frequent hand washing.³⁷ Respondents routinely fail to provide sufficient free soap to detained individuals to permit compliance with the CDC’s recommendation of frequent handwashing. Often additional soap is available for purchase at immigration detention center commissaries.

³⁵ CENTERS FOR DISEASE CONTROL AND PREVENTION, INTERIM GUIDANCE ON MANAGEMENT OF CORONAVIRUS DISEASE 2019 IN CORRECTIONAL AND DETENTION FACILITIES (2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (accessed June 23, 2020).

³⁶ *Id.*

³⁷ *Id.*

50. The CDC also recommends that detention centers “implement social distancing strategies” in common areas, during recreation time, and during meals.³⁸ Nevertheless, Petitioner spends nearly all of his days in crowded living spaces with other detainees.

51. Under current conditions, it will be impossible to stop the spread of the virus within the facility, where social distancing is unachievable. The first COVID-19 case at the PPPC was confirmed on or about April 3, 2020.³⁹ In just over two months, the number of confirmed COVID-19 cases at the PPPC rose to 30 cases.⁴⁰ Detention centers are integral components of the public health systems in the communities in which they are located. Detainees who contract severe cases of COVID-19 will require hospitalization in the community. This threatens to overwhelm local resources.

52. Savoy Medical Center and Mercy Regional Medical Center are the only two hospitals in Evangeline Parish. The Savoy Medical Center is a general hospital with 176 beds and only ten beds are designated for intensive care.⁴¹ Mercy Regional Medical Center is a general hospital with 109 beds and only eight beds are designated for intensive care.⁴² Evangeline Parish is part of the Louisiana Department of Health’s fourth administrative region that includes Acadia, Iberia, Lafayette, St. Landry, St. Martin, and Vermillion parishes.⁴³ On June 23, 2020, Region 4

³⁸ *Id.* at 11.

³⁹ Clark, Maria, *ICE Detainee Tests Positive for COVID-19 in Pine Prairie, Louisiana*, DAILY ADVERTISER, April 3, 2020, <https://www.theadvertiser.com/story/news/american-south/2020/04/03/coronavirus-ice-detainee-tests-positive-pine-prairie-louisiana/2946110001/> (accessed June, 23, 2020).

⁴⁰ ICE GUIDANCE ON COVID-19: CONFIRMED CASES, *supra* note 1.

⁴¹ SAVOY MEDICAL CTR., *About Us*, <http://savoymedical.com/about-us/> (accessed June 23, 2020).

⁴² MERCY REGIONAL MEDICAL CTR., *About Us*, <http://mercyregionalmedicalcenter.com/about-us/>; MERCY REGIONAL MEDICAL CTR., “Intensive Care” available at <http://mercyregionalmedicalcenter.com/intensive-care/> (accessed June 23, 2020).

⁴³ LA. DEP’T OF HEALTH, *Hospitals by Administrative Regions*, <http://ldh.la.gov/index.cfm/page/2665> (accessed June 23, 2020).

had a total of 177 ventilators with 42 in use, and only 135 available.⁴⁴ On June 23, 2020, Region 4 had a total 180 intensive care beds with 134 in use; only 46 were available.⁴⁵

53. As of June 22, 2020, ICE has tested 8,858 detainees system wide and 2,403 have tested positive for a positivity rate of 27.13%.⁴⁶ The current infection rate of detainees in ICE custody, applied to the Pine Prairie detention center's average daily detainee count of 641, demonstrates that COVID-19 infections at the PPPC can easily overwhelm the total combined hospital bed capacity of 285 for Evangeline Parish.⁴⁷

54. The Pine Prairie detention center has a history of disease outbreaks. In late January and early February 2020, 300 inmates were quarantined after 18 detainees tested positive for mumps.⁴⁸ On March 7, 2020 about 300 detainees were again quarantined for at least 25 days due to the continuing threat of mumps infections.⁴⁹ Mumps unlike COVID-19 can be prevented with a vaccine.

55. On April 4, 2020, ICE determined that its Field Office Directors should reassess custody of detainees who are "immune-compromised," including individuals with "lung disease."⁵⁰ "The presence of one of those factors . . . should be a significant discretionary factor weighing in favor of release," unless release would pose a danger to property or persons.⁵¹ Even

⁴⁴ LA. COVID-19 INFORMATION, *supra* note 2 (tracking hospital ventilator availability).

⁴⁵ LA. COVID-19 INFORMATION, *supra* note 2 (tracking ICU bed availability).

⁴⁶ ICE GUIDANCE ON COVID-19: CONFIRMED CASES, *supra* note 1.

⁴⁷ SYRACUSE UNIVERSITY TRAC IMMIGRATION, *Large Numbers at Risk in ICE Detention Facilities for the COVID-19 Virus*, April 21, 2020, <https://trac.syr.edu/immigration/reports/605/> (accessed June 23, 2020).

⁴⁸ Maria Clark, *Mumps quarantine at Louisiana immigration detention centers affecting legal access, lawyers say*, NOLA.COM, March 13, 2019, https://www.nola.com/news/article_c7b600fd-bce5-53a5-86c7-2b15a461e7f9.html (accessed June 23, 2020).

⁴⁹ The Associated Press, *2,200 quarantined over mumps outbreak at ICE immigration centers in Aurora and Louisiana*, March 12, 2019, THE DENVER POST <https://www.denverpost.com/2019/03/12/mumps-outbreak-quarantine-aurora-ice-immigration-center/> (accessed June 23, 2020).

⁵⁰ PETER B. BERG, ASSISTANT DIRECTOR, FIELD OPERATIONS, LETTER TO FIELD OFFICE DIRECTORS AND DEPUTY FIELD OFFICE DIRECTORS COVID-19 DETAINED DOCKET REVIEW, at 2-3, Apr. 04, 2020.

⁵¹ *Id.* at 3.

for detainees with past criminal convictions, the directors should look at the age of the arrest as a mitigation factor.⁵²

56. On or about April 13, 2020, thirty-three days after the World Health Organization declared COVID-19 to be a global pandemic, Respondent ICE issued a policy document for ICE detention facilities requiring detention facilities to take certain measures regarding COVID-19 (“ERO PRR”).⁵³

57. The ERO PRR is inadequate to provide safe conditions for Petitioner. It lacks deadlines, lacks a reporting or oversight structure by which to monitor compliance by detention facilities, lacks information on how detention facilities can procure hygiene supplies, PPE, or medical supplies, and it acknowledges but then ignores the fact that the coronavirus can be transmitted by asymptomatic and pre-symptomatic individuals. It fails to outline specific actions to be taken regarding medical monitoring, the provision of medical care within the detention facility, or the transfer of an individual requiring more intensive medical services or hospitalization.

58. The Detention Center where Petitioner is detained does not and cannot meet many of the requirements set out in the ERO PRR.

59. As early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts for the U.S. Department of Homeland Security, shared concerns about the specific risks to immigrant detainees as a result of COVID-19 with the agency. These experts warned of the danger of rapid spread of coronavirus in immigration detention facilities. In a whistleblower letter to Congress, Dr. Allen and Dr Rich recommended that “[m]inimally DHS should consider releasing

⁵² IMMIGR. AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS, COVID-19 PANDEMIC RESPONSE REQUIREMENTS (2020),

<https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf> (accessed June 23, 2020).

⁵³ *Id.*

all detainees in high risk medical groups such as older people and those with chronic diseases.” They concluded that “acting immediately will save lives not only of those detained, but also detention staff and their facilities, and the community-at-large.”⁵⁴

a. The Pine Prairie ICE Processing Center

60. As of the date of this filing, there are 125 confirmed COVID-19 cases and 1 death in Evangeline Parish.⁵⁵ Defendant ICE reports that 30 of those cases are detainees at the Detention Center.⁵⁶

61. Respondents confine Mr. Castillo Menjivar and hundreds of other civil immigration detainees at the Detention Center. Currently, the Detention Center has the capacity to hold up to 1,094 adult detainees.⁵⁷

62. Data from the Transactional Records Access Clearinghouse at Syracuse University shows that the PPPC holds an average of 641 male detainees per night.⁵⁸

63. The conditions in the Detention Center contravene medical and public health directives for risk mitigation. Detainees transferred to the PPPC have tested positive for COVID-19.⁵⁹ Two food servers at the PPPC have also tested positive for COVID-19.⁶⁰ Until mid-to-late April, the Detention Center staff did not provide the detainees any gloves, masks, or other PPE.⁶¹

⁵⁴ DR. SCOTT ALLEN AND DR. JOSIAH RICH, LETTER TO THE SENATE AND HOUSE COMMITTEES ON HOMELAND SECURITY AND OVERSIGHT AND REFORM, at 5-6, Mar. 19, 2020, <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html> (accessed June 17, 2020).

⁵⁵ LA. COVID-19 INFORMATION, *supra* note 2.

⁵⁶ ICE GUIDANCE ON COVID-19: CONFIRMED CASES, *supra* note 1.

⁵⁷ GEO GROUP, *Facility Detail Pine Prairie ICE Processing Center*, <https://www.geogroup.com/FacilityDetail/FacilityID/80> (accessed June 23, 2020).

⁵⁸ SYRACUSE UNIVERSITY TRAC IMMIGRATION, *supra* note 47.

⁵⁹ Joe Penney, *Inside an ICE facility in Louisiana, detainees say ICE is depriving them of masks, under-testing for COVID-19, and moving migrants around the country*, BUSINESS INSIDER, May 1, 2020, <https://www.businessinsider.com/detainees-say-ice-under-testing-for-covid19-not-giving-them-supplies-2020-5> (accessed June 23, 2020).

⁶⁰ *Id.*

⁶¹ *Id.*

64. On information and belief, the guards and other PPPC staff inconsistently wear PPE. Commonly used items and surfaces like telephones in the visitation area are infrequently disinfected.⁶² Respondents have limited detainees' access to basic hygiene products such as soap.⁶³ Detainees are forced to sleep just a few feet from one another in bunk beds.

b. Gregorio Castillo Menjivar's Health Condition Makes Him Particularly Likely to Suffer Severe Complications Related to COVID-19.

65. Mr. Castillo Menjivar suffers from chronic asthma – a risk factor that makes him more likely to develop a severe illness and even die from COVID-19. He was originally diagnosed as a young child. Throughout his life Mr. Castillo Menjivar's asthma has required constant monitoring and treatment by medication. As an adult Mr. Castillo Menjivar has been prescribed medications to treat and manage his asthma.

66. Respondents are well aware of Mr Castillo Menjivar's chronic condition. On April 10, 2020, counsel for Mr. Castillo Menjivar in his immigration case, advised ICE Officer Carl Rupard of Mr. Castillo Menjivar's serious health condition and requested his immediate release. That same day, Respondent Rupard denied Mr. Castillo Menjivar's request for release stating that the PPPC is not releasing detainees due to COVID-19 concerns.

67. Mr. Castillo Menjivar has experienced difficulty breathing and chest pains and tightness since he was initially detained. Mr. Castillo Menjivar had an asthma inhaler containing his medication in his possession when he was initially detained at the U.S. border on or about August 5, 2019. ICE officials took his inhaler away from him at the time he was detained. In November 2019, Mr. Castillo Menjivar informed immigration officials at the PPPC that he was suffering from difficulty breathing, numbness in his body, and chest pain and tightness. Mr.

⁶² *Id.*

⁶³ *Id.*

Castillo Menjivar asked that ICE provide treatment and medication to him so that he could properly manage his condition. The Detention Center staff sent Mr. Castillo Menjivar to the clinic at the PPC and prescribed several medications; however beginning January 2020, Respondents ceased providing Mr. Castillo Menjivar medications to treat his condition. Mr. Castillo Menjivar continues to have difficulty breathing, which makes it hard for him to sleep at night.

68. Due to the conditions of detention at the Detention Center, Mr. Castillo Menjivar finds it impossible to maintain the recommended distance of six feet from others. Defendants hold Mr. Castillo Menjivar in conditions where he sleeps less than six feet away from others in a room full of people with whom he shares bathrooms and eating space. He must also touch shared objects and surfaces that are not disinfected after others' use.

69. Due to these conditions, Mr. Castillo Menjivar is not able to follow the CDC's recommendations including social distancing, rigorous hygiene, separated sleeping and eating, and sufficient hours of sleep.

70. Respondents' actions and failures to act have continued to place Mr. Castillo Menjivar directly in harm's way, including by transferring Mr. Castillo repeatedly between different living arrangements at the Detention Center.

71. Beginning sometime in April 2020 through May 2020, Detention Center staff placed Mr. Castillo Menjivar's unit of cells ("pod"), which he shared with four other detainees, under quarantine. Mr. Castillo Menjivar and the other detainees were prohibited from leaving the pod except for a few minutes at a time. Mr. Castillo Menjivar and his fellow detainees were required to eat their meals within that pod.

72. From approximately June 1, 2020 to June 16, 2020, Detention Center staff held Mr. Castillo Menjivar in a large communal living space where he was detained in close proximity

with approximately 80 other detainees. The beds for the 80 detainees in this area were spaced less than six feet apart. In the living area, there were also several tables at which the detainees socialized, and the stools at these tables were fixed less than six feet apart. The 80 detainees also shared three bathrooms and four showers, with limited access to hygiene products. There was no soap or paper towels in the bathrooms with which the detainees could practice proper handwashing. Mr. Castillo Menjivar continues to purchase additional hygiene products from the commissary because Detention Center staff does not consistently provide Mr. Castillo Menjivar and the other detainees with small bags containing hygiene products each week.

73. On or about June 16, 2020, Detention Center staff transferred Mr. Castillo Menjivar to a pod with seven other detainees. The pod holds up to eight detainees and contains four bunk beds for the eight detainees that are spaced less than six feet apart. The detainees share one shower, one bathroom, and one sink. In the pod, there is no soap in the bathroom area for Mr. Castillo Menjivar and the other detainees to practice proper handwashing. Respondents and their agents only provide Mr. Castillo Menjivar one protective mask per week. Based on information and belief, Respondents do not provide any other PPE to detainees, including Mr. Castillo Menjivar.

74. Respondents continue to detain Mr. Castillo Menjivar in dangerous conditions despite the fact that Mr. Castillo Menjivar's mother and two sisters reside in the United States and have offered to house him upon his release from detention.

75. On March 9, 2020, an Immigration Judge denied Mr. Castillo Menjivar's requests for relief from removal and ordered him removed to El Salvador. Mr. Castillo Menjivar has appealed this decision to the Board of Immigration Appeals ("BIA") where he is represented by counsel. There is no final order of removal in his immigration case. 8 U.S.C. § 1101(a)(47)(B) (removal orders "shall become final upon the earlier of (1) a determination by the [BIA] affirming

such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the [BIA].”). His immigration proceedings are expected to continue for several months.

CLAIMS FOR RELIEF

CLAIM ONE

Fifth Amendment to the U.S. Constitution (Due Process Clause)

76. Petitioner repeats and incorporates by reference the allegations made above.

77. The Fifth Amendment to the U.S. Constitution requires that all individuals who are detained by the State be afforded conditions of reasonable health and safety including food, shelter, and medical care.

78. Respondents subject Petitioner to conditions of confinement that heighten his risk of contracting COVID-19.

79. Respondents act with deliberate indifference to the excessive risk of harm to Petitioner’s health and safety posed by COVID-19. Respondents are aware of Petitioner’s underlying health conditions and of his heightened risk of serious illness or death if infected with COVID-19. Respondents are aware that the conditions at the Detention Center expose Petitioner to greater risk of infection. By subjecting Petitioner to this risk, Respondents fail to ensure safety and health in violation of Petitioner’s due process rights. Respondents further violate Petitioner’s due process rights by failing to take action to ameliorate the conditions that prevent Petitioner from adopting the only known means of protecting himself from infection, or by failing to release him.

80. The Fifth Amendment to the U.S. Constitution also requires that civil detainees must not be subjected to conditions that amount to punishment. The government violates this substantive due process right when it subjects civil immigration detainees to cruel treatment and

conditions of confinement that amount to punishment, and fails to ensure detainees' health and safety.

81. Separately and cumulatively, regardless of Respondents' intent, the following conditions amount to a violation of due process rights of Petitioner who is a civil detainee:

- a. denial of soap, hand sanitizer, and other hygiene products to Petitioner;
- b. failure to clean and decontaminate adequately frequently used common items and surfaces;
- c. continuous detention of Petitioner in crowded conditions that preclude social distancing;
- d. failure to monitor detainees for COVID-19 on a regular basis; and
- e. failure to provide treatment or medication to Petitioner to manage his chronic underlying health condition.

82. The conditions of confinement are not reasonably related to a legitimate goal of detention.

83. Respondents' actions amount to and are intended as punishment and violate Petitioner's due process rights.

84. Respondents hold Petitioner in custody in violation of the Fifth Amendment to the United States Constitution. A writ of habeas corpus, pursuant to 28 U.S.C. § 2241, is necessary to remedy the constitutional violations, to ensure Petitioner receives necessary medical care, and to remove the unreasonable risk that Petitioner will contract COVID-19 and suffer serious physical injury and harm.

85. Alternatively, if the Court denies a writ of habeas corpus, declaratory and injunctive relief to compel Respondents to provide safe conditions is needed to remedy Respondents'

violation of the Fifth Amendment and to prevent serious, imminent, irreparable physical injury to Petitioner.

CLAIM TWO

Violation of the Rehabilitation Act—Failure to Provide Reasonable Accommodation to Persons with Disabilities

86. Petitioner realleges and incorporates by reference the allegations made above.

87. Section 504 of the Rehabilitation Act (“Section 504”) provides that “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” 29 U.S.C. § 794.

88. Section 504 of the Rehabilitation Act requires federal agencies to provide “reasonable accommodations” to individuals with disabilities so they can fully participate in benefits administered by these agencies. 29 U.S.C. § 794(a).

89. DHS regulations implementing the Rehabilitation Act mandate that “[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.” 6 C.F.R. § 15.30; *see also* 29 U.S.C. § 794(a). The regulations implementing Section 504 prohibit entities receiving federal financial assistance from utilizing “criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient’s program or activity with respect to handicapped persons.” 34 C.F.R. § 104.4(b)(4).

90. Defendant ICE is an Executive agency within the meaning of the Rehabilitation Act.

91. Petitioner is a qualified individual with disabilities for the purposes of Section 504.

92. The services, programs, and activities within the Detention Center receive substantial federal financial assistance and are programs and activities conducted by an Executive agency.

93. By failing to take account of Petitioner's vulnerability to severe illness or death if he contracts COVID-19 and by exposing Petitioner to a heightened risk of contracting COVID-19, Respondents intentionally prevent Petitioner from participating in the services, programs, and activities within the detention center by reason of his disabilities.

94. Respondents' actions have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of removal proceedings and the services, programs, and activities within the detention facilities with respect to Petitioner.

95. Respondents fail to "reasonably accommodate" Petitioner's disabilities by failing to ameliorate the conditions that prevent Petitioner from employing the only known means of protecting himself from infection or by failing to release Petitioner from the Detention Center.

96. Respondents' disparate treatment of Petitioner based on his disabilities, Respondents' use of criteria or methods of administration with respect to the services, programs, and activities within the Detention Center, and Respondents' failure to provide Petitioner with reasonable accommodations constitute disability discrimination in violation of Section 504.

PRAYER FOR RELIEF

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

A. Assume jurisdiction over this matter;

- B. Declare Petitioner's detention to be unlawful and unconstitutional;
- C. Order the immediate release of Petitioner or his placement in community-based alternatives to detention such as conditional release, with appropriate precautionary health measures;
- D. In the alternative, if the Court does not grant a writ of habeas corpus, order Respondents to provide Petitioner with protection from the risk of contracting COVID-19 by ameliorating all conditions that prevent Petitioner from implementing the public health recommendations that are the only known means of preventing against and mitigating the effects of COVID-19;
- E. Enjoin Respondents from transferring Petitioner outside of this judicial district pending litigation of this matter or his removal proceedings;
- F. Award to Petitioner reasonable costs and attorneys' fees; and,
- G. Grant any other relief that this Court deems just and proper.

Dated: June 24, 2020

Respectfully submitted,

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

The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned counsel has discussed with Petitioner 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 her knowledge.

Dated: June 24, 2020

/s/ Susana Sandoval Vargas
Attorney for Petitioner Gregorio Castillo Menjivar