

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CASE NO. \_\_\_\_\_

D.A.M. et al:

Petitioners,

v.

WILLIAM BARR, Attorney General  
of the United States of America; and  
CHAD WOLF, Acting Secretary,  
Department of Homeland Security,

Respondents.

Case: 1:20-cv-01321  
Assigned To : Jackson, Amy Berman  
Assign. Date : 5/18/2020  
Description: TRO/PI

**PETITIONERS' NOTICE OF MOTION FOR TEMPORARY RESTRAINING ORDER  
AND REQUEST FOR EMERGENCY HEARING**

Pursuant to Fed. R. Civ. P. 65 and LCvR 65.1, Petitioners, D.A.M., et al., hereby move this Court to issue a Temporary Restraining Order to stay the detained Petitioners' removal from the United States pending its adjudication of this Petition.

In support of this motion, Petitioners rely upon the attached memorandum of points and authorities, the declaration of Caroline Heller and exhibits attached thereto, the declaration of Shalyn Fluharty and the declaration of Bridget Cambria. A proposed order is attached. Petitioners also request an emergency hearing on this matter.

**RECEIVED**

MAY 18 2020

Clerk, U.S. District & Bankruptcy  
Court for the District of Columbia

Dated: May 18, 2020

Respectfully submitted,

/s/ Steven G. Barringer

Steven G. Barringer (D.C. Bar No. 375373)

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Respondents.

**PROPOSED ORDER**

**IT IS HEREBY ORDERED** that the Petitioners' Motion for a Temporary Restraining Order is GRANTED. Respondents shall not undertake any action to remove any of the detained Petitioners from the United States pending further Order of this Court.

Dated: May 18, 2020

\_\_\_\_\_  
**UNITED STATES DISTRICT JUDGE**

**IN THE UNITED STATES DISTRICT COURT  
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**DECLARATION OF BRIDGET CAMBRIA**

**DECLARATION OF BRIDGET CAMBRIA, ESQ.**

I, Bridget Cambria, declare and say as follows:

1. My name is Bridget Cambria, Esq. and I am an attorney licensed to practice in the State of Pennsylvania since May of 2007. This declaration describes my experiences and observations working with clients detained in an ICE family residential center, including detention practices and conditions and, in particular, issues concerning the detention of parents and children in the Berks Family Residential Center during the COVID-19 pandemic, their concerns about contracting a life-threatening illness in detention and the conditions of detention which threaten the lives of the families in immigration family detention in Pennsylvania.
2. For more than 12 years, I have exclusively practiced immigration law, working with children, families and adults, both in the detained and non-detained settings. In my practice, I have represented immigrants, children and families before Immigration Courts nationwide, the Board of Immigration Appeals, Federal District Courts and the Third Circuit Court of Appeals. I am a graduate of the Roger Williams School of Law, where my studies focused on immigration and public interest law. Prior to law school, on or about 2002, I was employed by the County of Berks as a staff member at the Berks County Residential Center (hereinafter "BCRC.")
3. Currently, I am an attorney with, and the Executive Director of, Aldea – The People's Justice Center ("Aldea"), a non-profit located in Reading, Pennsylvania in the County of Berks. Our organization, Aldea, offers universal representation to families detained at the Berks County Residential Center in Leesport, Pennsylvania. In the last five years, we have represented more than one thousand parents and children who have been detained in family detention in the BCRC.
4. In the course of employment, I have regular occasion to observe, and therefore am familiar with, the policies and practices of United States Immigration and Customs Enforcement ("ICE") toward the detention, release, removal and treatment of children and parents in family detention generally and the Berks County Residential Center.
5. The Berks County Residential Center ("BCRC") is a family detention facility in Leesport, Pennsylvania housing immigrant families. Primarily, the families who are brought to the detention center are seeking asylum in the United States. Each family currently detained has a close family member living in the United States who is willing to receive each family member, today.
6. As of this writing, Aldea represents every family who remains in the BCRC during COVID-19, consisting of five asylum seeking immigrant families. Four of those families are subject to imminent removal which places their lives at risk for COVID-19 and are Plaintiffs in the instant matter. These families were proposed plaintiffs in the action *M.M.V. et al. v. Barr et al.*, Case No. 19-cv-2773 (D.D.C.) (Judge Amy Berman Jackson). They are petitioners in the Petition for Writ of Habeas Corpus seeking a

stay of deportation in the COVID-19 pandemic. The remaining family is presently subject to a stay of removal issued by the San Antonio Immigration Court.

7. Currently in the BCRC are a family from Ecuador with a five-year-old daughter, a Mexican family with a one-year-old daughter, a Haitian family with a one-year-old daughter, a Haitian family with an 11-year-old daughter and a three-year-old daughter, a Haitian family with a two-year-old daughter, and a Haitian family with a seven-year-old son.
8. Each of the detained families fear return to their countries of origin. Additionally, each of the families have expressed a fear of contracting COVID-19. If removed, each family will be subjected to conditions which will increase their likelihood of contracting COVID-19 themselves and putting their immediate life at risk both in transit and upon removal to countries with insufficient healthcare services.
9. Further, their removal may contribute to the spread of COVID-19 to countries outside the United States whom are unable to provide proper medical and social services. Their removal from the United States will make them targets of community and governmental actors given the prevalence of COVID-19 in the United States.
10. A deportation from the BCRC requires the use of public transportation and transfer between vehicle travel, air travel, possibly hotels, and comingling with other detainees from other detention centers including both adults and children.
11. Families are removed from the BCRC without notice to the clients or counsel. They are transported by ground and air transportation with ICE officers assigned to transportation. Previously families were transported to an airport in New York for removal, however, more recently our families are transferred from Pennsylvania to the southern United States for arranged removal flights. Each of these points, families are intermixed with other detainees and other government employees and contractors in the process of removal. ICE officers accompany parents and children throughout the transfer process up until the removal flight.
12. Families often have layovers with commercial airlines and stops in route to the removal flight. Often, the travel takes more than one full day. Often, we are advised that the final removal flight occurs in Texas or Louisiana.
13. For those families who are from Mexico, they are normally brought to a border crossing point via ground transportation after their travel within the United States. During ground transportation families are transported by ICE officials and are intermixed with other detainees.
14. For countries where air travel is required, deportation flights are normally by ICE Air or other contracted services with many detainees from different detention facilities comingled on these flights. We have also heard of deportations being executed by commercial airline, but that is not the norm.

15. Flights of detainees from the United States to other countries have been made with COVID-19 infected individuals intermixed with other detainees.<sup>1</sup>
16. The families detained at the BCRC are from Ecuador, Haiti and Mexico.
17. As of this date Mexico has 49,219 COVID-19 cases and 5,177 deaths due to COVID-19. Out of the cases with an outcome, 13 percent of cases have resulted in death. See <https://www.worldometers.info/coronavirus/country/mexico/>.
18. As of this date Ecuador has 33,182 COVID-19 cases and 2,736 deaths due to COVID-19. <https://www.worldometers.info/coronavirus/country/ecuador/>.
19. As of this date Haiti has documented 456 COVID-19 Cases and 20 deaths. <https://www.worldometers.info/coronavirus/country/haiti/>.
20. The families continue to express their fear of contracting COVID-19 as a result of the detention and removal process. They fear for themselves as parents and the lasting effects that such an infection might have on their very young children. The majority are infants.
21. This morning, on information and belief, one Mexican family from Berks, a mother, father and 1 year old child were removed from the Berks facility. We are concerned they are being removed to Mexico unsafely and are at risk of harm if deported.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct pursuant to 28 U.S.C. ¶ 1746.

Executed this 18<sup>th</sup> day of May, 2020 in Reading, Pennsylvania.



Bridget Cambria, Esq.

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<sup>1</sup>See “Mexico: 14 migrants get COVID-19 after US deports man with virus. Al Jazeera. April 20, 2020. <https://www.aljazeera.com/news/2020/04/mexico-14-migrants-covid-19-deports-man-virus-200420201837633.html>; “Exporting coronavirus? Infections among U.S. deportees reach Haiti, Mexico.” Reuters. April 20, 2020. <https://www.reuters.com/article/us-health-coronavirus-usa-deportees/exporting-coronavirus-infections-among-u-s-deportees-reach-haiti-mexico-idUSKBN22305K>; “‘Exporting the virus’: Migrants deported by U.S. make up 20% of Guatemala’s coronavirus cases. CBS News. April 27, 2020. <https://www.cbsnews.com/news/deported-migrants-guatemala-coronavirus-cases/>

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of the United States of America; and  
CHAD WOLF, Acting Secretary,  
Department of Homeland Security,

Respondents.

**DECLARATION OF SHALYN FLUHARTY**



**DECLARATION OF SHALYN FLUHARTY**

I, Shalyn Fluharty, hereby declare under penalty of perjury as prescribed in 28 U.S.C.

§ 1746:

1. The facts contained in this declaration are based on my personal knowledge and I can testify competently to them if called upon to do so. I submit this sworn declaration in support of Plaintiffs' Motion for Temporary Restraining Order.

2. I direct Proyecto Dilley, formerly known as the Dilley Pro Bono Project, in Dilley, Texas, and have done so since December 2016. In this capacity, I supervise a small team of attorneys and full-time paralegals, and a rotating group of volunteers. I have been practicing law since 2010. My practice has focused on representing detained unaccompanied immigrant children and detained immigrant families before the Executive Office of Immigration Review and the Department of Homeland Security.

3. Proyecto Dilley provides pro bono legal services on behalf of detained mothers and their children at the South Texas Family Residential Center in Dilley, Texas ("Dilley" or "STFRC"). The overwhelming majority of families who are detained in Dilley fled persecution and torture in their countries of origin and seek asylum and related protection in the United States. During my time with Proyecto Dilley, the project has represented over 40,000 families. Based on this experience, I am familiar with the conditions of detention at STFRC, the experiences of medical treatment—or lack of treatment—reported by my clients and revealed in medical records, and the removal process, generally. Although deported families were at risk of harm in the removal process prior to the COVID-19 pandemic, the risk of harm is now greatly exacerbated.

4. Section 7.4 of the Immigration and Customs Enforcement (“ICE”) Family Residential Standards require that ICE ensure the safe release of individuals who are processed for removal from the United States, transferred to another facility, or released into the community. Among other things, the standard directs ICE to confirm that a family’s case information is accurate and up-to-date prior to release; to provide families and their representative-of-record with notice of release before it occurs; to ensure transportation providers have accurate and complete records on each family; to ensure safe transfer, particularly for individuals with special health care concerns; and to ensure transferred families have access to funds, valuables, and other property upon transfer. ICE Family Residential Standards, § 7.4(II) (relevant section is attached hereto as Exhibit “A”).

5. The *Flores* Settlement Agreement also requires ICE to protect the safety of children class members, and to provide notice to counsel prior to a child’s transfer. *See* Stipulated Settlement Agreement ¶¶ 12, 27, *Flores v. Reno*, No. CV-85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997). In my experience, ICE regularly fails to comply with all of these requirements.

6. Proyecto Dilley represents the Petitioners in this action in their immigration proceedings. Petitioners are mothers and minor children. Numerous Petitioners have documented and severe medical conditions. Some of the medical conditions of the minor children include asthma, heart murmurs, anemia, high blood pressure, tachycardia, fainting, uncontrolled gastritis, and respiratory illness that has required hospitalization. Some of the medical conditions of the mothers include asthma, anemia, high blood pressure, tachycardia, thyroiditis, liver disease, diabetes, undiagnosed chest pain, undiagnosed kidney problems,

seizure disorder, numbness in the extremities, and a tumor at the base of the skull. There are also Petitioners in recovery who recently survived surgery, a heart attack, and a stroke.

7. ICE consistently proceeds with the removal of an individual despite documented concerns that removal in and of itself will place the individual at risk of harm, if not death.

8. ICE and the ICE Health Services Corps work together to medically “clear” individuals for travel, in advance of their removal from the United States. I have personal knowledge of many families who were purportedly cleared for travel, when according to outside independent medical providers, they should not have been. On April 17, 2020, two mothers represented by Proyecto Dilley were transported for emergency medical care during the removal process while on a layover before their final removal flight. One of the mothers became unconscious during the initial flight, and the other lost lucidity due to symptoms of COVID-19 and severe fever. ICE was aware of the severity of each mother’s medical condition prior to their departure from STFRC for removal, and even took one of the mothers directly from the medical unit at STFRC to the San Antonio airport. Both mothers were tested for COVID-19 by independent outside medical providers while receiving emergency medical treatment when the airlines refused their further travel. To my knowledge, the coronavirus test results were never shared with either family, and ICE successfully proceeded with the removal of one of the two families days after the mother was hospitalized.

9. Proyecto Dilley represented another mother who survived three heart attacks prior to her journey to the United States. Each heart attack lead to extended hospitalization, and on one occasion, the mother was pronounced dead before being revived. Prior to her detention at STFRC, medical professionals advised the mother that air travel would place her at immediate risk of death and was prohibited. While detained at STFRC, the mother experienced ongoing

signs of a fourth impending heart attack, including: stabbing chest pains, left-sided neck pain, a feeling of a heavy or swollen heart, rapid heart rate, loss of vision, dizziness, headaches, and loss of feeling in her hands, feet and lips. The mother also lost consciousness numerous times while detained at STFRC and was transported to the hospital. Despite ongoing advocacy from Proyecto Dilley, ICE removed the mother in January 2020.

10. Proyecto Dilley regularly requests medical records on behalf of detained families, and regularly sees requests for records ignored or delayed. Even requests made by detained individuals for their own medical records are routinely denied. Proyecto Dilley's medical record requests are always time sensitive, and the government's failure to provide them prejudices Proyecto Dilley's ability to advocate on behalf of a client. Medical records provide critical evidence to support asylum claims, allegations of medical neglect, and requests for release from detention. The failure to promptly provide medical records also conflicts with the Family Residential Standards and Texas state law. *See* 52 Tex. Admin. Code § 165.2. Without prompt access to medical records, Proyecto Dilley is unable to effectively consult with independent medical experts regarding whether an individual is safe to fly.

11. For single mothers traveling with children, the few protections ICE is required to provide are necessary to protect a family's safety in the removal process. Unfortunately, ICE regularly fails to provide the protections promised by its own standards. I am aware of numerous cases in which ICE removed—or attempted to remove—a family absent up-to-date case information, without the family's medication and/or without the family's personal property.

12. As recently as April 29, 2020, a mother represented by Proyecto Dilley was transported to an airplane for removal. When the mother arrived at the plane for removal, she was visibly unwell. Upon inquiry, the airline provider learned that the mother had been deprived

of her blood pressure medication for the entire day, and the facility failed to provide the mother with any medication upon release. As a result, ICE was unable to proceed with removal as planned.

13. ICE does not provide families or their attorneys of record with notice that a family will be removed prior to their deportation. Instead, ICE regularly informs families at around 8:00 p.m. that they will be processed for release from the facility immediately and placed on a removal flight the following morning at around 6:00 a.m. Families are required to immediately pack up their belongings and move to a staging area within STFRC, where they wait for hours overnight before being transported to the airport.

14. One exception to ICE's failure to provide families and their attorneys of record with advance notice of removal exists for Salvadoran citizens; ICE regularly provides Proyecto Dilley with notice that a family will be removed to El Salvador 24 hours before removal occurs as required by the *Orantes Injunction*. See *Orantes-Hernandez v. Gonzalez*, 504 F. Supp. 2d 825 (C.D. Cal. 2007). On May 18, 2020 at 9:55 a.m. ICE provided Proyecto Dilley with written notification that 28 individuals will be removed from STFRC to El Salvador tomorrow, May 19, 2020 at 10:00 a.m. All 28 of these individuals are Petitioners who seek emergency relief in this case.

15. ICE's failure to provide families and their attorneys of record with notice in advance of their removal eliminates a family's ability to safely plan for their return to their home country. Deportation flights typically land in large cities that are many hours away from where a family previously resided. Many Proyecto Dilley clients report they live in rural areas, up mountains where cars cannot travel. When families are informed they are being removed for the first time late in the evening when the removal process has already formally begun, they do not

have the opportunity to communicate with their family members and loved ones to advise them of their return and to coordinate the details of their travel upon arrival. Families are also generally unable to communicate with their attorney after they are advised of their deportation.

16. Many families arrive to STFRC without any money. Other families arrive with some money, or have family members or friends who deposit money into their commissary account while they are detained. When an individual is processed for release, if they have money in their commissary account, it should be returned to them when they leave the facility. I have represented numerous families who—upon release from the facility—were not provided with the money in their commissary account or other personal possessions that were confiscated when they were taken into government custody. In particular, many clients report having their cell phone confiscated and not returned. Failure to provide families with their personal possessions, medication, and money places them in a dangerous and precarious situation upon arrival in their country of origin. Without access to money, families are unable to purchase food or tickets for travel back to their homes.

17. Furthermore, although some non-profit organizations and government agencies previously received deported STFRC families at the airport, and provided them with assistance making phone calls or purchasing bus tickets, many if not all of these resources—to my knowledge—have been eliminated during the COVID-19 pandemic.

18. The COVID-19 pandemic has created new dangers for detained individuals, which are multiplied in the removal process. ICE's ongoing detention of individuals in congregate care facilities that do not allow for social distancing has spurred significant litigation. *See, e.g., Alcantara v. Archambeault*, No. 3:20-cv-00756-DMS-AHG (S.D. Cal. Apr. 30, 2020); *Fraihat v. ICE*, No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020); *O.M.G. v. Barr*, 1:20-

cv-00786-JEB, March 30, 2020 Minute Order (D.D.C. Mar. 30, 2020); *Flores v. Barr*, No. CV-85-4544-DMG (AGRx), Dkt. No. 740 (C.D. Cal. Mar. 28, 2020). The pressure of this litigation has moved ICE to expedite removal of individuals in high volumes, even though detainees are not fit to fly, have been denied critical medical care while detained, and may be COVID-19 positive.

19. Reports from Guatemala show that over one hundred individuals deported to Guatemala since late March 2020 tested positive for COVID-19. *See, e.g.*, Sofia Menchu, *Maya Villages in Guatemala Spurn U.S. Deportees as Infections Spike*, Reuters (May 1, 2020), <https://www.reuters.com/article/us-health-coronavirus-guatemala-deportee/maya-villages-in-guatemala-spurn-u-s-deportees-as-infections-spike-idUSKBN22D5H3>. One Guatemalan government official estimated that approximately 75 percent of individuals removed to Guatemala in one flight in March 2020 tested positive. Maria Martin, *Official Alleges the U.S. has Deported Many COVID-Positive Migrants to Guatemala*, NPR (Apr. 15, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/15/834999661/official-alleges-the-u-s-has-deported-many-covid-19-positive-migrants-to-guatema>.

20. ICE was ordered to release children detained at STFRC on March 28, 2020, April 10, 2020, and April 24, 2020. *See Flores*, No. CV-85-4544-DMG (AGRx), Dkt. No. 740 (C.D. Cal. Mar. 28, 2020); *Flores*, CV-85-4544-DMG (AGRx), Dkt. No. 768 (C.D. Cal. Apr. 10, 2020); *Flores*, No. CV-85-4544-DMG (AGRx), Dkt. No. 784 (C.D. Cal. Apr. 24, 2020). ICE was ordered to release mothers from STFRC on March 30, 2020. *O.M.G.*, 1:20-cv-00786-JEB, March 30, 2020 Minute Order. ICE has failed to comply with these orders as required. Instead, ICE has attempted to hastily remove families (a process which takes significantly more time to facilitate than release in the United States). This haste has led to new unprecedented changes to

the removal process for STFRC families. Previously, families detained at STFRC were most commonly removed on commercial flights. Now, I have reason to believe families are being placed on ICE Air flights, where they are forced to travel with other adult ICE deportees who are in handcuffs.

21. I learned about this for the first time when I received a call from a Guatemalan reporter on April 30, 2020, who advised me that 20 family units were removed to Guatemala on an ICE flight with 69 adult men detainees. The reporter advised me that the flight arrived at 4:00 p.m. in the afternoon, and departed from Brownsville, Texas. Brownsville, Texas is a small town along the U.S.-Mexico border. It is a four-and-a-half-hour drive away from Dilley, Texas. I am unaware of any removal flights that initiated in Brownsville, Texas and carried Dilley families prior to the COVID-19 pandemic.

22. Given the great proportion of ICE detainees who have contracted COVID-19 throughout the country, and the impossibility of facilitating social distancing on an airplane, families represented by Proyecto Dilley have expressed increasing concerns regarding the likelihood that they will be exposed to COVID-19 during the removal process. ICE's efforts to remove high volumes of individuals from ICE detention facilities who are intermixed with family units from STFRC places families at heightened and unjustified risk of harm.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Executed May 18, 2020 in Ft. Myers, Florida.

A handwritten signature in black ink, appearing to be 'Shalyn Fluharty', written in a cursive style.

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Shalyn Fluharty

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

D.A.M.. et al.,

*Petitioners,*

-against-

William P. BARR, Attorney General of the United  
States; Chad WOLF, Acting Secretary, U.S.

Department of Homeland Security,

*Respondents.*

Case No.

**DECLARATION OF CAROLINE J. HELLER**

Caroline J. Heller declares, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1) I am a Shareholder of the law firm of Greenberg Traurig, LLP, attorneys for Petitioners.

2) I submit this declaration in support of Petitioners' Motion for a temporary restraining order.

3) This declaration is based upon my personal knowledge of the facts set forth herein.

4) Petitioners are all named plaintiffs in a separate pending action, and prospective plaintiffs who sought to join that same action, in which they contest the unlawful and unconstitutional process that resulted in a determination by relevant governmental authorities that their expressed fear of returning to the countries from which they fled was not credible. *See M.M.V. et al. v. Barr et al.*, Case No. 19-cv-02773 (United States District Court for the District of Columbia) (Hon. Amy Berman Jackson) ("M.M.V.").

5) Greenberg Traurig, LLP represents the Petitioners in *M.M.V.*

6) Most of the Petitioners in this action filed a Second Amended Complaint in *M.M.V.* on December 6, 2019. (*M.M.V.*, Doc. No. 54.)

7) Judge Jackson issued an administrative stay of removal for the named plaintiffs in the Second Amended Complaint. (*M.M.V.*, Doc. No. No. 50.)

8) On February 14, 2020, Defendants filed a partial motion to dismiss based on lack of subject matter jurisdiction. (*M.M.V.*, Doc. No. No. 72.)

9) Thereafter, other Petitioners in this action filed five motions for joinder, which were opposed by defendants, and five emergency motions to extend the administrative stay to the proposed plaintiffs. (*M.M.V.*, Doc. Nos. 78, 79, 85, 86, 88, 89, 91, 92, 94, 95).

10) Plaintiffs' motions for stays were granted until Judge Jackson could rule on the joinder motions. (*See M.M.V.*, Min. Orders, Mar. 25, 2020; Apr. 4, 2020; Apr. 6, 2020; Apr. 15, 2020; Apr. 23, 2020).

11) On April 27, 2020, in a Memorandum Decision and accompanying Order, Judge Jackson granted defendants' partial motion to dismiss, dismissing the majority of the plaintiffs and claims, and denied the five motions for joinder. (*M.M.V.*, Doc. Nos. 96, 97.)

12) Judge Jackson lifted the stays of removal for all Petitioners here, who comprise the dismissed plaintiffs and proposed plaintiffs in *M.M.V.* (*Id.*)

13) On April 27, 2020, Petitioners filed a Notice of Appeal from the Order and Memorandum Decision to the Court of Appeals for the District of Columbia Circuit. (*M.M.V. et al. v. Barr et al.*, Case No. 20-5106) (Court of Appeals for the District of Columbia Circuit) ("*M.M.V.* Appeal").

14) On April 28, 2020, Petitioners filed an Emergency Motion for a Stay of Removal Pending Appeal with the Court of Appeals (“Court of Appeals Emergency Motion”). (*M.M.V.* Appeal, Doc. No. 1840327).

15) Attached hereto as Exhibit “1” is Petitioners Petition for Writ of Habeas Corpus dated May 18, 2020.

16) Attached hereto as Exhibit “2” is the declaration of Shalyn Fluharty, Esq. dated April 28, 2020 submitted in support of the Court of Appeals Emergency Motion.

17) Attached hereto as Exhibit “3” is the declaration of Bridget Cambria, Esq. dated April 28, 2020 submitted in support of the Court of Appeals Emergency Motion.

18) On April 28, 2020, Petitioners also filed an emergency motion to stay removal before Judge Jackson (“District Court Emergency Motion”). (*M.M.V.*, Doc. No. 99).

19) The morning of April 28, 2020, before counsel had filed the Court of Appeal Emergency Motion or the District Court Emergency Motion, the government deported one of the dismissed *M.M.V.* plaintiff families to Mexico. (Exh. 1, ¶ 4.)

20) On April 28, 2020, counsel for Petitioners learned that Immigration and Customs Enforcement (“ICE”) scheduled the deportation of 44 other *M.M.V.* plaintiffs. (Exh. 2, ¶ 6.)

21) For example, ICE had announced that a flight to Honduras was to leave on April 29, 2020 and, based upon the fact that certain Honduran Petitioners had been screened for *Al Otro Lado, Inc. v. Wolf*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal.) class membership, a requirement prior to deportation, counsel had reason to believe that certain Petitioners were scheduled for removal on April 29, 2020: Petitioners A.C.O., J.S.O., L.O.R., A.P.O., J.S.P., M.A.S, T.C.L., A.P.C., M.R.A., L.C.R., S.L.R., A.V.L., B.H.I., D.M.H., S.R.F., C.M.R., D.P.R., S.B.P., M.Y.H., J.M.H., D.A.M., Y.H.A., A.D.L., D.D.D., R.L.A., N.C.L., N.M.L., and A.R.M. (Exh. 2, ¶ 6.)

22) On May 1, 2020, Judge Jackson denied the motion and lifted the administrative stay.

23) Less than an hour later, the Court of Appeals issued a per curiam order, among other things, ordering the clerk to lodge the motion to stay pending appeal and ordered that Petitioners removal from the United States be administratively stayed pending further order from the Court of Appeal, and set a briefing schedule for the motion to stay. (*M.M.V.* Appeal, Doc. No. 1840985).

24) On May 15, 2020, the Court of Appeals denied the emergency ordered that the administrative stay be dissolved. (*M.M.V.* Appeal, Doc. No. 1843095).

25) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: New York, New York  
May 18, 2020

/s/ Caroline J. Heller  
Caroline J. Heller

# Exhibit “1”

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Steven G. Barringer (D.C. Bar No. 375373)  
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Caroline Heller (*pro hac vice* motion to be filed)  
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Gregory P. Copeland (D.D.C. Bar # NY0311)  
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D.A.M.; Y.H.A., a minor; J.S.P.; M.A.S., a §  
minor; L.O.R.; A.P.O., a minor; J.S.M.; §  
D.M.S., a minor; S.L.V.; M.F.L., a minor; §  
M.M.B.; N.M.M., a minor; M.M.V.; §  
A.A.M., a minor; I.F.L.; R.F.L., a minor; §  
M.G.V.; A.R.G., a minor; N.M.L.; A.R.M., §  
a minor; C.C.N.; B.S.C., a minor; R.P.F.; §  
J.F.P., a minor; M.C.M.; S.M.C., a minor; §  
M.A.A.; A.R.A., a minor; C.A.A., a minor; §  
A.L.V.; I.G.L., a minor; A.G.L., a minor; §  
M.R.A.; L.C.R., a minor; S.G.H.; A.G.H., §  
a minor; J.M.R.; C.G.M., a minor; C.C.G.; §  
E.C.G., a minor; K.N.E.; E.A.N., a minor; §  
D.P.R.; S.B.P., a minor; R.L.A.; N.C.L., a §  
minor; L.M.L.; M.R.M., a minor; Y.V.O.; §

Case No.

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

**ORAL ARGUMENT  
REQUESTED**

E.P.V., a minor; A.D.L.; M.D.D., a minor; §  
 S.L.R.; A.V.L., a minor; M.J.P.; A.M.P., a §  
 minor; A.P.P., a minor; C.P.P., a minor; §  
 D.O.H.; L.A.O., a minor; D.A.O., a minor; §  
 I.H.L.; S.R.H., a minor; M.A.R.; S.R.S., a §  
 minor; S.J.A.; W.A.A., a minor; E.V.M.; §  
 A.V.M., a minor; M.P.O.; G.G.L., a minor; §  
 O.T.G.; T.T.G., a minor; B.H.I.; D.M.H., a §  
 minor; T.C.L.; A.P.C., a minor; S.R.F.; §  
 C.M.R., a minor; N.V.; Z.F., a minor; §  
 V.P.M.; S.L.P., a minor; N.L.P., a minor; §  
 E.L.P., a minor; K.Z.R.; A.Z.R., a minor; §  
 J.H.R.; A.M.H., a minor; S.M.C.; D.S.M., §  
 a minor; A.M.M., a minor; I.E.B.; B.E., a §  
 minor; M.V.G.; D.V.M., a minor; J.M.V., §  
 a minor; I.C.T.; V.T.P., a minor; R.S.P.; §  
 F.P.P., a minor; C.P.P., a minor; J.A.R.; §  
 E.G.M.; J.G.A., a minor; C.N.; B.L.; §  
 B.L.N., a minor; G.S.C.; M.C.; N.Y.B., a §  
 minor; G.R.S.C., a minor; P.M.; M.N.; §  
 H.M.N., a minor; N.P.; R.D.P., a minor; §  
 M.D.E.; A.G.D., a minor; Y.U.; F.G.U, a §  
 minor; Y.O.T., V.L.O., a minor, D.L.O., a §  
 minor; L.H.H.; Y.F.H., a minor; A.B.C.; §  
 E.C.B, a minor; K.P.P.; M.P.P., a minor; §  
 I.P.P., a minor; M.H.; J.M.H., a minor; §  
 B.C.A.; G.S.C., a minor; L.M.P.; Y.M.M., §  
 a minor; L.P.M, a minor; A.G.P.; D.S.G., a §  
 minor; A.S.G., a minor; C.R.R.; I.G.R., a §  
 minor; V.G.R, a minor; E.G.; J.G.M., a §  
 minor; B.G.C.; S.M.G., a minor; T.S.J.; §  
 L.P.S., a minor; G.S.J., a minor; I.C.A.; §  
 S.P.C., a minor; M.T.T.; Y.L.T., a minor; §  
 R.C.H.; E.P.C., a minor; L.M.B.; Z.R.M., a §  
 minor; E.R.M., a minor; C.H.G.; M.G.H., a §  
 minor; L.M.V.; C.A.M., a minor; J.C.; §  
 Y.J.C., a minor; T.R.M.; J.R.R., a minor; §  
 C.L.; J.A., a minor; M.P.A.; G.S.P., a §  
 minor; M.T.B.; A.V.B., a minor; W.A.B., a §  
 minor; I.F.; Z.M.F., a minor; E.G.F., a §  
 minor; J.M.F., a minor; Z.L.; J.C.L., a §  
 minor; M.P.T.; A.A.P., a minor; H.A.P., a §  
 minor; D.C.V.; S.V.C., a minor; M.C.P.; §  
 J.C.P., a minor; M.R.C., a minor; M.L.M.; §  
 J.R.L., a minor; N.B.C.; J.B.M., a minor; §  
 M.Z.L; F.P.Z., a minor.; I.M.V.; J.T.M., a §



minor; D.T.M., a minor; F.F.A.; D.A.B.; §  
 A.A.B., a minor; R.S.J.; S.A., a minor; §  
 A.O.V.; J.S.O., a minor; L.G.G.; W.C.G., a §  
 minor. §

Petitioners, §

v. §

WILLIAM BARR, Attorney General §  
 of the United States of America; and §  
 CHAD WOLF, Acting Secretary, §  
 Department of Homeland Security, §

Respondents. §

## **INTRODUCTION**

1. The Petitioners here are non-citizen parents and children who have fled persecution in their home countries seeking asylum in the United States. Petitioners have final orders of removal and are detained at either the South Texas Family Residential Facility in Dilley, Texas (“Dilley”) or the Berks County Residential Center in Leesport, Pennsylvania (“Berks”). Upon information and belief, Petitioners will be removed from the United States imminently.

2. This non-core habeas petition challenges the legality of Respondents’ actions during the COVID-19 pandemic. At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive encroachment on liberty, and it is in that context that its protections have been strongest. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). These protections extend fully to noncitizens subject to an order of removal. *Id.*; *see also* Gerard L. Neuman, *Habeas Corpus, Executive Detention, and the Removal of Aliens*, 98 COLUM. L. REV. 961, 1044 (1998) (“[H]istorical precedents beginning shortly after 1787 and reaching to the present confirm the applicability of the writ of habeas corpus to the detention involved in the physical

removal of aliens from the United States. These precedents include opinions . . . denying the power of Congress to eliminate judicial inquiry.”).

3. The Centers for Disease Control and Prevention (“CDC”), recommends against travel at this time, with the CDC stating “[t]ravel increases your chances of getting and spreading COVID-19.”<sup>1</sup> The novel coronavirus (“COVID-19”) pandemic is a global catastrophe that has affected virtually every corner of the world.

4. In the United States, the risks of COVID-19 have caused social distancing measures to be implemented throughout the country, along with the shutdown or suspension of all but essential businesses and services in nearly every state. Petitioners’ countries of origin have been similarly impacted, but with far fewer resources to fight the spread of the virus or provide care for those who fall ill.

5. Despite the pandemic, Respondents are removing immigrants from the United States without taking necessary precautions during the removal process to protect immigrants from exposure to the novel coronavirus known as COVID-19.

6. Because of these failures, over the past few months, the United States has removed dozens of immigrants infected with COVID-19, thereby exposing every other person who travelled with them to COVID-19.<sup>2</sup>

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<sup>1</sup> *Coronavirus and Travel in the United States: Travel Recommendations*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (last visited May 15, 2020).

<sup>2</sup> Caitlin Dickerson & Kirk Semple, *U.S. Deported Thousands Amid Covid-19 Outbreak. Some Proved to Be Sick*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala.html> (“Dozens of Guatemalans flown home by Immigration and Customs enforcement since late March tested positive for the coronavirus after returning, according to Guatemalan authorities.”); Maria Martin, *Official Alleges The U.S. Has Deported Many COVID-19-Positive Migrants To Guatemala*, NPR (Apr. 15, 2020) <https://www.npr.org/sections/coronavirus-live-updates/2020/04/15/834999661/official-alleges-the-u-s-has-deported->

7. The risks of exposure to COVID-19 during removal are so great that on Monday, May 11, 2020, United States Representative Frederica Wilson introduced the Haitian Deportation Relief Act, which calls for the suspension of deportation of Haitian nationals until the COVID-19 pandemic has ended in both the United States and Haiti.<sup>3</sup>

8. There are no reasonable practices to test detainees for COVID-19 prior to deportation; Immigration and Customs Enforcement (“ICE”) told the Miami Herald that the agency would acquire approximately 2,000 tests a month “but given the nationwide shortages of testing kits, ‘the agency likely won’t have enough to test all aliens scheduled for future removals and will prioritize testing based on evolving operational considerations,’ ICE said.”<sup>4</sup>

9. Indeed, as of May 9, 2020, the total detained population of migrants in ICE custody is 27, 908, and yet only 2,045 of these detainees have been tested for COVID-19.<sup>5</sup> That is just over seven percent (7%) of the detained population being tested. Of those 2,045 detainees tested, 986 have confirmed cases of COVID-19.<sup>6</sup> In other words, almost half (>48%) those tested have tested positive for COVID-19.

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[many-covid-19-positive-migrants-to-guatemala](#). (Guatemalan health officials claim one deportation flight from the United States arrived with 75% of its passengers infected).

<sup>3</sup> Press Release, Rep. Frederica S. Wilson, Wilson Introduces Bill to Suspend Deportations to Haiti During Pandemic (May 11, 2020), <https://wilson.house.gov/media-center/press-releases/wilson-introduces-bill-to-suspend-deportations-to-haiti-during-pandemic>.

<sup>4</sup> Monique O. Madan, Jacqueline Charles, & Romina Ruiz-Goiriena, *ICE plans to increase COVID-19 testing as Haiti commission calls for pause in deportations*, MIAMI HERALD (Apr. 24, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article242265956.html>.

<sup>5</sup> *ICE Guidance on COVID-19*, U.S. IMMIGRATION AND CUSTOMS ENF’T, <https://www.ice.gov/coronavirus> (last visited May 15, 2020).

<sup>6</sup> *Id.*

10. ICE Guidance on COVID-19 is woefully inadequate; it does not require: testing prior to removal; the provision of face masks to detainees; or social distancing during transportation to airports or on flights.<sup>7</sup>

11. During the removal process, individuals and families are frequently shuttled across the country between different detention centers, often confined in close quarters. Even the ordinary processes of deportation—transporting Petitioners en masse via bus or other vehicle to airports, where they are crowded onto airplanes and flown to their home countries—is fraught with danger related to the COVID-19.

12. Respondents' actions also put Petitioners' health and safety at great risk even after they arrive in their home countries. Upon arrival, Petitioners may be subjected to quarantine measures (presenting the risk of further persecution as Petitioners may be viewed as disease carriers). Once they are permitted to leave, they may have no safe place to turn, especially if they were fleeing persecution in their homes in the first place. In some countries, public transportation is suspended and curfews are imposed, inhibiting Petitioners' ability to contact relatives or friends, as well as their ability to reach a safe place to stay amid the ongoing pandemic. These risks are all-the-more inhumane when, as here, they threaten children.

13. Deportation proceedings that subject Petitioners to COVID-19 infections in the United States and/or in Petitioners' home countries would infringe on Petitioners' constitutional rights. Absent a stay of removal from this Court, Petitioners will face imminent harm and possible death from COVID-19.

14. Petitioners seek a temporary stay of their removal to avoid the grave danger and risk of peril caused by the deportation process as it exists. As described in further detail below,

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<sup>7</sup> *Id.*

deporting Petitioners during the coronavirus pandemic would violate (1) Petitioners' substantive and procedural due process rights, (2) the special-relationship doctrine, (3) the state-created danger doctrine, and (4) the *Accardi* doctrine.

15. Respondents would have deported Petitioners starting the week of April 27, 2020 had it not been for court issued stay orders, which have all been lifted as of May 15, 2020. *See M.M.V. et al. v. Barr et al.*, No. 20-5106, ECF No. 1843095 (D.C. Cir. May 15, 2020) (order dissolving administrative stay and denying emergency motion for stay) ("*M.M.V. Appeal*").

16. Petitioners are all plaintiffs, or prospective plaintiffs who sought joinder, in an action contesting the unlawful and unconstitutional process that resulted in a determination by relevant governmental authorities that their expressed fear of returning to the countries from which they fled was not credible. *See M.M.V., et al. v. Barr et al.*, No. 19-cv-02773, May 15, 2020, Per Curiam Order (D.D.C. *appeal docketed* May 7, 2020) (Hon. Amy Berman Jackson) ("*M.M.V.*").

17. During proceedings, Judge Jackson granted Petitioners administrative stays. (*M.M.V.*, ECF Nos. 50, 78, 79, 85, 86, 88, 89, 91, 92, 94, 95; Min. Orders, Mar. 25, 2020, Apr. 4, 2020, Apr. 6, 2020, Apr. 15, 2020, Apr. 23, 2020).

18. On April 27, 2020, in a Memorandum Decision and accompanying Order, Judge Jackson granted defendants' partial motion to dismiss, dismissed most of the plaintiffs and claims, and denied the five motions for joinder. (*MM.V.*, ECF Nos. 96, 97.) Judge Jackson lifted the stays of removal for all Petitioners here, who are plaintiffs and proposed plaintiffs in *M.M.V.* (*Id.*)

19. The same day, Petitioners filed a Notice of Appeal from the Order and Memorandum Decision to the Court of Appeals for the District of Columbia Circuit. (*M.M.V. Appeal*, ECF No. 1840283).

20. The very next morning of April 28, 2020, the government deported one of the dismissed *M.M.V.* plaintiff families to Mexico. Counsel for Petitioners also learned that Immigration and Customs Enforcement (“ICE”) intended to imminently remove forty-four (44) additional *M.M.V.* plaintiffs.

21. ICE had announced that a flight to Honduras was to leave on April 29, 2020 and, based upon the fact that certain Honduran Petitioners had been screened for *Al Otro Lado, Inc. v. Wolf*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. filed Nov. 22, 2017) class membership, a requirement prior to deportation, counsel had reason to believe that certain Petitioners were scheduled for removal on April 29, 2020 including Petitioners: A.C.O., J.S.O., L.O.R., A.P.O., J.S.P., M.A.S, T.C.L., A.P.C., M.R.A., L.C.R., S.L.R., A.V.L., B.H.I., D.M.H., S.R.F., C.M.R., D.P.R., S.B.P., M.Y.H., J.M.H., D.A.M., Y.H.A., A.D.L., D.D.D., R.L.A., N.C.L., N.M.L., and A.R.M.

22. As a result, that same day, one day after Judge Jackson’s decision, Petitioners filed both: 1) an Emergency Motion for a Stay of Removal Pending Appeal with the Court of Appeals for the District of Columbia Circuit (*M.M.V.* Appeal, ECF No. 1840327), and 2) an Emergency Motion to Stay Removal before Judge Jackson (*M.M.V.*, ECF No. 99).

23. In a minute order dated April 28, 2020, Judge Jackson granted an emergency stay pending her ruling on the motion to stay and ordered defendants to file an opposition by noon on May 1, 2020. (*See* Min. Order, *M.M.V.* (Apr. 28, 2020)).

24. On May 1, 2020, Judge Jackson denied the motion and lifted the administrative stay. (Order, *M.M.V.* (May 1, 2020), ECF No. 106).

25. Less than an hour later, the Court of Appeals issued a per curiam order, among other things, ordering the clerk to lodge the motion to stay pending appeal and ordered that

Petitioners' removal from the United States be administratively stayed pending further order from the Court of Appeals, and set a briefing schedule for the motion to stay. (Per Curiam Order, *M.M.V. Appeal* (May 1, 2020), ECF No. 1840985).

26. On May 15, 2020, the Court of Appeals issued a Per Curiam Order dissolving the administrative stay and denying Petitioners' emergency motion for a stay. Petitioners now face new dangers because Respondents' intent to deport them back to their countries of origin during a global pandemic of unprecedented proportions, putting Petitioners at great peril.

27. The writ of habeas corpus is so foundational to our legal framework that the Constitution provides: "[t]he privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it." U.S. CONST. art. I, § 9, cl. 2. It is the only writ enshrined in the Constitution, and this, along with the Judiciary Act of 1789 (1 Stat. 73 (1789)), establishes the authority for at least the Supreme Court to issue writs of habeas corpus when they believe a detention is unlawful.

28. The same authority vested to the Supreme Court above has been extended by Congress to the district courts through the Habeas Corpus Act of 1867 (14 Stat. 385 (1867)), which provides that a district court can grant the writ of habeas corpus whenever a petitioner is "in custody in violation of the Constitution or law and treaties of the United States." 28 U.S.C. § 2241(c)(3).

29. Absent this Court's intervention, Petitioners have no adequate substitute to challenge the legality of Respondents' action to deport them during the COVID-19 pandemic to countries where it has been confirmed that the government has deported people who tested positive for the virus for which there is no cure.

30. At its historical core, habeas corpus “has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (citations omitted). These protections extend fully to noncitizens subject to an order of removal. *St. Cyr*, 533 U.S. at 301.

31. The Supreme Court has noted its “scope and flexibility,” *i.e.*, its “capacity to reach all manner of illegal detention,” and its “ability to cut through barriers of form and procedural mazes.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Additionally, the remedy should “be administered with the initiative and flexibility essential to ensure that miscarriages of justices within its reach are surfaced and corrected.” *Id.*

32. The Constitution permits and requires the Court to retain residual habeas jurisdiction to ensure that the process employed by Respondents to deport Petitioners meets constitutional standards while Petitioners proceed with their request for judicial review in *M.M.V.*

33. The writ of habeas corpus is “a procedural device for subjecting executive, judicial, or private restraints on liberty to judicial scrutiny....” *Peyton v. Rowe*, 391 U.S. 54, 58 (1968). Chief Justice Earl Warren stated that it is this “high purpose [that] has made the writ both the symbol and guardian of individual liberty.” *Id.*

34. A stay of removal is necessary to maintain the *status quo* to ensure that Respondents are not engaging, or do not engage, in a removal process that unlawfully extinguishes the ability of Petitioners to pursue their claims in *M.M.V.* because of exposure to COVID-19. A stay is therefore necessary to ensure the effectiveness of the judicial review process taking place in *M.M.V.*

35. Respondents’ swift deportation of one family to Mexico 24 hours after Judge Jackson lifted the administrative stays, and their preparation to deport other families to Honduras



the evening after Judge Jackson lifted the administrative stays, are evidence that Petitioners' deportation to their countries of origin is imminent.

### **PARTIES**

36. Petitioners are all mothers, fathers, and children either detained at Dilley or Berks or released who have been issued negative credible and reasonable fear determinations.

37. Plaintiffs D.A.M. and her minor child Y.H.A. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 20, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 3, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

38. Plaintiffs M.M.V. and her minor son A.A.M. are Salvadoran nationals who seek protection from persecution and torture in the United States. M.M.V. and A.A.M. were placed in credible fear proceedings on or around August 22, 2019, attended their initial credible fear interview on August 29, 2019, and were served with negative credible fear determinations on August 30, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 30, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

39. Plaintiffs S.L.V. and her minor daughter M.F.L. are Salvadoran nationals who seek protection from persecution and torture in the United States. S.L.V. and M.F.L. were placed in credible fear proceedings on or around August 22, 2019, attended their initial credible fear interview on August 29, 2019, and were served with negative credible fear determinations on September 2, 2019. Their negative credible fear determinations were affirmed by the immigration

judge on September 18, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

40. Plaintiffs M.R.A. and her minor daughter L.C.R. are Honduran nationals who seek protection from persecution and torture in the United States. M.R.A. and L.C.R. were placed in credible fear proceedings on or around August 28, 2019, attended their initial credible fear interview on September 3, 2019, and were served with negative credible fear determinations on September 3, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 23, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

41. Plaintiffs A.L.V. and her minor sons I.G.L. and A.G.L. are Honduran nationals who seek protection from persecution and torture in the United States. A.L.V., I.G.L., and A.G.L. were placed in credible fear proceedings on or around August 28, 2019, attended their initial credible fear interview on September 3, 2019, and were served with negative credible fear determinations on September 3, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 19, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

42. Plaintiffs L.O.R. and her minor son A.P.O. are Honduran nationals who seek protection from persecution and torture in the United States. L.O.R. and A.P.O. were placed in credible fear proceedings on or around August 16, 2019, attended their initial credible fear interview on September 3, 2019, and were served with negative credible fear determinations on September 3, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 18, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

43. Plaintiffs N.P. and her minor daughter R.D.P. are Honduran nationals who seek protection from persecution and torture in the United States. N.P. and R.D.P. were placed in credible fear proceedings on or around August 16, 2019, attended their initial credible fear interview on August 27, 2019, and were served with negative credible fear determinations on August 29, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 17, 2019. They were released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

44. Plaintiffs M.D.E. and her minor son A.G.D. are Salvadoran nationals who seek protection from persecution and torture in the United States. M.D.E. and A.G.D. were placed in credible fear proceedings on or around August 21, 2019, attended their initial credible fear interview on August 29, 2019, and were served with negative credible fear determinations on August 29, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 18, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

45. Plaintiffs M.M.B. and her minor daughter N.M.M. are Nicaraguan nationals who seek protection from persecution and torture in the United States. M.M.B. and N.M.M. were placed in credible fear proceedings on or around August 21, 2019, attended their initial credible fear interview on August 30, 2019, and were served with negative credible fear determinations on August 31, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 30, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

46. Plaintiffs D.C.V. and her minor son S.V.C. are Guatemalan nationals who seek protection from persecution and torture in the United States. D.C.V. and S.V.C. were placed in

credible fear proceedings on or around August 22, 2019, attended their initial credible fear interview on August 27, 2019, and were served with negative credible fear determinations on August 30, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 30, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas.

47. Plaintiffs M.G.V. and her minor child A.R.G. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 25, 2019, attended their initial credible fear interview on September 2, 2019, and were served with negative credible fear determinations on September 3, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 18, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

48. Plaintiffs R.P.F. and her minor child J.F.P. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 26, 2019, attended their initial credible fear interview on September 2, 2019, and were served with negative credible fear determinations on September 2, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 18, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

49. Plaintiffs J.M.R. and her minor child C.G.M. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 20, 2019, attended their initial credible fear interview on August 27, 2019, and were served with negative credible fear determinations on August 29, 2019. Their

negative credible fear determinations were affirmed by the immigration judge on September 30, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

50. Plaintiffs J.S.M. and her minor child D.M.S. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 21, 2019, attended their initial credible fear interview on August 29, 2019, and were served with negative credible fear determinations on August 30, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 23, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

51. Plaintiffs Y.U. and her minor child F.G.U. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 23, 2019, attended their initial credible fear interview on August 29, 2019, and were served with negative credible fear determinations on September 2, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 23, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas.

52. Plaintiffs I.F.L. and her minor child R.F.L. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 24, 2019, attended their initial credible fear interview on September 2, 2019, and were served with negative credible fear determinations on September 2, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 19, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

53. Plaintiffs N.M.L. and A.R.M. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 28, 2019, attended their initial credible fear interview on September 4, 2019, and were served with negative credible fear determinations on September 5, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 18, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

54. Plaintiffs Y.O.T. and her minor children D.L.O. and V.L.O. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 21, 2019, attended their initial credible fear interview on September 4, 2019, and were served with negative credible fear determinations on September 5, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 23, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

55. Plaintiffs M.A.A. and her minor children A.R.A. and C.A.A. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 29, 2019, attended their initial credible fear interview on September 4, 2019, and were served with negative credible fear determinations on September 4, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 3, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

56. Plaintiffs C.C.N. and her minor son B.S.C. are Salvadoran nationals who seek protection from persecution and torture in the United States. C.C.N. and B.S.C. were placed in

credible fear proceedings on or around August 27, 2019, attended their initial credible fear interview on September 4, 2019, and were served with negative credible fear determinations on September 6, 2019. To date, they have not been scheduled for review before an immigration judge. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

57. Plaintiffs L.H.H. and her minor daughter Y.F.H. are Honduran nationals who seek protection from persecution and torture in the United States. L.H.H. and Y.F.H. were placed in credible fear proceedings on or around August 25, 2019, attended their initial credible fear interview on September 2, 2019, and were served with negative credible fear determinations on September 2, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 23, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

58. Plaintiffs S.G.H. and her minor child A.G.H. are Salvadoran nationals who seek protection from persecution and torture in the United States. S.G.G.H. and A.G.H. were placed in credible fear proceedings on or around August 30, 2019, attended their initial credible fear interview on September 5, 2019, and were served with negative credible fear determinations on September 12, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 23, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

59. Plaintiffs J.S.P. and her minor son M.A.S. are Honduran nationals who seek protection from persecution and torture in the United States. J.S.P. and M.A.S. were placed in credible fear proceedings on or around August 16, 2019, attended their initial credible fear interview on September 5, 2019, and were served with negative credible fear determinations on

September 12, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 26, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

60. Plaintiffs K.P.P. and her minor children I.P.P. and M.P.P. are Ecuadorean nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around September 9, 2019, attended their initial credible fear interview on September 12, 2019, and were served with negative credible fear determinations on September 12, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 30, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

61. Plaintiffs K.N.E. and her minor son E.A.N. are Honduran nationals who seek protection from persecution and torture in the United States. K.N.E. and E.A.N. were placed in credible fear proceedings on or around September 8, 2019, attended their initial credible fear interview on September 12, 2019, and were served with negative credible fear determinations on September 16, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 30, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

62. Plaintiffs M.H. and her minor son J.M.H. are Honduran nationals who seek protection from persecution and torture in the United States. M.H. and J.M.H. were placed in credible fear proceedings on or around August 29, 2019, attended their initial credible fear interview on September 4, 2019, and were served with negative credible fear determinations on September 6, 2019. Their negative credible fear determinations were affirmed by the immigration



judge on October 17, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

63. Plaintiffs M.C.M. and her minor child S.M.C. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings on or around August 26, 2019, attended their initial credible fear interview on September 2, 2019, and were served with negative credible fear determinations on September 2, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 17, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

64. Plaintiffs Y.V.O. and her minor child E.P.V. are Guatemalan nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 18, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 30, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

65. Plaintiffs S.L.R. and her minor child A.V.L. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 19, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 30, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

66. Plaintiffs A.D.L. and her minor child M.D.D. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear

proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 26, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 3, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

67. Plaintiffs D.P.R. and her minor child S.B.P. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 25, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 3, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

68. Plaintiffs L.G.G. and her minor child W.C.G. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 25, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 17, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

69. Plaintiffs M.C.P. and her minor children J.C.P. and M.R.C. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 23, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 17, 2019. Plaintiff M.C.P. has been released with her children for medical reasons because she is well into the third trimester of her current pregnancy.

70. Plaintiffs R.L.A. and her minor child N.C.L. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 28, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 17, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

71. Plaintiffs M.L.M. and her minor child J.R.L. are Honduran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 27, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 17, 2019. Plaintiff M.L.M. and J.R.L. have been released for medical reasons because she is well into the third trimester of her current pregnancy, but they remain in constructive custody and have final orders of removal.

72. Plaintiffs C.C.G. and her minor child E.C.G. are Salvadoran nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible fear determinations on September 25, 2019. Their negative credible fear determinations were affirmed by the immigration judge on October 17, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

73. Plaintiffs B.C.A. and her minor child G.S.C. are Ecuadorian nationals who seek protection from persecution and torture in the United States. They were placed in credible fear proceedings, attended their initial credible fear interview, and were served with negative credible

fear determinations on September 17, 2019. Their negative credible fear determinations were affirmed by the immigration judge on September 30, 2019.

74. Plaintiffs L.M.P. and her children Y.M.M. and L.P.M. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 5, 2019 and attended their initial credible fear interview on October 14, 2019. They were interviewed by Frank Natividad, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 30, 2019. The negative decisions were affirmed by an immigration judge on December 2, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

75. Plaintiffs A.G.P. and her children D.S.G. and A.S.G. are Mexican nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 3, 2019 and attended their initial credible fear interview on October 15, 2019. They were interviewed by Eric Peters, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 30, 2019. The negative decisions were affirmed by an immigration judge on December 2, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

76. Plaintiffs C.R.R. and her children I.G.R. and V.G.R. are Mexican nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 10, 2019 and attended their initial credible fear interview on October 26, 2019. They were interviewed by Benjamin Rodriguez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on November

1, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

77. Plaintiffs E.G. and her child J.G.M. are Brazilian nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 29, 2019 and attended their initial credible fear interview on October 12, 2019. They were interviewed by Michael Guz, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 31, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

78. Plaintiffs B.G.C. and her child S.M.G. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 1, 2019 and attended their initial credible fear interview on October 11, 2019. They were interviewed by D. Tipton, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 31, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

79. Plaintiffs T.S.J. and her children L.P.S. and G.S.J. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 29, 2019 and attended their initial credible fear interview on October 18, 2019. They were interviewed by R. Roberts, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on November 1, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

80. Plaintiffs I.C.A. and her child S.P.C. are Honduran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 1, 2019 and attended their initial credible fear interview on October 10, 2019. They were interviewed by Stephen Dougherty, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 29, 2019. The negative determinations were affirmed by an Immigration Judge on December 2, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

81. Plaintiffs M.P.O. and her child G.G.L. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 3, 2019 and attended their initial credible fear interview on October 17, 2019. They were interviewed by Harol Pineda, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on November 1, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

82. Plaintiffs D.O.H. and her children L.A.O. and D.A.O. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 24, 2019 and attended their initial credible fear interview on October 7, 2019. They were interviewed by Habacuc Laracuenta and Miguel Lemus, who, based upon information and belief, are both CBP agents. The family was served with negative credible fear determinations around October 18, 2019. The negative determinations were affirmed by an Immigration Judge on November 19, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

83. Plaintiffs N.B.C. and her child J.B.M. are Salvadoran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 26, 2019 and attended their initial credible fear interview on October 7, 2019. They were interviewed by Hugh Pacheco, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 18, 2019. The negative determinations were affirmed by an Immigration Judge on November 14, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

84. Plaintiffs S.J.A. and her child W.A.A. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 28, 2019 and attended their initial credible fear interview on October 4, 2019. They were interviewed by Laura Hendrickson, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 18, 2019. The negative determinations were affirmed by an Immigration Judge on November 14, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

85. Plaintiffs E.V.M. and her child A.V.M. is a Guatemalan national who entered the united states accompanied by her mother, who was placed in reasonable fear proceedings. A.V.M. was placed in credible fear proceedings on September 29, 2019 and attended her initial credible fear interview on October 14, 2019. She was served with negative credible fear determination on October 17, 2019. The negative determination was affirmed by an Immigration Judge on November 14, 2019. She is detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

86. Plaintiffs M.A.R. and her child S.R.S. are Brazilian nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 28, 2019 and attended their initial credible fear interview on October 11, 2019. They were interviewed by Perry Navarre, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 22, 2019. The negative determinations were affirmed by an Immigration Judge on November 21, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

87. Plaintiffs O.T.G. and her child T.T.G. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 3, 2019 and attended their initial credible fear interview on October 15, 2019. They were interviewed by Perry Navarre, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 24, 2019. The negative determinations were affirmed by an Immigration Judge on November 21, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

88. Plaintiffs M.T.T. and her child Y.L.T. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 28, 2019 and attended their initial credible fear interview on October 3, 2019. They were interviewed by Jacob Valdez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 14, 2019. The negative determinations were affirmed by an Immigration Judge on November 12, 2019.



They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

89. Plaintiffs R.C.H. and her child E.P.C. are Salvadoran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 28, 2019 and attended their initial credible fear interview on October 3, 2019. They were interviewed by Andres Lopez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 9, 2019. The negative determinations were affirmed by an Immigration Judge on November 5, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

90. Plaintiffs M.J.P. and her children A.M.P., A.P.P., and C.P.P. are Honduran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 17, 2019 and attended their initial credible fear interview on September 20, 2019. They were interviewed by Laura Hendrickson, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 4, 2019. The negative determinations were affirmed by an Immigration Judge on November 4, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

91. Plaintiffs I.H.L. and her child S.R.H. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 23, 2019 and attended their initial credible fear interview on September 30, 2019. They were interviewed by Andres Lopez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 8, 2019.

The negative determinations were affirmed by an Immigration Judge on November 5, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

92. Plaintiffs L.M.B. and her children Z.R.M. and E.R.M. are Honduran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 26, 2019 and attended their initial credible fear interview on October 3, 2019. They were interviewed by Luis Valdez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 10, 2019. The negative determinations were affirmed by an Immigration Judge on November 6, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

93. Plaintiffs C.H.G. and her child M.G.H. are Salvadoran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 25, 2019 and attended their initial credible fear interview on October 3, 2019. They were interviewed by Ruth Hernandez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 26, 2019. The negative determinations were affirmed by an Immigration Judge on December 2, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

94. Plaintiffs L.M.V. and her child C.A.M. are Mexican nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 28, 2019 and attended their initial credible fear interview on October 11, 2019. They were interviewed by Ruth Hernandez and E. Garayua, who, based upon

information and belief, are both CBP agents. The family was served with negative credible fear determinations on October 30, 2019. The negative determinations were affirmed by an Immigration Judge on December 2, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

95. Plaintiffs T.C.L. and her child A.P.C. are Honduran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 5, 2019 and attended their initial credible fear interview on October 16, 2019. They were interviewed by Andres Lopez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 31, 2019. The negative determinations were affirmed by an Immigration Judge on December 3, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

96. Plaintiffs J.C. and her child Y.J.C. are Honduran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 5, 2019 and attended their initial credible fear interview on October 14, 2019. They were interviewed by Jacob Valdez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 30, 2019. The negative determinations were affirmed by an Immigration Judge on December 3, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

97. Plaintiffs L.M.L. and her child M.R.M. are Guatemalan nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 13, 2019 and attended their initial credible fear interview on

September 18, 2019. They were interviewed by Laura Hendrickson and Jacob Valdez, who, based upon information and belief, are both CBP agents. The family was served with negative credible fear determinations on October 4, 2019. The negative determinations were affirmed by an Immigration Judge on November 4, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

98. Plaintiffs T.R.M. and her child J.R.R. are Honduran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 7, 2019 and attended their initial credible fear interview on September 18, 2019. They were interviewed by Jonathan Dickey, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on October 10, 2019. The negative decisions were affirmed by an immigration judge on November 13, 2019. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

99. Plaintiffs B.H.I. and her child D.M.H. are Honduran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 5, 2019 and attended their initial credible fear interview on October 14, 2019. They were interviewed by Johnathan Dickey, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on November 6, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

100. Plaintiffs S.R.F. and her child C.M.R. are Honduran nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on October 15, 2019 and attended their initial credible fear interview on October 30,

2019. They were interviewed by Jason Torrick, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on November 5, 2019. They are detained at the South Texas Family Residential Center in Dilley, Texas and have final orders of removal.

101. Plaintiff M.Z.L. and her child F.P.Z. are Peruvian national who seeks protection from persecution and torture in the United States. She was placed in credible fear proceedings on September 13, 2019 and attended her initial credible fear interview on September 27, 2019. She was interviewed by Julie Dutton, who, based upon information and belief, is a CBP agent. She was served with a negative credible fear determination on October 18, 2019. The negative decision was affirmed by an immigration judge on November 14, 2019. M.Z.L. was released from detention with a final order of removal on November 27, 2019.

102. Plaintiffs I.M.V. and her children J.T.M. and D.T.M. are Colombian nationals who seek protection from persecution and torture in the United States. The family was placed in credible fear proceedings on September 13, 2019 and attended their initial credible fear interview on September 17, 2019. They were interviewed by Benjamin Rodriguez, who, based upon information and belief, is a CBP agent. The family was served with negative credible fear determinations on September 26. The negative decisions were affirmed by an immigration judge on October 24. They were released from detention with final orders of removal on November 27, 2019.

103. Plaintiffs F.F.A., a Mexican national, Plaintiff D.A.B., a Honduran national, and their six-month old baby Plaintiff A.A.B., a Mexican national, seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the Berks County Family Residential Center in Leesport, Pennsylvania.

104. Plaintiffs G.S.C., a father, M.C., a mother and their minor children G.R.S.C., who are Haitian nationals, and Plaintiff N.Y.B., their minor child who is a Chilean national, seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the Berks County Family Residential Center in Leesport, Pennsylvania.

105. Plaintiffs N.V., a Haitian national, and her minor child Z.F., a Brazilian national, seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

106. Plaintiff C.L., a Haitian national, and her minor child J.A., a Brazilian national, seek protection from persecution and torture in the United States. They have final orders of removal. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

107. Plaintiff A.O.V. and her minor child J.S.O., Honduran nationals, seek protection from persecution and torture in the United States. They have final orders of removal. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

108. Plaintiff R.S.J. and her minor child S.A. are Haitian nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They have been released from the South Texas Family Residential Center in Dilley, Texas, but remain in constructive custody and have final orders of removal.

109. Plaintiffs E.G.M., a father, J.A.R., a mother, and their minor child J.G.A. are Mexican nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the Berks County Family Residential Center in Leesport, Pennsylvania.

110. Plaintiffs B.L., a father, and C.N., a mother, are Haitian nationals, and their minor child B.L.N., a Chilean national, seek protection from persecution and torture in the United States. They have been released from the Berks County Family Residential Center in Leesport, Pennsylvania, but remain in constructive custody and have final orders of removal.

111. Plaintiff K.Z.R. and her minor child A.Z.R. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

112. Plaintiff M.P.A. and her minor child G.S.P. are Ecuadorian nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

113. Plaintiff S.M.C. and her minor children D.S.M. and A.M.M. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

114. Plaintiff M.T.B. and her minor children A.V.B. and W.A.B. are Haitian nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

115. Plaintiff I.F. and her minor children Z.M.F., E.G.F., and J.M.F. are Ecuadorian nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

116. Plaintiff Z.L. and her minor child J.C.L. are Ecuadorian nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

117. Plaintiff R.S.P. and her minor children F.P.P. and C.P.P. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

118. Plaintiff I.C.T. and her minor child V.T.P. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

119. Plaintiff I.E.B. and her minor child B.E. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

120. Plaintiff M.V.G. and her minor children D.M.V. and J.M.V. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

121. Plaintiff M.P.T. and her minor children A.A.P. and H.A.P. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

122. Plaintiff V.P.M. and her minor children S.L.P., N.L.P., and E.L.P. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final



orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

123. Plaintiff J.H.R. and her minor child A.M.H. are Guatemalan nationals who seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

124. Plaintiff P.M. and M.N., Haitian nationals, and their minor child H.M.N., a Chilean national seek protection from persecution and torture in the United States. They have final orders of removal. They are detained at the South Texas Family Residential Center in Dilley, Texas.

125. Respondent William P. Barr is the Attorney General of the United States and the head of the United States Department of Justice (“DOJ”). DOJ is the federal agency responsible for the administration and enforcement of the immigration laws, and for advising the relevant federal Departments and agencies of their duties under the law. He is sued in his official capacity, and is the immediate and legal custodian of Petitioners. Respondent Barr’s address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

126. Respondent Chad Wolf is the Acting Secretary of the Department of Homeland Security (“DHS”), the Department of the Executive Branch of the United States government that oversees the agencies responsible for enforcing the immigration laws of the United States. Defendant Wolf is the head of DHS and has ultimate responsibility for the administration and enforcement of the immigration laws by DHS agencies. In that capacity, Respondent Wolf has direct authority over all policies, procedures and practices relating to the apprehension of immigrants at the United States border and any subsequent removal proceedings. He is sued in his official capacity, and is the immediate and legal custodian of Petitioners. Respondent Wolf’s

address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

## **JURISDICTION AND VENUE**

### **Jurisdiction**

127. The Court has jurisdiction over the Petitioners’ claims, and this Petition brought pursuant to 28 U.S.C. §§ 2241 *et seq.*, as provided under Art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”), federal question jurisdiction under 28 U.S.C. § 1331, and jurisdiction based on the United States as respondent under 28 U.S.C. § 1346(a)(2).

128. This case arises under the United States Constitution; the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*; the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 500 *et seq.*

129. This Court also has remedial authority under its inherent authority, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

130. While only the federal courts of appeal have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. §§ 1252(a)(1), (b), federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of ICE conduct in detaining them. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

131. This Petition has been brought by, and is directed to, the appropriate parties. A petition for a writ of habeas corpus may be brought by anyone “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). “The writ . . . shall be directed to the person having custody of the persons detained.” 28 U.S.C. § 2243. Accordingly, the proper respondent to a habeas petition is the person who has custody over the petitioner. “[T]he writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who

holds him in what is alleged to be unlawful custody.” *Rasul*, 542 U.S. at 478–79 (quoting *Braden v. 30th Judicial Circuit*, 410 U.S. 484, 495 (1973)).

132. Federal courts have jurisdiction to hear habeas petitions because “absent suspension, the writ of habeas corpus remains available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion of O’Connor, J.); U.S. CONST. art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended...”); 28 U.S.C. § 2241(c)(3) (stating federal courts may grant the writ to any person “in custody in violation of the Constitution or laws or treaties of the United States”). District courts may grant habeas relief “within their respective jurisdictions.” 28 U.S.C. § 2241(a).

133. Jurisdiction over a habeas corpus petition can, under some narrow circumstances, be deprived by 8 U.S.C. § 1252, but those circumstances are not applicable here. For 8 U.S.C. § 1252 to deprive the Court of habeas jurisdiction, the Court must assess a two-pronged inquiry: (i) whether the statute contains a clear statement that the Court lacks habeas jurisdiction, and (ii) if the statute does clearly deny jurisdiction, then whether the statute unconstitutionally suspends the habeas writ by failing to provide an adequate alternative forum for review. *Boumediene v. Bush*, 553 U.S. 723, 736, 771 (2008) (determining first whether the statute “denies the federal courts jurisdiction,” and then whether the statute “avoids the Suspension Clause mandate” by providing “adequate substitute procedures for habeas corpus”); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 575 (2006) (tracing the requirement of an “unmistakably clear statement” at least as far back as *Ex parte Yerger*, 75 U.S. 85, 104-05 (1868)).

134. With respect to the first prong, the clear-statement rule must be applied to each case’s facts, *i.e.*, even though a statute’s jurisdiction-stripping statement might clearly strip jurisdiction for one set of facts, the same statement might be ambiguous as to another set of facts,

and in the latter circumstance, jurisdiction is retained. *See Flores-Torres v. Mukasey*, 548 F.3d 708, 712 n.6 (9th Cir. 2008) (holding that “in this circumstance” § 1252(b) does not provide a “clear statement” even if it does in other circumstances). This has proven particularly true with section 1252 because the statute strips jurisdiction in some respects but is ambiguous in others. *See Hernandez v. Gonzales*, 424 F.3d 42, 42–43 (1st Cir. 2005) (stating that § 1252 strips jurisdiction over some but not all alien habeas petitions).

135. The U.S. Supreme Court has confirmed that section 1252 is not universal in its jurisdiction-stripping provisions. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) (hereinafter “*AADC*”). The *AADC* Court explained that section 1252 strips jurisdiction only for a “narrow” class of alien challenges to “discrete actions” of the Attorney General. *Id.* at 482. This “narrow” reading of section 1252 was critical to the outcome of the *AADC* case because the majority and the minority jockeyed over whether section 1252 barred the entire “universe of deportation claims,” or a “much narrower” set. *Id.* Despite the dissenting justice’s arguments, the majority agreed that the narrow view must prevail. *See id.* at 505–06 (Souter, J., dissenting) (arguing that the section was in fact “exhaustive”).

136. This limited reading of section 1252 was further solidified in *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), and has been enforced by multiple Circuit Courts. *See, e.g., Osorio-Martinez v. AG United States*, 893 F.3d 153, 178 (3d Cir. 2018) (finding jurisdiction stripping under section 1252(e) violates suspension clause); *Thuraissigiam v. U.S. Dep’t of Homeland Sec.*, 917 F.3d 1097 (9th Cir. 2019) (stripping jurisdiction pursuant to section 1252(e) would raise suspension clause issues). In sum, section 1252 is not a talisman to be invoked to eliminate a noncitizen’s habeas petition; instead, a case-by-case analysis is necessary to determine when it applies. *See Osorio-Martinez*, 893 F.3d at 178.

137. Here, 8 U.S.C. § 1252 does not deprive this Court of jurisdiction over Petitioners' claims. The right to seek habeas corpus relief is fundamental to the Constitution's scheme of ordered liberty. Habeas corpus is "a writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal." *Boumediene*, 553 U.S. at 737 (quoting BLACK'S LAW DICTIONARY 728 (8th ed. 2004)). Blackstone called it "the most celebrated writ in English law," (3 WILLIAM BLACKSTONE, COMMENTARIES \*129) and deemed the Habeas Corpus Act of 1679 "the stable bulwark of our liberties" (1 WILLIAM BLACKSTONE, COMMENTARIES \*137).

138. Moreover, jurisdiction is not stripped by 8 U.S.C. § 1252(g)'s bar against jurisdiction over claims arising from the Attorney General's exercise of discretion, because this non-core habeas petition challenges not a discretionary decision, but Respondents' legal authority. When, as here, "[t]he question before the Court is not why the [Respondents] chose to execute the removal order" but is instead focused on "whether the way Respondents acted accords with the Constitution and the laws of this country," § 1252(g) does not bar jurisdiction. *You v. Nielsen*, 321 F. Supp. 3d 451, 457-58 (S.D.N.Y. 2018) (holding that "§ 1252(g) is no bar to jurisdiction" over a request for a stay pending challenge of an administrative process).

### **Venue**

139. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because the defendant federal agencies are headquartered in this District.

140. Venue is not controlled by the immediate custodian rule, and the Petitioners' non-core habeas claims are all properly brought in this District. *See S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 408 (S.D.N.Y. 2018).

141. The immediate custodian rule is “limited [] to “core” petitions challenging present physical detention, implicitly leaving open whether the rule applies to “non-core” challenges. *See id.* (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 442-43(2004)). “[U]nder the governing case law, [the Attorney General] is the proper respondent for [“non-core” habeas claims[.]” *S.N.C.*, 325 F. Supp. 3d at 410.

142. This Court has jurisdiction over this claim, as the Attorney General is a named party and because venue in this district does not pose an inconvenience for the parties or otherwise offend other “traditional venue considerations[.]” *Batista-Taveras v. Ashcroft*, No. 03 Civ 1968 (LAK), 2004 U.S. Dist. LEXIS 19136 at \*21 (S.D.N.Y. Sept. 22, 2004); *S.N.C.*, 325 F. Supp. 3d at 410.

### **STATEMENT OF FACTS**

143. Petitioners (who are wholly comprised of mothers, fathers, and their children) made dangerous journeys to the United States, after being subjected to sexual and physical violence, and threats of violence, that triggered their flights from their home countries to seek refuge in the United States.

144. Because of this past trauma, many of the Petitioners suffer from symptoms of post-traumatic stress disorder (“PTSD”), anxiety, and depression.<sup>8</sup>

145. After completing their journeys to the United States—which lasted for more than a month for some Petitioners—all Petitioners were apprehended and placed in CBP custody. They

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<sup>8</sup> Cf. Allen Keller et al., *Pre-Migration Trauma Exposure and Mental Health Functioning Among Central American Migrants Arriving at the U.S. Border*, PLOS (Jan. 10, 2017), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0168692>, (PTSD, anxiety, and depression reported in Central American migrants).

remained, often for days, in cages and/or cement cells, without access to privacy, showers, beds, telephones, pillows, hot meals, or adequate medical attention.

146. Petitioners were eventually moved to Dilley or Berks, where most of them remain detained.

147. Some of the Petitioners were released based upon medical conditions but remain in custody of Respondents and may be removed from the United States immediately absent an administrative stay.

148. Against this backdrop, while in immigration custody, the COVID-19 pandemic hit the United States and Petitioners' home countries.

149. On January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency under the Public Health Services Act due to COVID-19. Press Release, U.S. Dep't of Health & Human Serv., Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus (Jan. 31, 2020), <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

150. On March 13 and 20, 2020, the President of the United States issued two national emergency declarations under the National Emergencies Act (Proclamation No. 9994, 2020 DAILY COMP. PRES. DOC. 156 (Mar. 13, 2020)), and under the Stafford Act (Memorandum on Providing Federal Support for Governors' Use of the National Guard to Respond to COVID-19, 2020 DAILY COMP. PRES. DOC. 181 (Mar. 22, 2020)) respectively, and on March 18, the President invoked emergency powers via Executive Order under the Defense Production Act due to COVID-19 (Exec. Order No. 13909, 2020 DAILY COMP. PRES. DOC 172 (Mar. 18, 2020)).

**Petitioners Are at Risk for Immediate Deportation**

151. In September of 2019, some of the Petitioners initiated an action in the United States District Court for the District of Columbia alleging that Respondents here, among others, had unlawfully developed secret written and unwritten policies and procedures, in violation of the constitution and statutes. (Compl., *M.M.V.*, ECF No. 1.)

152. A Second Amended Complaint was eventually filed, which added other Petitioners here. (*M.M.V.*, ECF No. 54.)

153. Judge Jackson issued an administrative stay of removal for the named plaintiffs in the Second Amended Complaint. (Order, *M.M.V.*, ECF No. 50.)

154. On February 14, 2020, Defendants filed a partial motion to dismiss based on lack of subject matter jurisdiction. (Mot. to Dismiss, *M.M.V.*, ECF No. 72.)

155. Thereafter, other Petitioners in this action filed five motions for joinder in *M.M.V.*, which were opposed by defendants, and five emergency motions to extend the administrative stay to the proposed plaintiffs. (*M.M.V.*, ECF Nos. 78, 79, 85, 86, 88, 89, 91, 92, 94, 95).

156. Judge Jackson granted the motions for stay until she could rule on the joinder motions. (See Min. Orders, *M.M.V.*, Mar. 25, 2020; Apr. 4, 2020; Apr. 6, 2020; Apr. 15, 2020; Apr. 23, 2020).

157. On April 27, 2020, in a Memorandum Decision and accompanying Order, Judge Jackson granted defendants' partial motion to dismiss, dismissing most of the plaintiffs and claims, and denied the five motions for joinder. (*M.M.V.*, ECF Nos. 96, 97.)

158. Judge Jackson lifted the stays of removal for all Petitioners here, who comprise the dismissed plaintiffs and proposed plaintiffs in *M.M.V.* (Id.)



159. On April 28, 2020, Petitioners filed a Notice of Appeal from the Order and Memorandum Decision to the Court of Appeals for the District of Columbia Circuit. (*See M.M.V. Appeal*, ECF No. 1840283.)

160. The morning of April 28, 2020, the government deported one of the dismissed *M.M.V.* family plaintiffs to Mexico.

161. On April 28, 2020, counsel for Petitioners learned that ICE intended to imminently remove forty-four (44) *M.M.V.* plaintiffs.

162. On April 28, 2020, Petitioners filed an Emergency Motion for a Stay of Removal Pending Appeal with the Court of Appeals. (*M.M.V. Appeal*, ECF No. 1840327.)

163. On April 28, 2020, Petitioners also filed an emergency motion to stay removal before Judge Jackson. (*M.M.V.*, ECF No. 99.)

164. In a minute order dated April 28, 2020, Judge Jackson granted an emergency stay pending her ruling on the motion to stay and ordered defendants to file an opposition by noon on May 1, 2020. (*See Min. Order, M.M.V. (Apr. 28, 2020).*)

165. On May 1, 2020, Judge Jackson denied the motion and lifted the administrative stay. (Order, *M.M.V.*, ECF No. 106.)

166. Less than an hour later, the Court of Appeals issued a per curiam order, among other things, ordering the clerk to lodge the motion to stay pending appeal and ordered that Petitioners' removal from the United States be administratively stayed pending further order from the Court of Appeal, and set a briefing schedule for the motion to stay. (Per Curiam Order, *M.M.V. Appeal* (May 1, 2020), ECF No. 1840985.)

167. May 15, 2020, the Court of Appeals issued a Per Curiam Order dissolving the administrative stay and denying Petitioners' emergency motion for a stay. (*M.M.V. Appeal*, ECF No. 1843095).

168. Based upon the government's rapid attempts to remove the M.M.V. families when Judge Jackson first lifted the stays on April 27, 2020, now that the Court of Appeals has lifted its stay, it is likely that the government will again attempt to rapidly remove Petitioners.

### **Deportation Procedures**

169. When a family is scheduled for removal, ICE typically informs the family at around 8:00 p.m. that they will be processed for release from the facility immediately and be placed on a flight at around 6:00 a.m. the following morning.<sup>9</sup>

170. Families are then moved to a staging area where they are together with other families for hours overnight awaiting transport to the airport or bus station.<sup>10</sup>

171. This short timeframe often provides families with no opportunity to contact family members about their upcoming release to coordinate the details of their return home.<sup>11</sup>

172. During the removal process, individuals and families are frequently shuttled across the country among different detention centers, and often confined in close quarters.<sup>12</sup>

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<sup>9</sup> Decl. of Shalyn Fluharty at ¶ 12.

<sup>10</sup> Decl. of Shalyn Fluharty at ¶ 12.

<sup>11</sup> Decl. of Shalyn Fluharty at ¶ 13.

<sup>12</sup> Jake Johnston, *Exporting COVID-19: ICE Air Conducted Deportation Flights to 11 LAC Countries, Flight Data Shows*, CENTER FOR ECONOMIC & POLICY RESEARCH (Apr. 27, 2020), <https://www.cepr.net/exporting-covid-19-ice-air-conducted-deportation-flights-to-11-lac-countries-flight-data-shows/>.

173. Upon release, individuals are entitled to the money in their commissary account, which may have been deposited upon arrival or during detention by family members or friends, as well as any other personal possessions that were confiscated when they were taken into custody.<sup>13</sup>

174. Often, however, individuals are not provided with their money and/or personal possessions, including their cellphones, when they are released.<sup>14</sup> They are then unable to purchase food or tickets for travel back to their homes, and unable to contact family for assistance.<sup>15</sup>

### **Heightened Dangers from COVID-19**

175. As of May 17, 2020, there are 4,589,526 confirmed cases of COVID-19 worldwide and 310,391 confirmed deaths.<sup>16</sup>

176. As of May 18, 9:33 am CEST, there are 1,432,265 confirmed cases of COVID-19 in the United States and 87,180 confirmed deaths.<sup>17</sup>

177. ICE's most recently reported numbers, as of May 9, 2020, state that there is a total detained population of 27,908 and 986 confirmed cases of COVID-19 among those in ICE custody.<sup>18</sup> To date, there have been 2,045 total detainees tested.<sup>19</sup> Thus, nearly 50% of the ICE population tested for COVID-19 have the disease.

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<sup>13</sup> Decl. of Shalyn Fluharty at ¶ 14.

<sup>14</sup> Decl. of Shalyn Fluharty at ¶ 14.

<sup>15</sup> Decl. of Shalyn Fluharty at ¶ 14.

<sup>16</sup> *Coronavirus Disease (COVID-19) Pandemic*, WORLD HEALTH ORG., <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> (last visited May 18, 2020).

<sup>17</sup> Coronavirus Disease (COVID-19) Dashboard, United States of America, WORLD HEALTH ORG., <https://covid19.who.int/region/amro/country/us> (last visited May 15, 2020).

<sup>18</sup> *ICE GUIDANCE ON COVID-19*, <https://www.ice.gov/coronavirus> (last visited May 16, 2020)

<sup>19</sup> *Id.*

178. There is currently no vaccine to prevent COVID-19 and the best way to prevent illness is to avoid being exposed to this virus.<sup>20</sup>

179. The virus is thought to spread mainly from person-to-person such as (a) between people who are in close contact with one another (within about 6 feet); and (b) through respiratory droplets produced when an infected person coughs, sneezes or talks, because these droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.<sup>21</sup>

180. Studies have suggested that COVID-19 may be spread by people who are not showing symptoms.<sup>22</sup>

181. Although it was originally believed that children who contracted COVID-19 did not become extremely ill, there are now reports of children hospitalized with a multisystem inflammatory disease who have tested positive for COVID-19.<sup>23</sup> At least three children have died as a result of this multisystem inflammatory disease and new research continues to be published describing the ways that the virus can behave in children, which is not always how it behaves in adults.<sup>24</sup>

182. Many of Petitioners here are children.

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<sup>20</sup> *How to Protect Yourself & Others*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited May 10, 2020).

<sup>21</sup> *Id.*

<sup>22</sup> *Clinical Questions about COVID-19: Questions and Answers: Transmission*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html#Transmission> (last visited May 12, 2020) (follow “When is someone infectious?” hyperlink).

<sup>23</sup> Perri Klass, M.D., *The Checkup: Rethinking Covid-19 in Children*, N.Y. TIMES (May 12, 2020), <https://www.nytimes.com/2020/05/12/well/family/coronavirus-children-covid-19.html>.

<sup>24</sup> *Id.*

183. ICE Guidance on COVID-19 does not require: testing prior to removal; the provision of face masks to detainees, or; social distancing during transportation to airports or on flights.<sup>25</sup>

184. There is no systematic testing of detainees for COVID-19 prior to deportation. Indeed, ICE told the Miami Herald that the agency would acquire approximately 2,000 tests a month “but given the nationwide shortages of testing kits, ‘the agency likely won’t have enough to test all aliens scheduled for future removals and will prioritize testing based on evolving operational considerations,’ ICE said.”<sup>26</sup>

185. These inadequate medical screenings have already failed to detect cases in migrants being deported in the past few months.

186. In Guatemala, the Health Minister testified in a congressional hearing that one such flight arrived with 75% of its passengers infected.<sup>27</sup>

187. The Guatemalan government estimated that recently returned immigrants from the U.S. account for nearly 20% of Guatemala’s 500 COVID-19 cases.<sup>28</sup>

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<sup>25</sup> *ICE Guidance on COVID-19*, U.S. IMMIGRATION AND CUSTOMS ENF’T, <https://www.ice.gov/coronavirus> (last visited May 12, 2020).

<sup>26</sup> Monique Madan and Jacqueline Charles, *He says he has COVID and has never been to Haiti. But ICE still wants to deport him there.*, MIAMI HERALD (May 8, 2020), <https://www.miamiherald.com/news/local/immigration/article242581381.html#storylink=cpy>.

<sup>27</sup> Maria Martin, *Official Alleges The U.S. Has Deported Many COVID-19-Positive Migrants To Guatemala*, NPR (Apr. 15, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/15/834999661/official-alleges-the-u-s-has-deported-many-covid-19-positive-migrants-to-guatemala>.

<sup>28</sup> Jake Johnston, *Exporting COVID-19: ICE Air Conducted Deportation Flights to 11 LAC Countries, Flight Data Shows*, CENTER FOR ECONOMIC & POLICY RESEARCH, April 27, 2020, <https://www.cepr.net/exporting-covid-19-ice-air-conducted-deportation-flights-to-11-lac-countries-flight-data-shows/>.

188. Reports also indicate that recently at least two Mexican and three Haitian deportees have also tested positive, yet had been placed on planes and/or buses with other deportees susceptible to infection.<sup>29</sup>

189. It is likely that transports to many other countries have likewise included individuals positive for the virus.<sup>30</sup>

190. In the report, *Exporting COVID-19: ICE Air Conducted Deportation Flights to 11 LAC Countries, Flight Data Shows*, The Center for Economic Policy and Research reports:

While the vast majority of deportations to Mexico take place over land, ICE Air flies tens of thousands of people across the country and across the world each year. Amid the global pandemic, which has led to countries shutting down air travel and closing borders, ICE Air continues to deport thousands of immigrants held in detention centers throughout the United States. Those facilities themselves have become hotspots of COVID-19 outbreaks, meaning the US is now exporting the virus to countries throughout the region.

\* \* \* \* \*

Since the Trump administration declared a national emergency on March 13, one ICE Air contractor has flown at least 72 likely deportation flights to 11 Latin America and Caribbean nations — including to Brazil and Ecuador, which are suffering the region's worst outbreaks of COVID-19, and which have both experienced an increase in deportation flights under the Trump administration.

From March 15 to April 24, ICE Air appears to have made 21 deportation flights to Guatemala; 18 to Honduras; 12 to El Salvador; six to Brazil; three each to Nicaragua, Ecuador, Haiti, and the Dominican Republic; and one each to Colombia and Jamaica.

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<sup>29</sup> Kevin Sieff and Nick Miroff, *U.S. is deporting infected migrants back to vulnerable countries*, WASH. POST (April 21, 2020), [https://www.washingtonpost.com/world/the\\_americas/us-is-deporting-infected-migrants-back-to-vulnerable-countries/2020/04/21/5ec3dcfe-8351-11ea-81a3-9690c9881111\\_story.html](https://www.washingtonpost.com/world/the_americas/us-is-deporting-infected-migrants-back-to-vulnerable-countries/2020/04/21/5ec3dcfe-8351-11ea-81a3-9690c9881111_story.html).

<sup>30</sup> Jake Johnston, *Exporting COVID-19: ICE Air Conducted Deportation Flights to 11 LAC Countries, Flight Data Shows*, CENTER FOR ECONOMIC & POLICY RESEARCH (Apr. 27, 2020), <https://www.cepr.net/exporting-covid-19-ice-air-conducted-deportation-flights-to-11-lac-countries-flight-data-shows/>.

[T]he Guatemalan government has estimated that 20 percent of the country's confirmed COVID-19 cases are recently returned immigrants.

\* \* \* \* \*

Because detainees are often flown across the country and are held in closely confined spaces, it is virtually impossible to adequately isolate those who have contracted COVID-19 or to ensure that those deported have not been exposed to COVID-19.<sup>31</sup>

191. To prevent the spread of COVID-19, the Centers for Disease Control and Prevention recommends that everyone should: (a) wash hands with soap and water—or use hand sanitizer—often for at least 20 seconds especially after being in a public place, or after blowing the nose, coughing or sneezing; (b) avoid close contact with other people, at least 6 feet; (c) avoid gathering in groups; (d) stay out of crowded places and avoid mass gatherings; (e) cover the mouth and nose with a face cloth when around others, but also continue to keep about 6 feet away from others, and; (f) clean and disinfect frequently touched surfaces.

192. While individuals in removal proceedings always face some danger, Petitioners face substantially heightened dangers because of the COVID-19 pandemic.

193. According to ICE reports, as of May 8, 2020, ICE had performed only 1,593 tests on the nearly 30,000 ICE detainees nationwide (at any given time), reporting 788 cases of COVID-19.<sup>32</sup>

194. Officials admit that due to limited testing, the actual number is likely significantly higher.<sup>33</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *ICE Guidance on COVID-19*, U.S. IMMIGRATION AND CUSTOMS ENF'T, <https://www.ice.gov/coronavirus> (last visited May 12, 2020).

<sup>33</sup> Kevin Sieff and Nick Miroff, *U.S. is deporting infected migrants back to vulnerable countries*, WASH. POST (April 21, 2020), [https://www.washingtonpost.com/world/the\\_americas/us-is-](https://www.washingtonpost.com/world/the_americas/us-is-)

195. This is unsurprising, given that detainees frequently lack personal protective equipment such as masks and gloves and cannot maintain social distancing.<sup>34</sup>

196. Upon information and belief, the government does not provide hand sanitizer to detainees while they are in detention centers, and thus it is likely that detainees are not provided hand sanitizer during the removal process.

197. While Respondents publicly state that they provide detainees with face masks during transport, upon information and belief Respondents do not require detainees to wear them or take any measures to enforce the use of face masks during the transfers and flights,

198. Respondents do not provide information about measures taken to sanitize the vehicles used to transport detainees to staging areas.

199. Thus, Petitioners face a danger of contracting COVID-19 during the deportation process by being confined with other detainees in either an airplane or bus, depending on their destination.

200. Petitioners face the danger of contracting COVID-19 even after they arrive in their respective countries of origin, as well as the severe circumstances of inadequate quarantine measures, weak healthcare systems, deepening poverty, food insecurity, restrictions on public transportation, and strict curfews.

201. Those dangers are heightened due to the COVID-19 pandemic.

202. Pre-COVID-19, nonprofit organizations and government agencies received deported families at the airport and provided them with assistance in making phone calls or

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deporting-infected-migrants-back-to-vulnerable-countries/2020/04/21/5ec3dcfe-8351-11ea-81a3-9690c9881111\_story.html.

<sup>34</sup> Patricia Sulbarán Lovera, *Coronavirus: Immigration detention centres in crisis*, BBC NEWS MUNDO (May 1, 2020), <https://www.bbc.com/news/world-us-canada-52476131>.



purchasing bus tickets, but these resources have been eliminated during the COVID-19 pandemic.<sup>35</sup>

203. Thus, families arriving without money or means of communication will be left stranded in a precarious and dangerous situation upon arrival in their country of origin.<sup>36</sup>

**Country Conditions of Petitioners' Countries of Origin During the COVID-19 Pandemic**

204. In Guatemala, the government has declared a “state of calamity” through June 5 because of the pandemic.<sup>37</sup>

205. Due to the severity of the situation, it has closed its borders, barring entry to non-Guatemalans (except for certain specific exceptions) and has instituted a mandatory curfew from 6:00 pm to 4:00 am each day.<sup>38</sup>

206. Additionally, there have been reports that deported individuals were told to undertake “voluntary” quarantine after arrival without any sort of medical screening.<sup>39</sup>

207. The government has also suspended all public transportation within the country, impacting petitioners’ ability to travel to their communities or other necessary destinations, as well as preventing their relatives from meeting them upon arrival.<sup>40</sup>

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<sup>35</sup> Decl. of Shalyn Fluharty at ¶ 14.

<sup>36</sup> Decl. of Shalyn Fluharty at ¶ 14.

<sup>37</sup> U.S. EMBASSY IN GUATEMALA, FAQs: HEALTH, SAFETY AND TRAVEL DURING COVID-19 RESPONSE IN GUATEMALA, p. 2 (May 13, 2020), <https://gt.usembassy.gov/alert-covid-19-2/>.

<sup>38</sup> *Id.* at p. 3.

<sup>39</sup> David Toro, *Siguen las deportaciones desde Estados Unidos aún con COVID-19*, MEDIUM (Mar. 23, 2020), <https://medium.com/@PrensaComunitar/siguen-las-deportaciones-desde-estados-unidos-a%C3%BAAn-con-covid-19-8ec944777524>.

<sup>40</sup> U.S. EMBASSY IN GUATEMALA, FAQs: HEALTH, SAFETY AND TRAVEL DURING COVID-19 RESPONSE IN GUATEMALA, p. 5 (May 13, 2020), <https://gt.usembassy.gov/alert-covid-19-2/>.

208. Conditions in Brazil are equally dire. With 233,142 confirmed cases and 15,633 COVID-related deaths as of May 18, 2020, 9:33 am CEST,<sup>41</sup> Brazil “is experiencing widespread ongoing transmission” of the virus.<sup>42</sup> Due to the poor conditions, Brazil closed its borders to non-Brazilian citizens on March 30, 2020.<sup>43</sup>

209. Ecuador’s health minister, Dr. Juan Carlos Zevallos, called the situation in Ecuador “horrificing” and “terrifying.”<sup>44</sup>

210. Indeed, as of May 18, 2020, 9:33 am CEST, Ecuador has 32,723 confirmed cases of COVID-19, and 2,688 reported deaths resulting from the virus,<sup>45</sup> and there is a widespread belief by Ecuadorian officials that the reported numbers fall far short of the actual numbers due to the lack of tests available in the country.

211. For example, the president of Ecuador, Lenin Morena, stated in a public address on April 2, that “both the number of infections and the number of deaths are falling short” of the

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<sup>41</sup> Coronavirus Disease (COVID-19) Dashboard, Brazil, WORLD HEALTH ORG., <https://covid19.who.int/region/amro/country/br> (last visited May 18, 2020).

<sup>42</sup> U.S. EMBASSY & CONSULATES IN BRAZIL, *COVID-19 Information*, <https://br.usembassy.gov/covid-19-information/> (last visited May 16, 2020).

<sup>43</sup> U.S. EMBASSY & CONSULATE IN BRAZIL, Health Alert (March 28, 2020), <https://br.usembassy.gov/health-alert-march-28-2020/>.

<sup>44</sup> Tim Padgett, *Ecuador Health Minister: ‘Horrificing’ Coronavirus Plague Better Contained Now*, WLRN (May 4, 2020), <https://www.wlrn.org/post/ecuador-health-minister-horrifying-coronavirus-plague-better-contained-now#stream/0>.

<sup>45</sup> Coronavirus Disease (COVID-19) Dashboard, Ecuador, WORLD HEALTH ORG., <https://covid19.who.int/region/amro/country/ec> (last visited May 18, 2020).

actual numbers, while the mayor of Guayaquil, Cynthia Viteri, also acknowledged that “[w]e will never know what the real number is, because there are no tests.”<sup>46</sup>

212. The government has restricted movement throughout the country with limited exceptions, and imposed a nationwide curfew from 2:00 pm to 5:00 am.<sup>47</sup>

213. As of May 18, 2020, 9:33 am CEST, Mexico has 47,144 confirmed COVID-19 cases, and 5,045 reported deaths resulting from it.<sup>48</sup>

214. The Mexican government has announced Phase 3 of the pandemic, meaning “widespread community transmission, thousands of cases of infection, and increased numbers of patients requiring hospitalization.”<sup>49</sup>

215. Individuals arriving in Mexico face a high probability of being returned to the United States or quarantined in Mexico.<sup>50</sup>

216. Honduras—the second poorest country in Central America—has 2,565 confirmed cases of COVID-19 and 138 reported deaths as of May 18, 2020 9:33 am CEST.<sup>51</sup>

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<sup>46</sup> José María León Cabrera and Anatoly Kurmanaev, *Ecuador’s Death Toll During Outbreak Is Among the Worst in the World*, N.Y. TIMES (April 23, 2020) available at <https://www.nytimes.com/2020/04/23/world/americas/ecuador-deaths-coronavirus.html>.

<sup>47</sup> U.S. EMBASSY & CONSULATE IN ECUADOR, *COVID-19 Information*, <https://ec.usembassy.gov/covid-19-information-ecu-2/> (last visited May 15, 2020).

<sup>48</sup> Coronavirus Disease (COVID-19) Dashboard, Mexico, WORLD HEALTH ORG., <https://covid19.who.int/region/amro/country/mx> (last visited May 18, 2020).

<sup>49</sup> U.S. EMBASSY & CONSULATES IN MEXICO, *COVID-19 Information for U.S. Citizens in Mexico*, <https://mx.usembassy.gov/u-s-citizen-services/covid-19-information/> (last visited May 15, 2020).

<sup>50</sup> *Id.*

<sup>51</sup> Coronavirus Disease (COVID-19) Dashboard, Honduras, WORLD HEALTH ORG., <https://covid19.who.int/region/amro/country/hn> (last visited May 18, 2020).

217. The country's health infrastructure is ill-equipped to handle severe cases of COVID-19,<sup>52</sup> not to mention the severe dengue outbreak Honduras was already experiencing.<sup>53</sup>

218. Due to a curfew implemented by the Honduran government, grocery stores, gas stations, and pharmacies are generally closed throughout the country.<sup>54</sup>

219. Due to the pandemic, there have been reports of families being forced to live on the streets, being deprived of the little government assistance that is provided.<sup>55</sup>

220. As of May 18, 2020, 9:33 am CEST, El Salvador has reported 1,338 confirmed cases of COVID-19 and 27 deaths.<sup>56</sup> Additionally, the political climate is unstable.

221. El Salvador's President, Nayib Bukele, announced in March a nationwide lockdown policy because of the pandemic, violations of which may result in indefinite detention in overcrowded facilities.<sup>57</sup>

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<sup>52</sup> U.S. EMBASSY IN HONDURAS, *COVID-19 Information*, <https://hn.usembassy.gov/covid-19-information/> (last visited May 15, 2020).

<sup>53</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, HONDURAS, *Travelers' Health, Honduras, Clinician View*, <https://wwwnc.cdc.gov/travel/destinations/clinician/none/honduras> (last visited May 15, 2020).

<sup>54</sup> U.S. EMBASSY IN HONDURAS, *COVID-19 Curfew*, <https://hn.usembassy.gov/u-s-citizen-services/local-resources-of-u-s-citizens/covid-19curfew/> (last visited May 15, 2020).

<sup>55</sup> *In already poor Honduras, coronavirus pushes some into homelessness*, THOMAS REUTERS FOUND. NEWS (Apr. 25, 2020), <https://news.trust.org/item/20200424232457-oyu8c>.

<sup>56</sup> Coronavirus Disease (COVID-19) Dashboard, El Salvador, WORLD HEALTH ORG., <https://covid19.who.int/region/amro/country/sv> (last visited May 18, 2020).

<sup>57</sup> *El Salvador: Police Abuses in Covid-19 Response*, HUMAN RIGHTS WATCH (Apr. 15, 2020), <https://www.hrw.org/news/2020/04/15/el-salvador-police-abuses-covid-19-response/>.

222. In April, the Salvadoran Supreme Court invalidated the policy, ruling that the government could not detain citizens indefinitely without suspicion of crime. Nevertheless, President Bukele openly rejected the ruling and continues to enforce the detention policy.<sup>58</sup>

223. As of April 13, 4,236 people were being held in 87 containment centers, including some detained for violating the mandatory home quarantine, others after returning from abroad, and still others for not wearing facemasks (even though the policy does not require them to do so).<sup>59</sup>

224. Haiti is likewise experiencing serious difficulties because of the spread of COVID-19. Though Haiti has reported 358 confirmed cases of COVID-19 and 20 deaths as of May 18, 2020 9:33 am CEST,<sup>60</sup> these figures almost certainly fall far below the true totals as the country has a population of nearly 11 million people,<sup>61</sup> over half of whom must wait in long lines at crowded markets just to get food each day.<sup>62</sup> Now that the President of Haiti, Jovenel Moise, has

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<sup>58</sup> *Id.*; Miranda Cady Hallett, *Mass arrests and overcrowded prisons in El Salvador spark fear of coronavirus crisis*, YAHOO! NEWS (May 6, 2020), <https://news.yahoo.com/mass-arrests-overcrowded-prisons-el-122041778.html>.

<sup>59</sup> *El Salvador: Police Abuses in Covid-19 Response*, HUMAN RIGHTS WATCH (Apr. 15, 2020), <https://www.hrw.org/news/2020/04/15/el-salvador-police-abuses-covid-19-response/>.

<sup>60</sup> Coronavirus Disease (COVID-19) Dashboard, Haiti, WORLD HEALTH ORG., <https://covid19.who.int/region/amro/country/ht> (last visited May 18, 2020).

<sup>61</sup> Countries: Haiti, WORLD HEALTH ORGANIZATION, <https://www.who.int/countries/hti/en/> (last visited May 15, 2020).

<sup>62</sup> Sam Bojarski, *Coronavirus Exposes Precarious Living Conditions in Haiti*, HAITIAN TIMES <https://haitiantimes.com/2020/03/26/coronavirus-exposes-precarious-living-conditions-in-haiti/> (last visited May 15, 2020).

closed the country's borders,<sup>63</sup> including the border with the Dominican Republic, a major source of food imports, the price of food has "skyrocketed."<sup>64</sup>

225. Since over half of the population lives on approximately \$2 per day, the rise in the cost of food means many people within Haiti will have little to no access to sustenance.<sup>65</sup>

226. In an April 27, 2020 address, President Moïse acknowledged the high likelihood that "there will be famine" as a result of COVID-19.<sup>66</sup>

227. The United States Department of State has said that medical facilities within Haiti are "scarce and generally substandard," and that life-threatening emergencies often require evacuation outside the country by air ambulance at the patient's expense.<sup>67</sup>

228. By some estimates, the country has only 39 physicians, 124 ICU beds, and capacity to ventilate just 62 patients within ICUs.<sup>68</sup>

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<sup>63</sup> U.S. EMBASSY IN HAITI, *COVID-19 Information*, <https://ht.usembassy.gov/covid-19-information/> (last visited May 15, 2020).

<sup>64</sup> Sam Bojarski, *Coronavirus Exposes Precarious Living Conditions in Haiti*, HAITIAN TIMES <https://haitiantimes.com/2020/03/26/coronavirus-exposes-precarious-living-conditions-in-haiti/> (last visited May 15, 2020) ("The price of a can of rice, which increased to about 100 gourdes, or \$1.25, during the fall 2019 protests, has skyrocketed even further.").

<sup>65</sup> *Id.*

<sup>66</sup> Samuel Louis, Jovenel Moïse Fears Famine in Haiti After Covid-19, HAITIAN TIMES, <https://haitiantimes.com/2020/04/28/jovenel-moise-fears-famine-in-haiti-after-covid-19/> (last visited May 15, 2020).

<sup>67</sup> U.S. DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, Country Information: Haiti, <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Haiti.html> (last visited May 15, 2020) (follow "Health" hyperlink).

<sup>68</sup> Sam Bojarski, *Coronavirus Exposes Precarious Living Conditions in Haiti*, HAITIAN TIMES <https://haitiantimes.com/2020/03/26/coronavirus-exposes-precarious-living-conditions-in-haiti/> (last visited May 15, 2020).

## **LEGAL STANDARD**

### **Due Process**

229. The Due Process Clause of the Fifth Amendment provides that “[n]o person... shall be deprived of life, liberty, or property without due process of law....” U.S. CONST. amend. V.

230. It protects individuals against two types of government action. “Substantive Due Process” prevents the government from engaging in conduct that “shocks the conscience,” *Rochin v. California*, 342 U.S. 165, 172 (1952), or interferes with rights “[i]mplicit in the concept of ordered liberty.” *Palko v. Connecticut*, 302 U.S. 319, 324–325 (1937).

231. “Procedural Due Process” ensures that government cannot unfairly and without meaningful process deprive a person of life, liberty, or property. *Mathews v. Eldridge*, 424 U.S. 319, 334–335 (1976).

### **Accardi Doctrine**

232. Respondents have a duty to follow their own policies related to release from custody, particularly when such policies are aimed at protecting Petitioners’ due process rights and right to access the courts. *See generally United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (establishing agency duty to follow self-imposed rules); *see also Montilla v. I.N.S.*, 926 F.2d 162, 167 (2d Cir. 1991) (“[W]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.” (internal citation omitted)); *see also Abdi v. Duke*, 280 F. Supp. 3d 373, 389 (W.D.N.Y. 2017) (“[T]he relevancy of the internal policy is to ascertain whether it pertains to individual rights. If so..., that internal policy must be followed.”); *accord Damus v. Nielsen*, 313 F. Supp. 3d 317, 338 (D.D.C. 2018) (finding the *Accardi* doctrine applied to same ICE Directive at issue in *Abdi* and that language “disclaiming [the conferral of] any substantive right does not prove otherwise.”).

233. “[I]t is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required.”); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005) (“*Accardi* has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others.”).

234. Breaches of *Accardi*’s rule constitute violations of both the APA and the Fifth Amendment’s Due Process Clause.

235. Berks and Dilley are both subject to National Detention Standards (“NDS”) and Performance-Based National Detention Standards (“PBNDS”), and the Family Residential Standards (FRD) that are issued by ICE, which set forth the medical care that must be provided to individuals in immigration detention. The current governing version of the NDS is the 2019 National Detention Standards for Non-Dedicated Facilities.

236. Section 4.3(II)(10) of the PBNDS requires that “Centers for Disease Control and Prevention (CDC) guidelines for the prevention and control of infectious and communicable diseases shall be followed.”<sup>69</sup>

237. Section 4.3(V)(C)(1) of the PBNDS also provides that “[f]acilities shall comply with current and future plans implemented by federal, state or local authorities addressing specific public health issues including communicable disease reporting requirements.” (*Id.*, at 261-62.)

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<sup>69</sup> U.S. IMMIGRATION AND CUSTOMS ENF’T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011, 257, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.



238. Similarly, pursuant to section 1.1(I) of the NDS, covered “facilit[ies] will operate in accordance with all applicable regulations and codes, such as those of . . . the Centers for Disease Control and Prevention (CDC).”<sup>70</sup>

239. Respondents have failed to follow their duty to comply with the PBNDS and NDS, which in turn require compliance with CDC guidelines and federal, state and local laws.

240. The CDC’s “COVID-19 Travel Recommendations by Country” guidelines state that the “CDC recommends that travelers avoid all nonessential travel to” Guatemala, Honduras, El Salvador, Haiti, Mexico, Brazil and Ecuador.<sup>71</sup>

241. Respondents have failed to follow these guidelines because the removal of Petitioners now is nonessential.

242. The CDC’s “Coronavirus and Travel in the United States” guidelines state:

Clean your hands often. Wash your hands often with soap and water for at least 20 seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing. If soap and water are not readily available, use a hand sanitizer that contains at least 60% alcohol. Cover all surfaces of your hands and rub your hands together until they feel dry.

Avoid touching your eyes, nose, and mouth.

Avoid close contact with others.

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<sup>70</sup> U.S. IMMIGRATION AND CUSTOMS ENF’T, NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES, 1 (Rev. 2019), <https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf>.

<sup>71</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, *COVID-19 Travel Recommendations by Country*, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html> (last visited May 11, 2020) (query each country in “Search for a destination” field).

Keep 6 feet of physical distance from others.<sup>72</sup>

243. Respondents have failed to follow these guidelines because when detainees are transported within the United States during the removal process, detainees are not able to keep 6 feet of physical distance from others and are not provided hand sanitizer.

244. The CDC's "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" recommends that these facilities "[s]uspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding."<sup>73</sup>

245. Respondents have failed to follow this guidance because the removal of Petitioners from the United States has not been suspended and is not necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.

246. The PBNDS provides, in pertinent part:

#### 2.1 Admission and Release, V.I. Releases or Removals

The time, point and manner of release from a facility shall be consistent with safety considerations and shall take into account special vulnerabilities. Prior to release, the detainee shall be notified of the upcoming release and provided an opportunity to make a free phone call to facilitate release arrangements.<sup>74</sup>

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<sup>72</sup> *Coronavirus and Travel in the United States*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (last visited May 11, 2020).

<sup>73</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited May 11, 2020).

<sup>74</sup> U.S. IMMIGRATION AND CUSTOMS ENF'T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011, 58, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

#### 4.3 Medical Care, V.Z. Continuity of Care

The facility [Health Services Administrator] must ensure that a plan is developed that provides for continuity of medical care in the event of a change in detention placement or status. ...Upon removal or release from ICE custody, the detainee shall receive up to a 30 day supply of medication...and a detailed medical care summary as described in “BB. Medical Records”. ...The [Health Services Administrator] must ensure that a continuity of treatment care plan is developed and a written copy provided to the detainee prior to removal.<sup>75</sup>

#### BB. Medical Records, 4. Transfer and Release of Detainees

... Detainees shall be transferred, released or removed, with proper medication to ensure continuity of care throughout the transfer and subsequent intake process, release or removal.

...

c.2) Upon removal or release from ICE custody, the detainee shall be provided medication, referrals to community-based providers as medically appropriate, and a detailed medical care summary. This summary should include instructions that the detainee can understand and health history that would be meaningful to future medical providers. The summary shall include, at a minimum, the following items:

...

- c) current ...physical health status, including all significant health issues, and highlighting any potential unstable issues or conditions which require urgent follow-up;
- d) current medications, with instructions for dose, frequency, etc., with specific medications that must be administered en route;
- e) any past hospitalizations or major surgical procedures
- f) recent test results, as appropriate;
- h) any pending medical or mental health evaluations, test, procedures, or treatments for a serious medical condition scheduled for the detainee at the sending facility. In the case of patients with...serious medical needs, detainees being released from ICE custody are given a list of community resources, at a minimum
- i) copies of any relevant documents as appropriate.

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<sup>75</sup> *Id.* at 276.

j) printed instructions on how to obtain the complete medical record; ....<sup>76</sup>

### **CLAIMS FOR RELIEF**

#### **COUNT I: Removing Petitioners during the COVID-19 Pandemic violates their substantive and procedural due process rights (shocks the conscience).**

247. Petitioners re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

248. “It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

249. “‘Substantive due process’ prevents the government from engaging in conduct that ‘shocks the conscience,’... or interferes with rights ‘implicit in the concept of ordered liberty.’” *United States v. Salerno*, 481 U.S. 739, 746 (1987) (internal citations omitted). Thus, “the touchstone of due process is protection of the individual against arbitrary action of government...whether the fault lies in the denial of fundamental due process fairness [procedural due process], ...or in the exercise of power without any reasonable justification in the service of a legitimate government objective [substantive due process].” *Cty. Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998) (citations and internal quotations omitted).

250. The current COVID-19 pandemic is unprecedented and presents the possibility of severe illness and death for those who contract the disease.

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<sup>76</sup> *Id.* at 278–279.

251. There is currently no vaccine to prevent COVID-19 and the best way to prevent illness is to avoid being exposed to this virus.

252. The virus is thought to spread mainly from person-to-person such as (a) between people who are in close contact with one another (within about 6 feet); (b) through respiratory droplets produced when an infected person coughs, sneezes or talks, because these droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

253. Some recent studies have suggested that COVID-19 may be spread by people who are not showing symptoms.

254. There is currently no vaccine to prevent COVID-19 and the best way to prevent illness is to avoid being exposed to this virus.

255. To prevent the spread of COVID-19, the CDC recommends that everyone should: (a) wash hands with soap and water—or use hand sanitizer—often for at least 20 seconds especially after being in a public place, or after blowing the nose, coughing or sneezing; (b) avoid close contact with other people, at least 6 feet; (c) avoid gathering in groups; (d) stay out of crowded places and avoid mass gatherings; (e) cover the mouth and nose with a face cloth when around others, but also continue to keep about 6 feet away from others, and; (f) clean and disinfect frequently touched surfaces (“Prevention Requirements”).

256. Because many individuals who had COVID-19 are asymptomatic, the only way to know if a person has COVID-19 is to test the person.

257. This possibility of transmission of COVID-19 increases exponentially when Prevention Requirements and testing are not implemented or meaningfully followed during the removal process.

258. Respondents have failed to meaningfully implement Prevention Requirements and testing to prevent transmission of COVID-19 to Petitioners during the removal.

259. Respondents have engaged in willful, knowing conduct, removing Petitioners from the United States without implementing Prevention Requirements.

260. Instead, during the removal process Respondents are placing detainees in confined spaces, like cells, buses, and planes, and forcing them into situations where social distancing measures are impossible.

261. Respondents' failure to implement Prevention Requirements and testing during the removal process deprive Petitioners of their health, safety, and bodily integrity, by placing them at extreme risk of contracting COVID-19.

262. Further, Respondents seek to deport Petitioners to countries during their own pandemic related crises, even though these countries may lack the transportation, housing, and medical infrastructure required to adequately deal with such a crisis.

263. Respondents seek to deport Petitioners to their home countries despite knowing Petitioners may face persecution because of COVID-19 pandemic.

264. Petitioners are faced with the possibility that they will contract COVID-19 in the United States while moving through the deportation processes initiated and run by Respondents, only to be removed to a country that is unable to provide the resources and care necessary to treat COVID-19 if they are infected with and that may subject them to persecution because of their infection.

265. When the government attempts to force an individual to take anti-psychotic drugs, the due process clause prevents them from doing so absent an essential and overriding state

interest. *United States v. White*, 620 F. 3d. 401, 409 (4th Cir. 2010). Without this state interest, such forcible medicating is said to shock the conscience.

266. If the government cannot force individuals to put medication in their bodies, the government should not be able to force individual into a process that exposes their bodies to a severe and deadly virus.

267. Given the current pandemic, the removal process employed by Respondents shocks the conscience as it forces Petitioners into a removal regime where they face infection, persecution upon arrival to their home country, and even death.

**COUNT II: Removing Petitioners during the COVID-19 Pandemic runs afoul of the state-created danger doctrine.**

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

269. Substantive due process precludes a state actor from affirmatively acting create or enhance a danger that will ultimately harm an individual. *See Butera v. District of Columbia*, 235 F.3d 637, 649–51 (D.C. Cir. 2001) (citing cases).

270. The State “owes a duty of protection when its agents create or increase the danger to an individual.” *Id.*; *see also Paine v. Cason*, 678 F.3d 500, 510 (7th Cir. 2012) (due process was violated where police left detainee in more dangerous neighborhood, away from public transportation and without cell phone); *Wang v. Reno*, 81 F.3d 808, 817 (9th Cir. 1996) (alien could not be removed to China where U.S. government convinced him to testify about topic that would lead Chinese government to torture and possibly execute him).

271. Due process is implicated when the state actor’s conduct in such a case is “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *Butera*, 235 F.3d at 651 (quoting *Sacramento*, 523 U.S. at 847 n.8).

272. Respondents' failure to implement Prevention Requirements and testing during the removal of detainees from the United States creates myriad increased risks and dangers to Petitioners considering the COVID-19 pandemic.

273. By forcing detainees into confined areas, including buses and planes, without adequate screening and testing procedures, and without implementing the Prevention Requirements, Respondents substantially increase the risk that the virus will spread during the removal process.

274. Respondents thus create or increase Petitioners' risks not only of infection, but also of persecution due to a public perception that they are likely to carry the virus like others that have passed through United States removal proceedings.

275. Removal proceedings will also place Petitioners in a far more dangerous location than they are currently in without means of protection.

276. Petitioners being sent to countries where public transportation has been closed will be stranded at the place Respondents release them from custody, without a way to return to their communities or meet with relatives. Others will be subject to strict quarantines and in danger of unlawful detention, food insecurity, and inadequate healthcare systems. Notably, these dangers are substantially increased due to the COVID-19 pandemic.

277. Respondents are aware of the increased dangers the COVID-19 pandemic presents to Petitioners. Disregarding these risks and affirmatively pursuing removal, given the conditions during removal proceedings, likelihood of virus transmission, and dangerous points of release is egregious and shocks the conscience.

278. Accordingly, pursuing removal proceedings constitutes a violation of Petitioners' substantive due process rights under the state-created danger doctrine.



**COUNT III: Removing Petitioners during the COVID-19 Pandemic runs afoul of the special-relationship doctrine.**

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

280. Respondents also owe Petitioners affirmative duties of care and protection arising from their special relationship. *See Harvey v. District of Columbia*, 798 F.3d 1042, 1050 (D.C. Cir. 2015) (citing *DeShaney v. Winnebago Cty. Dep't of Social Servs.*, 489 U.S. 189, 197 (1989)). A special relationship arises between the government and an individual when the government “takes a person into its custody and holds him there against his will.” *Harris v. District of Columbia*, 932 F.2d 10, 14 (D.C. Cir. 1991) (quoting *DeShaney*, 489 U.S. at 199–200). This duty arises “from the limitation which [Respondents have] imposed on [Petitioners’] to act on [their] own behalf.” *DeShaney*, 489 U.S. at 200. This duty of care and protection includes a responsibility for Petitioners’ safety, well-being, and medical needs. *LaShawn A. v. Kelly*, 990 F.2d 1319, 1325 (D.C. Cir. 1993); *Harris*, 932 F.2d at 14. (citing *Youngberg v. Romeo*, 457 U.S. 307, 314–324 (1982)).

281. When the government has a special relationship with an individual, “governmental deliberate indifference will shock the conscience sufficiently to establish a substantive due process violation.” *Harvey*, 798 F.3d at 1050 (internal citations omitted).

282. Respondents have detained each of Petitioners involuntarily, thus forming a special relationship with Petitioners. Consequently, Respondents owe Petitioners a heightened duty of care and protection.

283. Pursuing Petitioners’ removal will breach Respondents’ duty to care for and protect Petitioners. As discussed *supra*, Petitioners will face a serious, heightened danger of contracting COVID-19 during removal proceedings by confinement during transportation. Because pre-

deportation testing and medical screening procedures are inadequate, Respondents cannot fulfill their duty to protect Petitioners from this risk. Sending Petitioners to their countries of origin also places them in substantially more danger than they currently face. Guatemala, Ecuador, Brazil, Mexico, Honduras, El Salvador, Brazil, and Haiti all have reported substantial numbers of confirmed COVID-19 cases, and Petitioners will be at risk of infection if required to return. If infected, they will suffer greater peril due to poor country conditions, their likely inability to procure effective healthcare, and probable persecution.

284. Respondents are aware of the danger COVID-19 presents to Petitioners. Because they have a special relationship with Petitioners, pursuing removal proceedings with deliberate indifference to the COVID-19 Pandemic shocks the conscience.

285. Accordingly, pursuing removal proceedings constitutes a violation of Petitioners' substantive due process rights under the special-relationship doctrine.

**COUNT IV: Respondents' attempt to remove Petitioners during the COVID-19 Pandemic violates their own policies and regulations in violation of the APA and the Fifth Amendment (Accardi doctrine).**

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

287. Respondents further had a duty to follow their own policies related to release from custody, particularly when such policies are aimed at protecting Petitioners' due process rights. *See Accardi*, 347 U.S. 260 (establishing agency duty to follow self-imposed rules).

288. As discussed *supra*, ICE's PBNDS require facilities to provide medical care to individuals in immigration custody, and provide a continuity of care plan, medication, referrals to community-based providers as medically appropriate, and a detailed medical care summary, among other things, upon release.

289. As discussed *supra*, the NDS and PBNDS require Berks and Dilley to comply with CDC Guidelines, including that (a) travelers avoid all nonessential travel to” Guatemala, Honduras, El Salvador, Haiti, Mexico, Brazil, and Ecuador; (b) travelers use a hand sanitizer that contains at least 60% alcohol if soap and water are not available, and; (c) travelers keep 6 feet of physical distance from others.

290. CDC Guidelines also provide that detention facilities suspend all transfers of incarcerated/detained persons to and from other jurisdictions unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.

291. All the above policies and standards are aimed at protecting Petitioners’ rights to due process and violations of these policies constitutes a violation of the APA and the Fifth Amendment pursuant to the *Accardi* doctrine.

292. Respondents have failed to comply with any of the department policies, and CDC Guidelines, outlined in the PBNDS and NDS policies discussed above.

293. Respondents have failed to comply with the above referenced policies.

294. Such failure to comply with the PBNDS, NDS, and CDC Guidelines constitutes a violation of the APA and the Fifth Amendment—violating the *Accardi* doctrine.

295. Respondents seem woefully underprepared for the effects of COVID-19 pandemic on the removal process and as such have been unable to comply with the above referenced policies.

296. Such failure to comply with the PBNDS constitutes a violation of the APA and the Fifth Amendment—violating the *Accardi* doctrine.

**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioners request that the Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Temporarily stay Petitioners' removal from the United States pending its adjudication of this Petition;
3. Declare that removal of Petitioners during the current COVID-19 pandemic violates the Due Process Clause of the Fifth Amendment, the INA, APA, and federal regulations until Respondents can demonstrate that they have complied with the law including but not limited to the compliance with the NDS, PBNDS, FRS, and CDC Guidelines.
4. Order a stay of removal until further order of this Court;
5. Award Petitioners costs and reasonable attorneys' fees under the Equal Access to Justice Act; and
6. Order such other relief as this Court may deem just and proper.

Dated: 18th day of May, 2020.

Respectfully Submitted,

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**ATTORNEYS FOR PETITIONERS**

**VERIFICATION PURSUANT TO 28 U.S.C. §2242**

I am submitting this verification on behalf of the Petitioners because I am one of the Petitioners' attorneys. I have discussed with the Petitioners the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached Petition are true and correct to the best of my knowledge.

Date: May 18, 2020

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**ATTORNEYS FOR PETITIONERS**

## EXHIBIT “2”

**DECLARATION OF SHALYN FLUHARTY, ESQ.**

I, Shalyn Fluharty, hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. The facts contained in this declaration are based on my personal knowledge, and I can testify competently to them if called upon to do so. I submit this sworn declaration in support of Plaintiffs' Motion for Administrative Stay.
2. I direct the Dilley Pro Bono Project (the "Dilley Project" or "DPBP"), formerly known as the CARA Pro Bono Project, in Dilley, Texas. In this capacity, I oversee a team of attorneys and full-time paralegals, and a rotating group of volunteers, who provide legal services on behalf of asylum-seeking families who are detained at the South Texas Family Residential Center. I have been practicing law since 2010, and my practice has focused on representing detained unaccompanied immigrant children and detained immigrant families before the Executive Office of Immigration Review ("EOIR") and the Department of Homeland Security ("DHS").
3. The Dilley Pro Bono Project represents the plaintiffs in this matter in their immigration proceedings. Each plaintiff has a final order of expedited removal that may be immediately executed by Immigration and Customs Enforcement ("ICE") absent an administrative stay.
4. At least two plaintiffs have already been removed from the United States. On April 28, 2020 at or around 9:00 a.m. plaintiffs I.L.L. and K.H.L. were removed to Mexico.
5. Based upon information and belief, the removal of all additional plaintiffs is imminent.
6. Although ICE does not generally inform an individual or their attorney of record of the date they will be removed in advance of removal, DPBP is aware of 44 plaintiffs who are scheduled for removal, as follows:



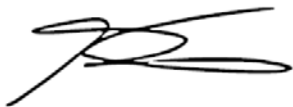
- a. Plaintiffs E.C.B., Y.M.C., C.G.C., and I.C.B. were informed by ICE that they will be removed to Mexico imminently. Dilley, Texas is less than an hour and a half away from the U.S.-Mexico border, and removal can occur at any time. Curiously, plaintiffs E.C.B. and Y.M.C. are not citizens of Mexico, but instead, citizens of Honduras. E.C.B. and Y.M.C. wish to be removed to Honduras, if removal is necessary.
- b. DPBP has been informed that a flight to Ecuador is scheduled to depart on May 1, 2020. For this reason I believe the following plaintiffs will be removed to Ecuador May 1, 2020: M.V.P.A., G.S.P., Z.L., J.D.C.L., I.F., and Z.G.M.F.
- c. Numerous families have informed DPBP that ICE announced that a removal flight to Honduras will take place tomorrow, April 29, 2020. U.S. Citizenship and Immigration Services is required to conduct a screening of every asylum seeker pursuant to *Al Otro Lado, Inc. v. Wolf*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal.) prior to removal. The plaintiffs identified below were screened for A.O.L. class membership by the asylum office today, April 28, 2020 at 2:00 p.m. Based upon the fact that the 2:00 p.m. screenings were scheduled last minute at 9:00 a.m. this morning, I have reason to believe that each of the following plaintiffs will be removed tomorrow: A.C.O., J.S.O., L.O.R., A.P.O., J.S.P., M.A.S, T.C.L., A.P.C., M.R.A., L.C.R., S.L.R., A.V.L., B.H.I., D.M.H., S.R.F., C.M.R., D.P.R., S.B.P., M.Y.H., J.M.H., D.A.M., Y.H.A., A.D.L., D.D.D., R.L.A., N.C.L., N.M.L., and A.R.M.
- d. The following plaintiffs were previously screened for membership in *Al Otro Lado, Inc. v. Wolf*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal.): J.M.R., C.G.M., M.J.P., A.M.P., A.P.P., and C.P.P. Accordingly, I have reason to believe that they will be also removed to

Honduras tomorrow. It is highly likely that other plaintiffs have also been screened for AOL class membership.

7. The above-referenced plaintiffs do not constitute an exhaustive list of individuals who face imminent removal; rather, these are the plaintiffs who have (a) received specific concrete information regarding their upcoming removal and (b) successfully communicated this information to DPBP staff telephonically. Most commonly, individuals who are staged for removal learn about their removal for the first time late in the evening before their removal proceeds. Most flights depart around 6:00 a.m. and facility staff direct families to gather their belongings for removal around 10:00 p.m. the night before removal occurs.
8. The plaintiffs before the Court fear death, torture, rape and other extreme cruelty and harm upon return to their countries of origin. Although the removal of each plaintiff will permanently jeopardize their ability to seek asylum in the United States, plaintiffs primary fear is the irreversible physical harm they will face if deported.
9. All plaintiffs seek the opportunity to have a fair credible fear process, as proscribed by law. They request nothing more than the chance to have their claims presented in *M.M.V. v. Barr* fully considered by the court.

Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020 in San Antonio, Texas.



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Shalyn Fluharty, Esq.

## EXHIBIT “3”

## **DECLARATION OF BRIDGET CAMBRIA, ESQ.**

I, Bridget Cambria, declare and say as follows:

1. My name is Bridget Cambria, Esq. and I am an attorney licensed to practice in the State of Pennsylvania since May of 2007. I am writing this statement as the immigration attorney for families currently detained at the Berks County Residential Center (hereinafter "BCRC") and specifically on behalf of four families whom are seeking review of procedures they were subjected to while attempting to seek asylum in the United States at the BCRC.
2. At this time, each of the four families remain detained at the BCRC, facing imminent deportation including:
  - The family of E.G.M., J.A.R., and child J.G.A. from Mexico and subject of a motion for joinder on April 14, 2020 at Docket 91.
  - The family of B.L, C.N. and child B.L.N. from Haiti and subject of a motion for joinder on April 14, 2020 at Docket 91.
  - The family of P.M., M.N. and H.M.N. form Haiti and subject of a motion for joinder on April 14, 2020 at Docket 91.
  - The family of G.S.C., M.C., and children G.R.S. and N.Y.B. from Haiti and of a motion for joinder on April 3, 2020 at Docket 86.
3. The families consist of one family from Mexico and three families from Haiti. At the present time, they each have received negative credible fear findings, and but for a stay of removal, are immediately subject to deportation from the United States. This can happen as soon as today.
4. Should these families be deported from the United States they will no longer have any further rights to seek asylum related relief and their rights to pursue protection in the United States will be

extinguished. Further, they would be returned to countries where they fear extreme violence for themselves as parents and very young children, including physical violence, kidnappings, beatings, death, gender-based violence such as sexual assault and rape, and other forms of persecution and torture.

5. Each of the four families requested to pursue an appeal of the District Court's decision in *M.M.V. v Barr*. Again, they are at imminent risk of removal and can be removed at any time. Upon removal, we believe any appellate rights will be lost.
6. Each parent and child maintain an extreme fear of persecution and torture should they be removed to their native countries.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



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Bridget Cambria, Esq.