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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DANIEL MOSSO RAMIREZ;  
CHRISTOPHER NJINGU

Petitioners-Plaintiffs,

vs.

ROBERT CULLEY, Director of the Salt Lake  
City Field Office of U.S. Immigrations and  
Customs Enforcement; MATTHEW T.  
ALBENCE, Deputy Director and Senior  
Official Performing the Duties of the Director  
of the U.S. Immigration and Customs  
Enforcement; U.S. IMMIGRATIONS AND  
CUSTOMS ENFORCEMENT, an entity;  
THEDRICK ANDRES, Chief of Police of the  
City of Henderson; JOHN/JANE DOE,  
Corrections Captain, Henderson Detention  
Center,

Respondent-Defendants.

CASE NO.:

DEPT. NO.

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

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## INTRODUCTION

1  
2 1. Petitioners-Plaintiffs (hereinafter Plaintiffs) are men currently in the custody of  
3 Immigration and Customs Enforcement ("ICE"), a component of the United States Department of  
4 Homeland Security ("DHS"). Plaintiffs have a range of serious medical conditions including  
5 hypertension, dyslipidemia, and pre-diabetes. Plaintiffs are people who are particularly vulnerable  
6 to severe illness or death if infected by the novel coronavirus. They are being held in civil detention  
7 by ICE at the Henderson Detention Center ("HDC") in Henderson, Nevada as they await the  
8 adjudication of their immigration cases. By keeping Plaintiffs detained, despite the rapidly  
9 spreading COVID-19 virus and their specific vulnerabilities, ICE is showing a deliberate  
10 indifference to their safety.

11 2. A global pandemic is occurring. Since November 2019, at least 693,224 individuals  
12 worldwide have been diagnosed with COVID-19, a disease resulting from infection by a novel  
13 coronavirus.<sup>1</sup> This includes 140,904 people infected in the United States<sup>2</sup> and this number is  
14 expected to continue to grow exponentially over the coming days. The coronavirus is highly  
15 contagious and there is no vaccine to prevent its spread.<sup>3</sup> There is no known cure for COVID-19.  
16 Treatment exists only to manage the symptoms of the disease. Older people and those with pre-  
17 existing medical conditions are at higher risk for severe illness with COVID-19. Symptoms of  
18 COVID-19 include fever, cough, myalgia, fatigue, and shortness of breath. COVID-19 can cause  
19 acute respiratory distress and pneumonia which require intensive care treatment for respiratory  
20 support. The immunocompromised are particularly at risk of experiencing these complications.  
21 Data gathered from COVID-19 patients in China showed that “[p]atients who reported no

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22 <sup>1</sup> World Health Organization, Coronavirus Disease 2019 (COVID-19) Situation Report-70,  
23 March 30, 2020, [https://www.who.int/docs/default-source/coronaviruse/situation-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200330-sitrep-70-covid-19.pdf?sfvrsn=7e0fe3f8_2)  
24 [reports/20200330-sitrep-70-covid-19.pdf?sfvrsn=7e0fe3f8\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200330-sitrep-70-covid-19.pdf?sfvrsn=7e0fe3f8_2).

25 <sup>2</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) Cases in  
26 U.S., March 30, 2020, [https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html)  
27 [us.html](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html).

<sup>3</sup> World Health Organization, Responding to Community Spread of COVID-19 Interim  
Guidance, March 7, 2020, [https://www.who.int/publications-detail/responding-to-community-](https://www.who.int/publications-detail/responding-to-community-spread-of-covid-19)  
spread-of-covid-19.

1 underlying medical conditions had an overall case fatality of 0.9%, but case fatality was higher for  
2 patients with comorbidities: 10.5% for those with cardiovascular disease, 7% for diabetes, and 6%  
3 each for chronic respiratory disease, hypertension, and cancer. Case fatality for patients who  
4 developed respiratory failure, septic shock, or multiple organ dysfunction was 49%.”<sup>4</sup>

5 3. The only known effective measures to reduce the risk of severe illness and death caused  
6 by COVID-19 are social distancing and improved hygiene. People who live, eat, and sleep in  
7 close proximity are at an increased risk of contracting COVID-19. People who are confined in  
8 prisons, jails, and detention centers will find it virtually impossible to engage in the necessary  
9 social distancing and increased hygiene measures required to mitigate the risk of transmission of  
10 this disease, even with the increased protective measures in which some facilities have engaged.  
11 For this reason, correctional public health experts have recommended that these facilities release  
12 from custody those individuals most vulnerable to COVID-19.<sup>5</sup> Release protects high-risk  
13 populations from the risk of severe illness and death and helps to decrease the rate of transmission  
14 between the rest of the population, including others in custody and detention center staff. Release  
15 of the most vulnerable from custody also reduces the burden on this region’s limited healthcare  
16 infrastructure, as it decreases the likelihood that an overwhelming number of people will become  
17 seriously ill from COVID-19 at the same time and require hospitalization.

18 4. The COVID-19 pandemic, which places Plaintiffs at a grave health risk while detained,  
19 constitutes a material change in circumstances requiring custody redetermination by this Court.  
20 The danger posed by Plaintiffs’ detention during the growing outbreak of COVID-19 is “so grave  
21 it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk,” and  
22 violates Plaintiffs’ constitutional rights to safety in government custody. *Helling v. McKinney*,

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24 <sup>4</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) Clinical  
25 Care, March 7, 2020, [https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-  
management-patients.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html).

26 <sup>5</sup> See Scott A. Allen and Josiah Rich, *Letter to the House Committee on Homeland Security*,  
27 March 19, 2020, accessed at [https://www.documentcloud.org/documents/6816336-032020-  
Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238](https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238).

1 509 U.S. 25, 36 (1993). Further, Plaintiffs pose no risk of flight nor danger to persons or property.  
2 For these reasons, Plaintiffs request a temporary restraining order for their immediate release from  
3 detention.

4 **JURISDICTION AND VENUE**

5 5. This Court has subject matter jurisdiction over the present action pursuant to 28 U.S.C. §  
6 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 2241 (habeas  
7 jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension  
8 Clause).

9 6. Venue lies in the United States District Court for the District of Nevada, the judicial district  
10 in which Plaintiffs are currently in custody. Venue is proper in the District of Nevada pursuant to  
11 28 U.S.C. § 1391, as venue is proper in any district in which substantial part of the events or  
12 omissions giving rise to the claim occurred.

13 **PARTIES**

14 7. Petitioner-Plaintiff DANIEL MOSSO RAMIREZ is a citizen of Mexico who has been  
15 detained by ICE at HDC since February of 2020. He has been a legal permanent resident of the  
16 United States since 1989. He suffers from pre-diabetes, hypertension, and high cholesterol and  
17 requires various medications to manage these health conditions. Consequently, he is at high risk  
18 for severe illness or death if he contracts COVID-19.

19 8. Petitioner-Plaintiff CHRISTOPHER NJINGU is a 51-year-old citizen of Cameroon who  
20 has been detained by ICE at HDC since November 2019. He came to the United States of America  
21 seeking asylum as he was a victim of torture in Cameroon. He suffers from hypertension and high  
22 cholesterol and requires medication to manage these conditions. Consequently, he is at high risk  
23 for severe illness or death if he contracts COVID-19.

24 9. Respondent-Defendant ROBERT CULLEY is the Director of the Salt Lake City Field  
25 Office of U.S. Immigration and Customs Enforcement (“ICE”). The Salt Lake City Field Office is  
26 responsible for carrying out ICE’s enforcement and removal operations, including detention  
27 operations at HDC.

1 10. Respondent-Defendant MATTHEW T. ALBENCE is the Deputy Director and Senior  
2 Official Performing the Duties of the Director of ICE. Defendant ALBENCE is responsible for  
3 ICE’s policies, practices, and procedures, including those relating to the detention of immigrants.  
4 Defendant ALBENCE is a legal custodian of Plaintiffs. He is sued in his official capacity.

5 11. Respondent-Defendant ICE is a federal law enforcement agency within the Department of  
6 Homeland Security (“DHS”). ICE is responsible for the criminal and civil enforcement of  
7 immigration laws, including the detention and removal of immigrants. Enforcement and Removal  
8 Operations (“ERO”), a division of ICE, manages and oversees the immigration detention system.  
9 Defendant ICE is a legal custodian of Plaintiffs.

10 12. Respondent-Defendant THEDRICK ANDRES is the Chief of Police at the City of  
11 Henderson, which oversees the Henderson Detention Center where Plaintiffs are detained.  
12 Defendant ANDRES is a legal custodian of Plaintiffs. He is sued in his official capacity.

13 13. Respondent-Defendant JOHN/JANE DOE is the Corrections Captain of the Henderson  
14 Detention Center, where Plaintiffs are detained. Defendant DOE is a legal custodian of Plaintiffs.  
15 He/she is sued in his/her official capacity.

16  
17 **FACTUAL BACKGROUND**

18 **I. COVID-19 Poses Grave Risk of Harm, Including Serious Illness or Death, to Older**  
19 **Adults and Those with Certain Medical Conditions.**

20 14. COVID-19 is a disease caused by a novel coronavirus. There is currently no cure for  
21 COVID-19. There is no vaccine to prevent its spread. It is highly contagious and spreads through  
22 person-to-person contact via respiratory secretions emitted through the nose or mouth of an  
23 infected person. An infected person can infect another person directly if he exhales, coughs, or  
24 sneezes in close proximity to a non-infected person. An infected person can also spread respiratory  
25 secretions on to surfaces, where the virus can live and infect others who touch those surfaces.<sup>6</sup>

26 \_\_\_\_\_  
27 <sup>6</sup> World Health Organization, Q&A on coronaviruses (COVID-19), March 9, 2020,  
<https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

1 Without proper cleaning, the virus can live for several hours to days in aerosols and on surfaces.<sup>7</sup>

2 15. While anyone can be infected by the novel coronavirus, certain populations are at a higher  
3 risk of serious illness as a result of contracting COVID-19. Based on available data, the Centers  
4 for Disease Control and Prevention (CDC) have identified seven groups of people who are at an  
5 increased risk for severe illness: (1) people aged 65 years and older; (2) people who live in a  
6 nursing home or long-term care facility; (3) people with chronic lung disease or moderate to severe  
7 asthma; (4) people who have heart disease with complications; (5) people who are  
8 immunocompromised<sup>8</sup>; (6) people of any age with severe obesity or certain underlying medical  
9 conditions such as diabetes, renal failure, or liver disease; and (7) people who are pregnant.<sup>9</sup>

10 16. A study of 1590 COVID-19 patients in China found that, even after adjusting for age and  
11 smoking status, patients with comorbidities of chronic obstructive pulmonary disease, diabetes,  
12 hypertension, and malignancy were 1.79 times more likely to be admitted to an intensive care unit  
13 (ICU), require invasive ventilation, or die. If the patient had two comorbidities, this number  
14 increased to 2.59.<sup>10</sup>

15 17. Individuals who contract COVID-19 require close monitoring by medical professionals to  
16 prevent mild symptoms from progressing to lower respiratory tract disease. Individuals who  
17 contract COVID-19 and have severe illness require care that is available only in an in-patient  
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19 <sup>7</sup> National Institutes of Health, *New coronavirus stable for hours on surfaces*, March 17, 2020,  
20 <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces#.XnkprsuWla8.email>.

21 <sup>8</sup> The CDC reports that “many conditions can cause a person to be immunocompromised,  
22 including cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly  
23 controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening  
24 medications.” *See infra* n.6.

25 <sup>9</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) People  
26 Who are at Higher Risk*, March 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html>. Note that the CDC has indicated that “people who are  
27 pregnant should be monitored since they are known to be at risk with severe viral illness,  
however, to date data on COVID-19 has not shown increase risk.” *Id.*

<sup>10</sup> Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with COVID-19 in China: A  
Nationwide Analysis*, medRxiv (Feb. 27, 2020), at 5,  
<https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf>.

1 hospital setting, including supplemental oxygen, positive pressure ventilation, and, in extreme  
2 cases, extracorporeal mechanical oxygenation (ECMO).<sup>11</sup>

3 **II. People Detained at the Henderson Detention Center Face an Elevated Risk of**  
4 **COVID-19 Transmission**

5 18. HDC is located in Clark County, Nevada, the largest population center in Nevada. As of  
6 March 30, 2020, there are 753 confirmed cases of COVID-19 in Clark County. 115 individuals  
7 with COVID-19 have been hospitalized and 15 of those individuals have died.<sup>12</sup> The COVID-19  
8 outbreak in Nevada has resulted in unprecedented measures to facilitate and enforce social  
9 distancing. Governor Steve Sisolak has declared a state of emergency and ordered all non-essential  
10 businesses closed.<sup>13</sup> He has asked individuals to remain at home to slow the spread of the novel  
11 coronavirus and imposed a ban on gathering in groups larger than ten in public and private places.<sup>14</sup>  
12 The state has also closed all K-12 schools and universities, and most state and local government  
13 agencies are performing only necessary operations.<sup>15</sup> The Las Vegas Justice Court issued an  
14 administrative order that, among other things, declares that any person arrested on a criminal  
15 offense subject to an own-recognition release will be given a return court date in sixty days.<sup>16</sup>

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16  
17 <sup>11</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) Clinical  
18 Care, March 20, 2020, [https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-  
management-patients.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html).

19 <sup>12</sup> Southern Nevada Health District, COVID-19 Report – Clark County, NV, March 30, 2020,  
<https://www.southernnevadahealthdistrict.org/coronavirus#cases>.

20 <sup>13</sup> Nevada Governor Steve Sisolak, *Governor Sisolak Declares State of Emergency in Response*  
*to COVID-19*, March 13, 2020, accessed at  
21 [http://gov.nv.gov/News/Press/2020/Governor\\_Sisolak\\_Declares\\_State\\_of\\_Emergency\\_in\\_Respo  
nse\\_to\\_COVID-19/](http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Declares_State_of_Emergency_in_Response_to_COVID-19/).

22 <sup>14</sup> Jordan Hicks and Jennifer Quintana, *Gov. Sisolak signs emergency order to limit gatherings,*  
*enforcing social distance*, NBC NEWS 4, March 24, 2020, [https://mynews4.com/news/local/gov-  
sisolak-discusses-how-state-of-nevada-plans-to-mitigate-impacts-of-the-coronavirus](https://mynews4.com/news/local/gov-sisolak-discusses-how-state-of-nevada-plans-to-mitigate-impacts-of-the-coronavirus).

23 <sup>15</sup> Riley Snyder, Megan Messerly, Michelle Rindels, and Jackie Valley, *Sisolak orders all non-*  
*essential businesses to close, warns of criminal penalties for noncompliance*, THE NEVADA  
24 INDEPENDENT, March 20, 2020, [https://thenevadaindependent.com/article/sisolak-orders-all-non-  
essential-businesses-to-close-warns-of-criminal-penalties-for-noncompliance](https://thenevadaindependent.com/article/sisolak-orders-all-non-essential-businesses-to-close-warns-of-criminal-penalties-for-noncompliance).

25 <sup>16</sup> In the Administrative Matter Regarding Temporary Procedures in Criminal, Civil, and Traffic  
26 Cases, Amended Administrative Order # 20-03, Justice Court, Las Vegas Township, Clark  
27 County Nevada.



1 The order also subjects to release any person arrested on traffic offenses or warrants and recalls all  
2 active misdemeanor bench warrants.<sup>17</sup> These steps are all taken with the express purpose of  
3 limiting the existence of large groups of people, including in jails and courtrooms.

4 19. Individuals housed at HDC have already been exposed to COVID-19. HDC officials  
5 confirmed on March 28, 2020 that 13 individuals held in ICE detention at HDC have been isolated  
6 in individual cells in a separate unit at HDC. These individuals were all exposed to COVID-19  
7 after they were transported to HDC by an ICE agent who later began showing symptoms of  
8 COVID-19.<sup>18</sup>

9 20. The conditions of immigration detention facilities pose a heightened public health risk for  
10 the spread of COVID-19. Individuals in immigration detention are not able to practice the proper  
11 social distancing and hygiene required to prevent the transmission of this disease. People live in  
12 close quarters and are unable to maintain the recommended distance of six feet from others. People  
13 share and touch objects used by others. Toilets, sinks, and showers are shared, without disinfection  
14 between each use. Food preparation and service is communal with little opportunity for surface  
15 disinfection. Staff arrive and leave on a shift basis, with limited ability to adequately screen staff  
16 for new, asymptomatic infection.<sup>19</sup>

17 21. Detention facilities “were constructed to maximize public safety, not to minimize the  
18 transmission of disease or to efficiently deliver health care. The probability of transmission of  
19 potentially pathogenic organisms is increased by crowding, delays in medical evaluation and  
20 treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control  
21 expertise...”<sup>20</sup> Detention facilities lack sufficient resources and offer their detainees little or no

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22 <sup>17</sup> *Id.*

23 <sup>18</sup> Katelyn Newberg, *ACLU seeks more steps to curb virus spread in Nevada prisons*, LAS VEGAS  
24 REVIEW-JOURNAL, March 29, 2020, <https://www.reviewjournal.com/local/local-las-vegas/aclu-seeks-more-steps-to-curb-virus-spread-in-nevada-prisons-1993964/>.

25 <sup>19</sup> See Catherine E. Shoichet, *Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE*  
26 *detention*, CNN HEALTH, March 20, 2020, <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

27 <sup>20</sup> Joseph A. Bick, *Infection Control in Jails and Prisons*, HEALTHCARE EPIDEMIOLOGY, October  
2015, accessed at <https://academic.oup.com/cid/article/45/8/1047/344842>.

1 genuine access to medical care.<sup>21</sup> A report by the DHS Office of Inspector General (“OIG”) itself  
2 found “problems that undermine the protection of detainees’ rights, their humane treatment, and  
3 the provision of a safe and healthy environment.”<sup>22</sup> Experts say that facilities run out of county  
4 jails “have far worse medical care than ICE run facilities and are subject to less oversight.”<sup>23</sup>

### 5 **III. People Most Vulnerable to COVID-19 Should Be Released from ICE Detention**

6 22. Because risk mitigation is the only known strategy that can protect vulnerable groups from  
7 COVID-19, public health experts with experience in immigration detention and correctional  
8 settings have recommended the release of vulnerable detainees from custody.<sup>24</sup> In a letter to  
9 Congress, Dr. Scott A. Allen and Dr. Josiah Rich, medical doctors for DHS, explained that there  
10 is an “imminent risk to the health and safety of immigrant detainees, as well as to the public at  
11 large, that is a direct consequence of detaining populations in congregate settings.”<sup>25</sup> These  
12 physicians urge that, “[m]inimally, DHS should consider releasing all detainees in high risk  
13 medical groups such as older people and those with chronic diseases.” Releasing the most  
14 vulnerable individuals will allow them to engage in proper social distancing and hygiene and, if  
15 necessary, seek medical attention.

16 23. Releasing the most vulnerable individuals will also benefit the community at large. If a  
17

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18 <sup>21</sup> In 2019, immigration advocates filed a class action lawsuit against the Trump Administration,  
19 claiming “official policies and lack of oversight related to the border and immigration crisis have  
20 led to major lapses in medical and mental health care in nearly 160 detention facilities across the  
21 country.” Renuka Rayasam, *Trump administration sued over poor medical care in immigration*  
*centers*, POLITICO, August 19, 2019, [https://www.politico.com/story/2019/08/19/trump-](https://www.politico.com/story/2019/08/19/trump-administration-sued-medical-care-immigration-centers-1467605)  
22 [administration-sued-medical-care-immigration-centers-1467605](https://www.politico.com/story/2019/08/19/trump-administration-sued-medical-care-immigration-centers-1467605).

23 <sup>22</sup> Off. of Inspector Gen., Off. of Homeland Sec., *OIG-18-32: Concerns About ICE Detainee*  
*Treatment and Care at Detention Facilities*, at 7 (Dec. 11, 2017),  
<https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

24 <sup>23</sup> *Id.*

25 <sup>24</sup> Catherine E. Shoichet, *Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE*  
*detention*, CNN HEALTH, March 20, 2020, [https://www.cnn.com/2020/03/20/health/doctors-ice-](https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html)  
26 [detention-coronavirus/index.html](https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html).

27 <sup>25</sup> Scott A. Allen and Josiah Rich, *Letter to the House Committee on Homeland Security*, March  
19, 2020, accessed at [https://www.documentcloud.org/documents/6816336-032020-Letter-From-](https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238)  
[Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238](https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238).

1 large number of people in detention at HDC contract COVID-19, many will inevitably require in-  
2 patient, emergency medical attention. “As local hospital systems become overwhelmed by the  
3 patient flow from detention center outbreaks, precious health resources will be less available for  
4 people in the community. To be more explicit, a detention center with a rapid outbreak could result  
5 in multiple detainees – five, ten or more – being sent to the local community hospital where they  
6 may be only six or eight ventilators over a very short period. As they fill up and overwhelm the  
7 ventilator resources, those ventilators are unavailable when the infection inevitably is carried by  
8 staff to the community and are also unavailable for all the usual critical illnesses (heart attacks,  
9 trauma, etc.).”<sup>26</sup> However, if vulnerable detainees are released, “the tinderbox scenario of a large  
10 cohort of people getting sick all at once is less likely to occur, and the peak volume of patients  
11 hitting the community hospital would level out. In the first scenario many people from the  
12 detention center *and the community* die unnecessarily for want of a ventilator. In the latter, survival  
13 is maximized as the local mass outbreak scenario is averted.”<sup>27</sup>

14 24. Just days ago, this Court determined that COVID-19 is a serious threat to the health and  
15 safety of our state’s incarcerated populations. In a ruling granting an emergency motion to  
16 temporarily modify a criminal defendant’s conditions of probation (to prevent the defendant’s  
17 upcoming confinement in the Washoe County Detention Center), this Court aptly noted that  
18 “[c]onditions of pretrial confinement create the ideal environment for the transmission of  
19 contagious disease.” *United States v. Barkman*, 2020 U.S. Dist. Lexis 45628\* at \*3. Allowing the  
20 defendant to avoid detention, this Court went on to conclude that, “[w]ith confirmed cases that  
21 indicate community spread, the time is now to take action to protect vulnerable populations and  
22 the community at large.” *Id.* at \*2.

#### 23 **IV. COVID-19 Has Already Infected Individuals in the Immigration Detention System**

24 25. ICE has issued guidance which it claims will be sufficient to safeguard its employees and  
25

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26 <sup>26</sup> *Id.* at 4.

27 <sup>27</sup> *Id.*

1 detainees.<sup>28</sup> Notably, the guidance that is publicly available is silent on how the agency will protect  
2 individuals at high-risk of severe illness as a result of COVID-19. And, despite the efforts outlined  
3 in the guidance<sup>29</sup>, as of March 30, 2020, five ICE facility employees and four individuals in ICE  
4 custody have already tested positive for COVID-19.<sup>30</sup> The employees work at four different  
5 facilities in New Jersey, Texas, and Colorado.<sup>31</sup> The individuals are detained at three different  
6 facilities in New Jersey.<sup>32</sup> Importantly, these numbers do not include ICE agents who do not work  
7 at detention facilities – such as the agent that caused the exposure at HDC – that may have COVID-  
8 19 and are in contact with ICE detainees regularly.

9 **V. Plaintiffs Are Vulnerable to Serious Illness or Death if Infected by COVID-19 and**  
10 **Should Be Released from Custody.**

11 26. Plaintiffs in this case are people who are particularly vulnerable to serious illness or death  
12 if infected by COVID-19 who are currently detained at HDC as they await the adjudication of their  
13 civil immigration cases.

14 27. DANIEL MOSSO RAMIREZ is a 45-year-old citizen of Mexico. Mr. Ramirez has been  
15 a lawful permanent resident of the United States since June 30, 1989. In November 2019, Mr.  
16 Ramirez was returning to the United States from Panama when ICE confiscated his Permanent  
17 Resident Card. After checking in with ICE for three months, ICE arrested him at his final check-  
18 in on February 23, 2020. ICE charged him with inadmissibility due to a prior conviction for  
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20 <sup>28</sup> U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, March 24, 2020,  
21 <https://www.ice.gov/covid19>.

22 <sup>29</sup> ICE’s COVID-19 guidance indicates that “ICE epidemiologists have been tracking the  
23 outbreak, regularly updating infection prevention and control protocols, and issuing guidance to  
24 ICE Health Service Corps (IHSC) staff for the screening and management of potential exposure  
25 among detainees. ICE continues to incorporate CDC’s COVID-19 guidance, which is built upon  
26 the already established infectious disease monitoring and management protocols currently in use  
27 by the agency. In addition, ICE is actively working with state and local health partners to  
determine if any detainee requires additional testing or monitoring to combat the spread of the  
virus.” *Id.*

<sup>30</sup> *Id.*

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

<sup>32</sup> *Id.*

1 possession of a controlled substance. The conviction occurred 18 years ago in 2002.

2 28. Mr. Ramirez suffers from pre-diabetes, hypertension, and high cholesterol and is  
3 prescribed lisinopril and atorvastatin.

4 29. Prior to his detention, Mr. Ramirez was scheduled to have surgery on his neck for a prior  
5 workplace injury. He was doing monthly physical therapy.

6 30. Mr. Ramirez is critically vulnerable to COVID-19 because of his health problems.

7 31. CHRISTOPHER NJINGU is a 51-year-old citizen of Cameroon. Mr. Njingu arrived in  
8 the U.S. on November 2, 2019. Mr. Njingu came to the U.S. seeking asylum after being tortured  
9 during the 2018 civil war in Cameroon. He was detained upon arrival at the U.S. border where he  
10 presented himself as an asylum seeker. He has been held at HDC since November 2019.

11 32. Mr. Njingu has no known criminal history in the United States or in his home country of  
12 Cameroon.

13 33. As a result of the torture he endured, Mr. Njingu suffered injuries that left him with chronic  
14 migraines and facial asymmetry.

15 34. Mr. Njingu suffers from hypertension and high cholesterol.

16 35. Mr. Njingu is critically vulnerable to COVID-19 because of his health problems.

17 **LEGAL FRAMEWORK**

18 **A. Plaintiffs Have a Constitutional right to Reasonable Safety in Custody.**

19 36. Whenever the government detains or incarcerates someone, it has an affirmative duty to  
20 provide conditions of reasonable health and safety. As the Supreme Court has explained, “when  
21 the State takes a person into its custody and holds them there against his will, the Constitution  
22 imposes upon it a corresponding duty to assume some responsibility for his safety and general  
23 well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989).  
24 As a result, the government must provide those in custody with “food, clothing, shelter, medical  
25 care, and reasonable safety.” *Id.* at 200.

26 37. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment’s  
27 prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. The

1 Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which  
2 is ‘reasonable safety.’” *Helling v. McKinney*, 509 U.S. at 33 (quoting *DeShaney*, 489 U.S. at 200).  
3 Accordingly, “[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe,  
4 life-threatening condition in their prison on the ground that nothing yet had happened to them.” *Id.*

5 38. The Supreme Court has explicitly recognized that the risk of contracting a communicable  
6 disease may constitute such an “unsafe, life-threatening condition” that threatens “reasonable  
7 safety.” *Helling*, 509 U.S. 25 at 36.

8 39. These principles also apply in the context of immigration detention. Immigrant detainees,  
9 even those with prior criminal convictions, are *civil detainees* held pursuant to civil immigration  
10 laws. *Zadydas v. Davis*, 533 U.S. 678, 690 (2001).

11 40. Because detained immigrants are civil detainees, their constitutional protections while in  
12 custody are derived from the Fifth Amendment, which provides protections even greater than the  
13 Eighth Amendment. The Eighth Amendment, which applies to persons convicted of criminal  
14 offenses, allows punishment as long as it is not cruel and unusual. But the Fifth Amendment’s due  
15 process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979)  
16 (“Due process requires that a pretrial detainee not be punished.”).

17 41. The Ninth Circuit has applied this principle to make clear that civil detainees, like Plaintiffs  
18 here, are entitled to conditions of confinement that are superior to those of convicted prisoners and  
19 to those of criminal pretrial detainees. *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), *cert.*  
20 *denied*, 546 U.S. 820 (2005); *see also King v. Cnty. Of Los Angeles*, 885 F.3d 548, 557 (9th Cir.  
21 2018) (finding presumption of punitive and, thus, unconstitutional treatment where conditions of  
22 confinement for civil detainees are similar to those faced by pre-trial criminal detainees).

23 42. Moreover, because civil detention is governed by the Fifth Amendment rather than the  
24 Eighth Amendment, the “deliberate indifference” standard required to establish a constitutional  
25 violation in the latter context does not apply to civil detainees like Plaintiffs. *Jones*, 393 F.3d at  
26 934. Instead, a condition of confinement for a civil immigration detainee violates the Constitution  
27 “if it imposes some harm to the detainee that significantly exceeds or is independent of the inherent

1 discomforts of confinement and is not reasonably related to a legitimate governmental objective  
2 or is excessive in relation to the legitimate governmental objective.” *Unknown Parties v. Johnson*,  
3 No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at 12 \*5 (D. Ariz. Nov. 18, 2016), *aff’d sub*  
4 *nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017).

5 43. This means that conditions of confinement violate this standard when they deprive people  
6 in civil custody of a basic human need, including safety, and the risk of deprivation cannot be  
7 justified by a legitimate government interest or is excessive despite a legitimate government  
8 interest.

9 **B. ICE has the Authority to Release Detained People in Its Custody.**

10 44. It is well within ICE’s authority to comply with these constitutional requirements by  
11 releasing people who are vulnerable to severe illness or death if they contract COVID-19. For  
12 example, the regulations governing ICE’s release authority state that serious medical conditions  
13 are a reason to parole an individual, as “continued detention would not be appropriate” in such  
14 cases. 8 C.F.R. § 212.5(b)(1).

15 45. ICE not only has the authority to exercise discretion to release individuals from custody  
16 but has routinely exercised this discretion to release particularly vulnerable detainees like  
17 Plaintiffs. This exercise of discretion comes from a long line of agency directives explicitly  
18 instructing officers to exercise favorable discretion in cases involving severe medical concerns and  
19 other humanitarian equities militating against detention.

20 46. ICE’s discretion applies regardless of the statutory basis for a noncitizen’s detention.

21 47. When conditions of confinement in an immigration detention facility lead to uniformly  
22 unsafe conditions that rise to the level of a constitutional violation, the only available remedy is to  
23 reduce levels of detention unless and until conditions can be brought in line with constitutional  
24 standards. For example, in a recent case challenging conditions of confinement in ICE detention  
25 facilities along the Arizona border, Judge David C. Bury ordered that the Constitution prohibited  
26 Border Patrol from continuing to detain any person to whom it could not provide a bed, shower,  
27 nutritious food, and a screening by a medical professional within 48 hours of booking. *Unknown*



1 *Parties v. Nielsen*, CV-15-00250-TUC0DCB, 2020 WL 813774 \*1 (D. Az. Feb. 19, 2020).

2 **C. This Court has Authority to Order Plaintiffs' Release to Vindicate Their Fifth**  
3 **Amendment Rights, and Such Relief is Appropriate Here.**

4 48. While the circumstances of this case are somewhat novel and constantly evolving, the  
5 Court's authority to order Plaintiffs' release to ensure their constitutional rights are protected is  
6 not. "Federal courts possess whatever powers are necessary to remedy constitutional violations  
7 because they are charged with protecting these rights." *Stone v. City & Cnty. of San Francisco*,  
8 968 F.2d 850, 861 (9th Cir. 1992). As a result, "[w]hen necessary to ensure compliance with a  
9 constitutional mandate, courts may enter orders placing limits on a prison's population." *Brown v.*  
10 *Plata*, 563 U.S. 493, 511 (2011).

11 49. Courts have regularly exercised this authority to remedy constitutional violations caused  
12 by overcrowding. *Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S.  
13 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond  
14 pretrial detainees as necessary to reach a population cap).

15 50. The same principle applies here. As the constitutional principles and public health experts  
16 make clear, releasing Plaintiffs is the only viable remedy to ensure their safety from the threat that  
17 COVID-19 infection poses. Social distancing and hygiene measures are Plaintiffs' only defense  
18 against the disease. These protective measures are impossible to achieve in the environment of an  
19 immigration detention center, where Plaintiffs share toilets, sinks, and showers, eat in communal  
20 spaces, and are constantly in close contact with other detainees and detention center staff. These  
21 conditions are prime for a devastating and deadly infectious spread and, as a result, Plaintiffs face  
22 unreasonable and unconstitutional harm from continued detention.

23 **CLAIM FOR RELIEF**

24 **Violation of Fifth Amendment Right to Substantive Due Process (Unlawful Punishment;**  
25 **Freedom from Cruel Treatment and Conditions of Confinement)**

26 51. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as  
27 though fully set forth herein.



1 52. The Fifth Amendment of the Constitution guarantees that civil detainees, including all  
2 immigrant detainees, may not be subjected to punishment. The federal government violates this  
3 substantive due process right when it subjects civil detainees to cruel treatment and conditions of  
4 confinement that amount to punishment. The federal government violates this right when it fails  
5 to ensure those detainees' safety and health.

6 53. Defendants' conditions of confinement subject Plaintiffs to heightened risk of contracting  
7 COVID-19, for which there is no vaccine or cure. Defendants are subjecting Plaintiffs to a  
8 substantial risk of serious harm.

9 54. People in civil detention must not be subject to punitive conditions. *See Jones*, 393 F.3d at  
10 931. Conditions are presumptively punitive when they are "intended to punish" or when they are  
11 "employed to achieve objectives that could be accomplished in so many alternative and less harsh  
12 methods." *Id.* at 934, quoting *Hallstrom v. City of Garden City*, 991 F.2d at 1484 (citation and  
13 internal quotation marks omitted). If Plaintiffs can establish *either* of these presumptions, "the  
14 burden shifts to the defendant to show (1) 'legitimate, non-punitive interests justifying the  
15 conditions of [the detainee's confinement]' and (2) 'that the restrictions imposed...[are] not  
16 excessive in relation to these interests.'" *King*, 885 F.3d at 557, quoting *Jones*, 393 F.3d at 935.

17 55. Both the presumptions of punitive conditions are established here. First, the Trump  
18 Administration has frequently made clear that immigration detention generally is intended to  
19 punish those migrants who enter the United States without documentation. On August 23, 2019,  
20 Kenneth T. Cuccinelli, Senior Official Performing the Duties of the Deputy Secretary for DHS,  
21 while announcing a policy change which would allow DHS to detain migrant families  
22 indefinitely<sup>33</sup>, said of detention: "This is a deterrent... now [ICE] can and will to the extent we're  
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26 <sup>33</sup> Geneva Sands, *Trump administration to allow longer detention of migrant families*, CNN  
27 POLITICS, August 22, 2019, <https://www.cnn.com/2019/08/21/politics/immigration-family-detention-flores/index.html>.

1 able to do so, hold them until those hearings happen.”<sup>34</sup> That deterrence is an express goal of  
2 detention makes clear that detention is, to DHS, a form of punishment. Importantly, a report of  
3 conditions in detention published by the DHS OIG indicated that “[Customs and Border Patrol  
4 agents] recognize they have a humanitarian issue with detaining single adults for so long, but  
5 believe if they do not have a consequence delivery system, either prosecution or ICE detention,  
6 the flow [of migrants into the U.S.] will increase.”<sup>35</sup> There CBP itself described detention as “a  
7 consequence delivery system.”

8 56. Even if this Court is not convinced that detention alone is presumptively punitive, detention  
9 during a global pandemic, where the likelihood is extremely high of falling ill due to one’s  
10 incarceration, is punitive. In its recent decision in *United States v. Barkman*, this Court noted that  
11 “incarcerated individuals ‘are at special risk of infection, given their living situations,’ and ‘may  
12 also be less able to participate in proactive measures to keep themselves safe;’ because ‘infection  
13 control is challenging in these settings.’” *Barkman*, 2020 U.S. Dist. Lexis 45628\* at \*3. This Court  
14 also noted that “Secretary of State Mike Pompeo has called for Iran to release Americans detained  
15 there because of the ‘deeply troubling’ [r]eports that COVID-19 has spread to Iranian prisons,’  
16 noting that [t]heir detention amid increasingly deteriorating conditions defies basic human  
17 decency.” *Id.* at \*4. The Secretary’s assessment is correct. All signs indicate that it will not be  
18 long before conditions at HDC deteriorate, and it would defy basic human decency to require  
19 Plaintiffs to remain in harms’ way.

20 57. Second, the restrictions placed on Plaintiffs are “employed to achieve objectives that could  
21 be accomplished in so many alternative and less harsh methods.” *Jones*, 393 F.3d at 934.  
22 Immigration detention for all is not a legal or factual necessity. ICE has discretion to release  
23

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24 <sup>34</sup> Veronica Stracqualursi, *Trump immigration official says new rule detaining families*  
25 *indefinitely is a ‘deterrent’*, CNN POLITICS, August 23, 2019,  
<https://www.cnn.com/2019/08/23/politics/ken-cuccinelli-flores-settlement-cnntv/index.html>.

26 <sup>35</sup> Office of Inspector General, Special Reviews and Evaluations, *FY 2019 CBP Spot Inspections*,  
27 U.S. Department of Homeland Security, May 15, 2019, accessed at  
<https://www.documentcloud.org/documents/6178541-FinalDocumentsRedacted.html>.

1 detainees, especially those who are medically vulnerable. ICE can release these detainees to their  
2 families or other support systems now and still require them to appear at a future proceeding to  
3 adjudicate their immigration cases. Allowing Plaintiffs to go home, practice the social distancing  
4 and hygiene exercises required to stay safe, and then return for any future proceedings would be  
5 significantly “less harsh” than requiring Plaintiffs to risk their lives and remain in detention. This  
6 is particularly true where ICE has shown, as described above, that it is incapable of protecting its  
7 staff and detainees and particularly unprepared to mitigate the potentially devastating effects of  
8 this crisis on elderly and medically vulnerable individuals.

9 58. As public health experts in correctional medical care and infectious disease agree, people  
10 vulnerable to COVID-19 who are held in immigration detention “are at grave risk of severe illness  
11 and death.” Accordingly, Defendants are subjecting Plaintiffs to detention conditions that amount  
12 to punishment and that fail to ensure their safety and health.

13 59. For these reasons, Defendants’ ongoing detention of Plaintiffs violates the Due Process  
14 Clause.

15 **PRAYER FOR RELIEF**

16 WHEREFORE Plaintiffs request that the Court grant the following relief:

- 17 a. Issue a Writ of Habeas Corpus and order Plaintiffs’ immediate release, with appropriate  
18 precautionary public health measures, on the ground that their continued detention  
19 violates the Due Process Clause;
- 20 b. In the alternative, issue injunctive relief ordering Defendants to immediately release  
21 Plaintiffs, with appropriate precautionary public health measures, on the grounds that  
22 their continued detention violates the Due Process Clause;
- 23 c. Issue a declaration that the conditions under which Plaintiffs and others are confined at  
24 HDC place Plaintiffs at an unreasonable risk of contracting severe illness and death, in  
25 violation of the Due Process Clause;
- 26 d. Award Plaintiffs their costs and reasonable attorneys’ fees in this action under the Equal  
27 Access to Justice Act (“EAJA”), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412,

1 and on any other basis justified under law; and

2 e. Grant any and all other such relief that this Court may deem fit and proper.

3  
4 RESPECTFULLY SUBMITTED 31st of March, 2020.

5 s/ Nicole C. Levy

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