

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TRACEY [REDACTED] S [REDACTED],

Petitioner-Plaintiff,

v.

THOMAS DECKER, in his official capacity as Field Office Director, New York City Field Office, U.S. Immigration & Customs Enforcement; CHAD WOLF, in his official capacity as Acting Secretary, U.S. Department of Homeland Security; and RONALD P. EDWARDS, in his official capacity as Director, Hudson County Correctional Facility,

Respondents-Defendants.

Civil Action No. _____

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

INTRODUCTION

1. Tracey ██████ S ██████ is a civil immigration detainee who, by virtue of her serious medical conditions, including hypertension, faces an imminent risk of severe illness or death if she contracts COVID-19 at the Hudson County Correctional Facility (“HCCF” or “Hudson”), where she is currently detained, and where the virus has already claimed the lives of four staff members and infected 37 detainees and inmates. Despite their knowledge of this enormous risk, Respondents continue to detain Ms. S ██████, at grave risk to her life and health, during this unprecedented public health crisis. Immigration and Customs Enforcement’s (“ICE”) failure to heed the advice of medical experts to release medically vulnerable individuals has created a risk of harm to Ms. S ██████ that is both unconscionably high and entirely preventable.

2. A growing number of courts in this District and around the country have ordered the immediate release of medically-vulnerable immigration detainees in recent days, recognizing both the enormous risk of harm that COVID-19 creates as well as ICE’s failure to sufficiently abate the risk of harm. *See e.g., Durel B. v. Decker*, Civ. No. 20-3430, 2020 WL 1922140 (D.N.J. Apr. 21, 2020) (McNulty, J.); *Cristian A.R. v. Decker*, Civ. No. 20-3600, ECF No. 26 (D.N.J. Apr. 12, 2020) (Arleo, J.); *Leandro R.P. v. Decker*, Civ. No. 20-3853, 2020 WL 1899791 (D.N.J. Apr. 17, 2020) (McNulty, J.); *Anthony v. Anderson*, Civ. No. 20-3704, ECF No. 22 (D.N.J. Apr. 17, 2020) (Martinotti, J.); *Jeferson V.G. v. Decker*, Civ. No. 20-3644, 2020 WL 1873018 (D.N.J. Apr. 15, 2020) (McNulty, J.); *Rafael L.O. v. Tsoukaris*, Civ. No. 20-3481, 2020 WL 1808843 (D.N.J. Apr. 9, 2020) (Vazquez, J.); *Hope v. Doll*, Civ. No. 20-562, ECF No. 11 (M.D. PA Apr. 7, 2020); *Coronel v. Decker*, ---F. Supp. 3d---, 2020 WL 1487272 (S.D.N.Y. Mar. 27, 2020); *Avendano Hernandez v. Decker*, 20-cv-1589, 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020); *Basank v. Decker*, ---F. Supp. 3d---, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Grant v. Decker*, 20-cv-2946, ECF No. 18 (S.D.N.Y. Apr. 17, 2020); *Thakker v. Doll*, 20-cv-

480-EJ, ECF No. No. 47 (M.D. Penn. Mar. 31, 2020); *Bravo Castillo v. Barr*, 5:20-cv-605-TJH-AFM, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020).

3. Ms. S [REDACTED] seeks the same relief in light of her pre-existing medical conditions. Packed in close quarters with other detainees and correctional staff, forced to share necessities like showers and telephones with dozens of others, and deprived of basic forms of preventative hygiene, Ms. S [REDACTED] is helpless to take the key risk mitigation steps known to limit transmission of the virus. And if she is infected, she faces a heightened risk of severe illness and death within a correctional facility that has a track record of failing to provide adequate medical care even outside times of crisis.

4. Medical experts agree that reducing correctional facility populations is critical to reducing risk during the widespread COVID-19 outbreak, and that officials must first focus on vulnerable populations to reduce harm to the entire population. Failing to heed this medical consensus and against a backdrop of extreme crisis, ICE has not sufficiently exercised its discretion to release medically-vulnerable individuals. Instead, the Acting Director of ICE recently informed Congress that the agency has no plans to release any additional detainees from detention facilities to protect them from becoming ill with COVID-19, because ICE believes that would send a message that the United States is “not enforcing [its] immigration laws” and would encourage people to migrate to the United States.¹ Thus, ICE has conceded it is using civil detention – and putting lives at risk – to deter border crossings.

¹ *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus*, UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND REFORM, <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>, attached as Exhibit A to the Declaration of Katherine Haas (“Haas Decl.,” attached as Exhibit 7 to this Complaint).

5. Before this suit was filed, The Legal Aid Society submitted a release request on Ms. S [REDACTED]'s behalf to ICE based on her medical conditions and vulnerability to death or serious injury from COVID-19, explaining her release plan and why she does not pose a risk of flight or danger to the community. ICE has not responded to this request as of April 25, 2020. The continued detention of Ms. S [REDACTED], a high-risk individual, violates her due process rights by subjecting her, as a civil detainee, to punitive conditions of confinement and by constituting deliberate indifference to her serious medical needs.

PARTIES

6. Petitioner-Plaintiff Tracey [REDACTED] S [REDACTED] is a 50-year-old woman who has been detained by ICE since June 21, 2019 at the Hudson County Correctional Facility. She suffers from various medical ailments, including hypertension, obesity, and anemia. Because of her medical conditions, in particular her hypertension, Ms. S [REDACTED] is at high risk for severe illness or death if she contracts COVID-19.

7. Respondent-Defendant Thomas Decker is named in his official capacity as the Director of the New York Field Office for Immigration and Customs Enforcement within the Department of Homeland Security. He is responsible for the administration of immigration laws and the execution of detention, bond, release, parole, and removal determinations for individuals under the jurisdiction of the New York Field Office. As such, he is a custodian of Ms. S [REDACTED].

8. Respondent-Defendant Chad F. Wolf is named in his official capacity as the Secretary of the Department of Homeland Security. He is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); he supervises Respondent Decker; and is legally responsible for the pursuit of non-citizens' detention and removal. As such, he is a custodian of Ms. S [REDACTED].

9. Respondent-Defendant Ronald P. Edwards is named in his official capacity as the Director of the Hudson County Correction Facility. In this capacity, he is a custodian of Ms. S [REDACTED]. His office is located at the Hudson County Correctional Facility, Kearny, NJ.

JURISDICTION & VENUE

10. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (the All Writs Act); 42 U.S.C. § 1983 (Civil Rights Act); and Article I, Section 9, clause 2 of the Constitution (the Suspension Clause). Venue properly lies in this district under both 28 U.S.C. § 1391 and 28 U.S.C. § 2241.

STATEMENT OF FACTS

I. New York and New Jersey are Epicenters of an Exponentially Escalating Global Pandemic.

11. On March 13, 2020, President Trump declared a national emergency in response to the coronavirus pandemic. At the time, there were just over 1,600 confirmed cases in the United States and 46 deaths. As of today, over 972,969 cases have been confirmed across the country and COVID-19 has led to the death of at least 55,118 individuals.

12. New York and New Jersey are epicenters of COVID-19 in the United States with over 398,268 identified cases in New York and New Jersey and 28,245 virus-related deaths.

13. Because the coronavirus that causes COVID-19 is particularly contagious, authorities are taking unprecedented precautions to manage the public health crisis and minimize the transmission of the virus by reducing the opportunity for large groups of people to congregate.

II. The Heightened Risk of Severe Illness or Death from COVID-19 in Jails and Detention Facilities

14. According to Dr. Robert B. Greifinger, who has worked in health care for detained populations for more than thirty years, “the conditions of immigration detention facilities pose a heightened public health risk to the spread of COVID-19, even greater than other non-carceral institutions.” *See* Declaration of Robert Greifinger ¶ 9 (“Greifinger Decl.,” attached as Exhibit 1 to this Complaint); *see also* Declaration of Dora Schriro ¶ 26 (“Schriro Decl.,” attached as Exhibit 2 to this Complaint) (“Based on my years of experience overseeing and managing secure facilities, conditions in immigration detention facilities place people in close contact with one another and allow disease to spread freely.”).

15. When people are in close proximity to each other without an ability to distance themselves, the person-to-person transmission rate for COVID-19 is exponential. By way of example: On March 23, 2020, there were two confirmed cases of COVID-19 among inmates at the Cook County Jail in Chicago, Illinois; on April 1, 2020—eight days later—167 inmates and 34 staff members had tested positive.² Similarly, the chief physician at the Rikers Island jail complex acknowledged that “infections are soaring” at the facility despite allegedly “following Centers for Disease Control and Prevention guidelines.”³ As of April 20, 2020, eight prisoners have died in New Jersey’s correctional facilities.⁴ The outbreak has similarly impacted the

² 167 inmates at Cook County Jail confirmed positive for COVID-19, CHICAGO SUN-TIMES (Apr. 1, 2020), <https://chicago.suntimes.com/coronavirus/2020/4/1/21203767/cookcounty-jail-coronavirus-positive-covid-19>, (Ex. B to Haas Decl.).

³ Miranda Bryant, *Coronavirus Spread at Rikers is a ‘Public Health Disaster’, Says Jail’s Top Doctor*, THE GUARDIAN (Apr. 1, 2020), <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>, (Ex. C to Haas Decl.).

⁴ Joe Hernandez, *Coronavirus update: 8 N.J. prisoners die of COVID-19*, (Apr. 20, 2020), <https://whyy.org/articles/coronavirus-update-8-n-j-prisoners-die-of-covid-19/>, (Ex. D to Haas Decl.).

HCCF, where four staff members have died and over 125 detainees, inmates, and staff members have been infected with COVID-19.

16. The conditions of correctional and detention facilities pose an acute risk for the spread of COVID-19 due to their close quarters, the proportion of vulnerable people detained, lack of medical care resources, and inability to seal off the facility from the outside world, given that jail staff still enter and leave the facilities. Greifinger Decl. ¶ 10. On March 23, 2020, the Centers for Disease Control and Prevention (CDC) acknowledged that correctional and detention facilities “present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.”⁵

17. Preventative strategies utilized by the general public, like social distancing and preventative hygiene, are not possible in these facilities. Greifinger Decl. ¶ 10.

18. When an outbreak occurs, facilities holding immigrant detainees are ill-equipped to engage in adequate containment and proper medical treatment for sick detainees. Greifinger Decl. ¶ 11 (explaining that many immigration detention centers “lack adequate medical care infrastructure to address the spread of infectious disease and treatment of high-risk people in detention”).

19. Medical experts agree that reducing the number of detainees is a necessary component of risk mitigation. Greifinger Decl. ¶¶ 40-44. Any reduction in detained populations must focus on the most vulnerable detainees, in order to safeguard their health, the health of other detainees and facility staff, and the community as a whole. *Id.*

⁵ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, CENTERS FOR DISEASE CONTROL (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, (Ex. E to Haas Decl.).

20. As medical staff and resources within the facility become overwhelmed, regional hospitals and health centers end up bearing the brunt of providing healthcare for sick detainees, who are disproportionately likely to be those with pre-existing medical vulnerabilities. *Id.* ¶ 42. The rapid spread of an infectious disease like COVID-19 within a detention or correctional facility ultimately results in adverse public health outcomes for the broader community and region.

21. In the face of the current crisis, detention and correctional systems around the country and the world have announced concerted efforts to reduce their detained populations. On March 22, 2020, the New Jersey Supreme Court ordered, on consent, the release of the vast majority of individuals serving county jail sentences, in light of the “profound risk posed to people in correctional facilities arising from the spread of COVID-19.” On April 10, 2020, the Governor of New Jersey similarly ordered the release of individuals from state prison whose age or health status put them at risk of developing life-threatening complications from COVID-19.⁶

22. In contrast, on April 17, 2020, the Acting Director of ICE informed the U.S. House Committee on Oversight and Reform that ICE had completed its review of its existing population and that it does not plan to release any additional detainees currently being held in its detention facilities as a result of COVID-19.⁷ This despite the fact that, as of April 17, there were 124 confirmed cases of COVID-19 among those in ICE custody, even though *only 400 ICE detainees nationwide* had been tested for the virus, out of approximately 33,000 people in ICE custody. *See* Schriro Decl. ¶ 19. Countless more have undoubtedly been infected. Indeed, as of

⁶ Nicholas Pugliese, *Coronavirus Update: N.J. to Release ‘Low-Risk’ Prisoners*, (Apr. 10, 2020), <https://whyy.org/articles/coronavirus-update-n-j-to-release-low-risk-prisoners/>, (Ex. F to Haas Decl.).

⁷ *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus*, UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND REFORM, <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>, (Ex. A to Haas Decl.).

April 24, ICE’s website now confirms that 317 detainees have tested positive—more than double the number of infected cases in just over a week. ICE informed the House Committee that a reason that it is not planning on releasing any additional detainees because of COVID-19 is that ICE believes that releasing detainees—even if for the purpose of trying to protect them and others from being infected with COVID-19—could give the impression that ICE is “not enforcing our immigration laws,” which would be a “huge pull factor” and create a “rush at the borders.” In the name of deterring future migration, ICE is continuing to play “Russian roulette” with the lives of vulnerable people in its custody. *See Coreas v. Bounds*, No. 20-cv-780 (TDC), ECF. No. 56, at *28 (D. Md. Apr. 3, 2020).

III. The Risks to Ms. S [REDACTED]’s Health are Particularly Acute in the Hudson County Correctional Facility, Where ICE is Detaining Her.

A. Hudson County Correctional Facility Has Confirmed COVID-19 Cases.

23. The New Jersey facility where Ms. S [REDACTED] is detained, Hudson County Correctional Facility, is especially vulnerable to rapid transmission of COVID-19 because of the unsanitary and hazardous conditions within the facility and its history of providing poor treatment.

24. The novel coronavirus is rapidly spreading at the HCCF and there are multiple confirmed cases of COVID-19 amongst ICE detainees, jail inmates, and facility staff. *See Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *7 (“It is undisputed that COVID-19 is spreading quickly through the Bergen and Hudson County Facilities.”). As of April 20, 2020, ten ICE detainees, twenty-seven inmates, and eighty-nine staff members had tested positive for COVID-19 at the HCCF. *See Declaration of Ronald Edwards, Arevalo v. Decker*, 2:20-cv-04337, ECF. No. 22-6 ¶ 20(a)-(c) (D.N.J. Apr. 20, 2020). Earlier this month, a corrections

officer, two nurses, and a commissary director who worked at the facility died from COVID-19.⁸ The facility has not provided estimates of suspected positive cases but the number of cases and casualties there is “certain to rise.” *Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *8.

B. The Facility has Unsanitary Conditions and Fails to Provide Adequate Medical Care.

25. ICE detainees at Hudson have also reported that conditions have deteriorated in recent weeks as the facility takes ad hoc and insufficient measures to try to contain transmission, including by widespread and arbitrary use of extreme isolation. Detainees report lockdowns of 22 hours or more during which they are not permitted to leave their cells. During each day’s brief reprieve, detainees must choose between showering and calling their family or attorneys. This level of isolation from the outside world is not only draconian, but ineffective, as detainees still share infrequently-sanitized or cleaned common spaces, telephones, and showers when allowed out of their cells. As the Court in *Cristian A.R.* noted, based on the cleaning schedule at the HCCF, “close to *thirty inmates and detainees* pass through common areas, potentially coming into contact with contaminated surfaces before they are routinely cleaned.” *Id.* at *10 n.16 (emphasis added).

26. Prior to March 16, 2020, Ms. S [REDACTED] was housed in a unit where she lived in an open space layout with other detainees. Declaration of Gustavo Gutierrez ¶ 8 (“Gutierrez Decl.,” attached as Exhibit 6 to this Complaint). On March 16, she was moved to a cell where she was locked down for 23 hours every day. About two weeks later, this was reduced to 22 hours. *Id.* ¶

⁸ Rodrigo Torrejon, *Hudson County Jail Correctional Officer, 56, Dies from Coronavirus, Police Union Says* (Apr. 2, 2020), available at <https://www.nj.com/coronavirus/2020/04/hudson-county-jail-correctional-officer-56-dies-from-coronavirus.html>, (Ex. G to Haas Decl.); Ron Zeitlinger, *Nurse at Hudson County Jail Dies from Coronavirus* (Apr. 5, 2020), available at <https://www.nj.com/hudson/2020/04/nurse-at-hudson-county-jail-dies-from-coronavirus.html>, (Ex. H to Haas Decl.); Monsy Alvarado, *Another Hudson County Jail Employee Dies of Coronavirus Complications* (Apr. 8, 2020), available at <https://www.northjersey.com/story/news/new-jersey/2020/04/07/coronavirus-another-hudson-county-nj-jail-employee-dies/2962894001>, (Ex. I to Haas Decl.).

9. On April 14, Ms. S [REDACTED] was moved to another cell that is built for two individuals and has a bunkbed. She does not currently have a cellmate. *Id.* ¶ 15. Being confined to such a small space for an extended amount of time each day exacerbates Ms. S [REDACTED]'s medical issues, since she is unable to walk and exercise. *Id.* ¶ 22. In the time she is allowed outside of her cell each day, Ms. S [REDACTED] must share common areas with other detainees that are not kept clean. The detainees must clean common areas themselves in the limited time when they are let out of their cells. She has never observed anyone using disinfectant to clean the common areas, nor has she observed any disinfectant smells. *Id.* ¶ 24. Ms. S [REDACTED] also noted that the shared shower area has not been cleaned for weeks—there is often standing water and the shower walls have turned yellow. Ms. S [REDACTED] reported that she and several other detainees have developed rashes, which she believes is coming from the unsanitary conditions in the common shower area. *Id.* ¶ 25. Ms. S [REDACTED] further noted that detainees who complain about the conditions are ignored or threatened with disciplinary action. She has even observed one detainee being handcuffed for complaining that the common area was dirty. As a result, Ms. S [REDACTED] feels afraid to speak up for fear of similar consequences. *Id.* ¶ 26.

27. When detainees are in their cells, it remains impossible to social distance. Detainees reside in a 10' x 7' cell, which apart from the bunk-bed in the room, contains 70.6 square feet to move around. Several detainees, including those who have underlying medical conditions that make them high-risk for developing complications from COVID-19, report that they still share the cell with a cellmate. The facility also still operates “bullpens” of “nine inmates” where new detainee intakes and pre-admission medical screenings of detainees occur. *Cristian A.R.*, Civ. No. 20-3600, ECF No. 26, at *14. Indeed, recently released guidance from ICE issued on April 10, 2020 acknowledges that “strict social distancing may not be possible in

congregate settings such as detention facilities.”⁹ The guidance says that beds should be rearranged, but only “if practicable,” and that six feet of distance should be maintained, but only “whenever possible.” *Id.*

28. Detainees also describe insufficient hand soap, hand sanitizer, and cleaning supplies. While detainees are provided with some soap, at least one has reported that once they run out, requests for additional soap have been ignored or denied. Accordingly, detainees spend 22 or more hours in their cells with limited access to soap, making it extraordinarily difficult to consistently “perform the most effective measure of combatting the spread of the virus: washing and disinfecting their hands.” *Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *7. Detainees further report that they are not provided with sufficient, or in some cases, any, cleaning supplies for their cells. Ms. S [REDACTED] reported that, when she was moved to her current cell, she observed that it had been recently inhabited by another person, but it had not been cleaned and still had debris and toilet paper in the cell. Ms. S [REDACTED] only had access to basic window cleaners in order to clean her own cell. These minimal cleaning supplies are for everyone in the unit to use and must be returned. Gutierrez Decl. ¶ 19. Ms. S [REDACTED] does not have access to cloth or paper towels, so she must resort to using toilet paper (which is rationed) and maxi pads in order to clean her cell. *Id.* ¶ 20. Another detainee has reported that a few weeks ago, when he was moved to another cell, he found that the “walls were covered in feces” and he still was denied cleaning or cleaning products. Declaration of Sarah Deri Oshiro ¶ 17 (“Oshiro Decl.,” attached as Exhibit 3 to this Complaint).

⁹ *COVID-19 Pandemic Response Requirements*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT REMOVAL OPERATIONS, <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>, (Ex. J to Haas Decl.); *see also* Greifinger Decl. ¶ 15 (“ICE facilities have fixed architecture and are designed as congregate settings, requiring many people to be in close proximity.”)

29. Some detainees also report that facility officials have forbidden them from flushing toilets frequently, and that the showers are not regularly cleaned, adding to unsanitary conditions. *See* Oshiro Decl. ¶ 14. Attorneys who visited the facility prior to the end of contact visits confirmed that there was a lack of hand soap in the visitors' bathrooms, meaning that visitors would carry in whatever germs they entered the facility with. Detainees also report that they are provided with a single pair of disposable gloves and a single surgical mask to use repeatedly, which limits the effectiveness of these items. This despite the fact that surgical masks "are not intended to be used more than once."¹⁰ Moreover, the CDC has updated its guidance in light of new evidence of asymptomatic transmission of COVID-19 to recommend that all individuals wear cloth face coverings "in public settings where other social distancing measures are difficult to maintain."¹¹ The failure of the HCCF to provide sufficient functional protective equipment to its detainees, and failure to require detainees to consistently use it when provided, means that the HCCF is not meaningfully in compliance with this guidance. Ms. S█████ reported that she was provided with a simple cloth mask on April 7, 2020, and has not received another mask since then. Gutierrez Decl. ¶ 12. Ms. S█████ was provided gloves once, on April 12 or 13, and only because she had a medical appointment. She disposed of the gloves afterwards and has not receive a new pair since then. *Id.* ¶ 13.

¹⁰ *N95 Respirators and Surgical Masks (Face Masks)*, UNITED STATES FOOD & DRUG ADMINISTRATION, <https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/n95-respirators-and-surgical-masks-face-masks>, (Ex. K to Haas Decl.).

¹¹ *Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission*, CENTERS FOR DISEASE CONTROL (Apr. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>, (Ex. L to Haas Decl.). Likewise, New Jersey Governor Phil Murphy ordered all residents to wear face masks in grocery stores on April 8, 2020. *See New Jersey Orders Residents to Wear Masks in Grocery Stores*, THE HILL (Apr. 8, 2020), <https://thehill.com/homenews/state-watch/491840-new-jersey-orders-residents-to-wear-masks-in-grocery-stores>, (Ex. M to Haas Decl.).

30. Further contributing to the elevated risk of harm is the HCCF's track record of failure to provide adequate and prompt medical care even before the current pandemic. *See* Declaration of Marinda Van Dalen ¶¶ 19-44 ("Van Dalen Decl.," attached as Exhibit 4 to this Complaint). Examples of inadequate care at this specific facility include a history of denial of vital medical treatment such as dialysis and blood transfusions; subjecting detainees in need of surgeries to unconscionable delays; altering established treatment regimens; failing to provide necessary mental health services; overuse of solitary confinement; and ignoring repeated requests for care from detainees with serious symptoms. *Id.* ¶¶ 23-37.

31. Unsurprisingly, these deficiencies have been aggravated in the wake of the COVID-19 outbreak. *See* Declaration of Jennifer Durkin ¶ 7 ("Durkin Decl.," attached as Exhibit 5 to this Complaint). "Detainees report that they are either irregularly receiving medications critical to treating the conditions that put them at a higher risk for severe illness from the virus, like insulin for diabetes, or not receiving those medications at all." *Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *24. One detainee at the facility, who is a type-2 diabetic, reported that he receives his insulin at inconsistent times each day, often after he has eaten, causing his blood sugar to rise. *Id.* at *14. He also reports that he has not been receiving meals from "a designated-diet menu, originally ordered due to his diabetes, hypertension, and high cholesterol," but instead receives "regular meals," and has been told that these are the "only meals available." *Id.* (quotations and alterations omitted). Ms. S [REDACTED] similarly reported that she does not receive adequate medical care at HCCF. Ms. S [REDACTED] suffers from frequent nosebleeds, which have, in the past, led to hospitalizations due to major blood loss from her anemia. Gutierrez Decl. ¶¶ 4, 27. She is prescribed iron pills that she must take daily. *Id.* ¶ 29. However, she has had to wait a month to receive her iron pills after they run out. *Id.* ¶¶ 27-29. On April 8, 2020, Ms. S [REDACTED]'s iron pills ran out again, and she still does not have any pills

despite requesting more. *Id.* ¶ 29. Ms. S [REDACTED] also reported a concerning incident involving another detainee in her unit who suffered a seizure on April 7. There were no guards on duty in the unit, and detainees had to shout and bang on their cell doors for about ten minutes before guards arrived to attend to the woman. *Id.* ¶ 11. Relatedly, Ms. S [REDACTED] has noticed a reduction in staffing as guards themselves fall sick. *Id.* ¶¶ 10, 11, 18.

32. The Department of Homeland Security’s own Office of the Inspector General also recently reported on the substandard care, long waits for medical care and hygiene products, and mistreatment in ICE detention facilities.¹² Additionally, at another New Jersey facility, an inmate recently passed away while waiting over an hour for an ambulance to arrive at the facility. *See* Declaration of Laura Rodriguez, *Arevalo v. Decker*, 2:20-cv-04337, ECF. No. 26-3 ¶ 4 (D.N.J. Apr. 20, 2020). It is unclear whether the individual died from COVID-19, but he had a fever and also suffered from numerous underlying health conditions that would have put him at risk of complications related to the virus. *Id.* ¶ 3.

C. ICE’s Recently Enacted COVID-19 Guidelines are Deficient.

33. On April 10, 2020, ICE issued new guidance related to detention conditions during the COVID-19 pandemic (the “April 10 Guidelines”).¹³ Even if the facilities followed these guidelines to the letter, these guidelines, which amount to non-binding recommendations,¹⁴

¹² *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>, (Ex. N to Haas Decl.).

¹³ *COVID-19 Pandemic Response Requirements*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT REMOVAL OPERATIONS, <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>, (Ex. J to Haas Decl.).

¹⁴ *Fraihat v. U.S. Immigration and Customs Enforcement*, No. 19-1546 JGB, at *8 (C.D. Ca. Apr. 20, 2020) (“there is a serious question whether the issuance of non-binding recommendations is an objectively ‘reasonable’ response to a pandemic, given the high degree of risk and obvious consequences of inaction.”)

fall “well short” of adequately protecting detainees. Greifinger Decl. ¶ 14. To take just a few examples of the Guidelines’ deficiencies:

34. *First*, as noted above, the April 10 Guidelines acknowledge that consistent social distancing is all but impossible, requiring that six feet of distance be maintained between the facility’s staff and detainees only “whenever possible.”

35. *Second*, with regard to new arrivals, the April 10 Guidelines ask those who have had contact with a confirmed COVID-19 case or those who meet epidemiological risk criteria be quarantined and monitored for 14 days. Greifinger Decl. ¶ 17. This policy utterly fails to recognize that—particularly because New York and New Jersey are the epicenter of the pandemic—a large share of new arrivals have likely been exposed to COVID-19 and may be asymptomatic carriers. The April 10 Guidelines do not require any quarantine period for such individuals.

36. *Third*, the April 10 Guidelines’ definition of a “high-risk individual”—one who, due to pre-existing conditions, is more susceptible to developing serious illness from COVID-19—does not comport with the guidelines set forth by the CDC. The CDC has recognized that pregnant or postpartum people, people with histories of smoking, those between the ages of 60 and 65, and those with a body mass index over 40 are at a higher-risk, but the April 10 Guidelines fail to include any of these populations in ICE’s criteria for vulnerable individuals. Greifinger Decl. ¶ 16. Moreover, facilities are only required to identify and report the existence of such individuals in the facility, but are not mandated to release them or install any other protective measures. *Id.* At the HCCF, they are detained as a cohort, which actually facilitates rather than reduces the spread of COVID-19 in the absence of adequate social distancing and access to proper hygiene. *Id.*

37. *Fourth*, the April 10 Guidelines do not address the lack of testing in ICE facilities. Although ICE continues to detain more than 32,000 people, only 400 detainees have been tested to date. The absence of testing limits the efficacy of ICE's isolation procedures. Greifinger Decl. ¶ 18. Much of the April 10 Guidelines contemplates what to do with confirmed cases. Without testing, ICE cannot identify confirmed cases within its facilities, which renders much of the guidelines meaningless.

IV. The COVID-19 Pandemic Presents a Grave Risk of Harm, Including Serious Illness and Death, to Those with Certain Medical Conditions or other Risk Factors.

38. COVID-19 can lead to severe illness, extended hospitalization, and death. Greifinger Decl. ¶ 4. CDC guidance notes that those at high-risk for severe illness from COVID-19 include “[p]eople of all ages with underlying medical conditions, particularly if not well controlled.”¹⁵ Underlying medical conditions that may increase the risk of serious COVID-19 for individuals of any age include “blood disorders, chronic kidney or liver disease, compromised immune system, including from HIV, endocrine disorders, including diabetes, metabolic disorders, heart and lung disease, neurological and neurologic and neurodevelopmental conditions, and current or recent pregnancy.” Greifinger Decl. ¶ 7. CDC guidance also describes that individuals with severe obesity are at greater risk of developing severe complications from COVID-19.¹⁶

¹⁵ *Groups at Higher Risk for Severe Illness*, CENTERS FOR DISEASE CONTROL (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>, (Ex. O to Haas Decl.).

¹⁶ *Groups at Higher Risk for Severe Illness*, CENTERS FOR DISEASE CONTROL (Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>, (Ex. O to Haas Decl.).

39. According to preliminary data from China, 20% of high-risk individuals who contract COVID-19 have died. Greifinger Decl. ¶ 5.; *see also Cristian A.R.*, Civ. No. 20-3600, ECF No. 26 at *24.

40. Those in high-risk categories who do not die may have prolonged serious illness requiring hospital care, including ventilators that will likely be in very short supply. Greifinger Decl. ¶ 6.

V. Ms. S [REDACTED] is a Medically-Vulnerable Individual Who Faces a Heightened Risk of Severe Harm if She Contracts COVID-19 While Detained.

41. Ms. S [REDACTED] faces unprecedented and imminent harm because COVID-19 has been spreading through the HCCF and she does not have the ability to take measures to keep herself healthy.

42. Ms. S [REDACTED] is a 50-year-old woman who has been detained by ICE at HCCF since June 21, 2019. Gutierrez Decl. ¶¶ 2-3. Ms. S [REDACTED] has been a lawful permanent resident for approximately 30 years. *Id.* ¶ 32. She first arrived in the United States in 1980, when she was 10 years old. *Id.* ¶ 33. She has spent almost her entire life in Queens, New York. Until she was detained, she lived in the same community for almost three decades. She attended middle school and high school in Queens. She received an associate's degree at a technical college. In 2005, Ms. S [REDACTED] attended Adelphi University to try to earn a bachelor's degree, but was unable to complete her degree due to the cost. *Id.* Ms. S [REDACTED] is the single mother of a 12-year-old daughter, who is a U.S. citizen. *Id.* ¶ 34. Ms. S [REDACTED] is the primary support for both her daughter and her mother, who suffers from Alzheimer's and relies heavily on Ms. S [REDACTED]'s support. *Id.* ¶ 35. Ms. S [REDACTED] has tried to maintain constant communication with her daughter, Imami, even while detained. Imami has expressed on many occasions that she is eagerly awaiting the return of her mother. *Id.* ¶ 36. If released, Ms. S [REDACTED] will live with her mother, sister, and daughter in

Jamaica, New York. She will have access to her own room in which she can self-isolate. *Id.* ¶ 46.

43. While at HCCF, Ms. S [REDACTED] has worked hard to be a conscientious worker and contribute to the facility. When she arrived at Hudson, Ms. S [REDACTED] volunteered in the kitchen, and after a month of volunteering was hired to work in the kitchen. Later, she worked as part of the cleaning maintenance crew. *Id.* ¶ 37. Although there are no formal programs at HCCF, Ms. S [REDACTED] served as an informal ESL teacher for Spanish speakers. She has been unable to hold these classes since the COVID-19 emergency. *Id.* ¶ 38.

44. Ms. S [REDACTED] suffers from hypertension, obesity, and anemia. Her detention records indicate that she suffers from chronic essential (primary) hypertension. Ms. S [REDACTED] has received multiple types of medications during her detention. *Id.* ¶ 3. In 2018, Ms. S [REDACTED] was hospitalized twice because her anemia caused major blood loss through nose bleeds. During these two hospitalizations, Ms. S [REDACTED] had to receive blood transfusions. *Id.* ¶ 4.

45. Because of her medical conditions, Ms. S [REDACTED] is at high risk for severe illness or death if she contracts COVID-19. Based on these conditions, The Legal Aid Society submitted a release request to ICE on Ms. S [REDACTED]'s behalf on April 21, 2020, noting Ms. S [REDACTED]'s medical vulnerabilities and describing her release plan. It also explained that she does not pose a risk of flight or danger to the community. As of April 25, 2020, ICE has not responded to Ms. S [REDACTED]'s request. *Id.* ¶ 47.

Criminal History

46. In 2018, Ms. S [REDACTED] pleaded guilty to money laundering and mail theft, under 18 U.S.C. § 1956(a)(1) and 18 U.S.C. § 1708. *Id.* ¶ 40. The District Judge who presided over her case, Judge Allyne Ross, sentenced Ms. S [REDACTED] to 364 days on both charges to run concurrently, even though the plea agreement suggested 33 to 41 months. *Id.* ¶ 41. During the sentencing,

Judge Ross remarked upon Ms. S█████'s "considerable mitigating personal characteristics and history" and found that it is unlikely Ms. S█████ would reoffend. Judge Ross noted how this was not only Ms. S█████'s first criminal conviction, but also her first arrest. Judge Ross then noted that a 48-year-old with no criminal history or arrest record like Ms. S█████ represents "one of the lowest statistical risks to recidivate of any defendants that comes before the court." *Id.* ¶ 42. Judge Ross further commented upon Ms. S█████'s strong family ties and how she is a hard worker who has supported multiple people while making little money. *Id.* ¶ 43.

Removal Proceedings

47. Ms. S█████ has diligently sought relief from removal after being placed in removal proceedings. *See* Supplemental Declaration of Gustavo Gutierrez ¶¶ 2-12 ("Supp. Gutierrez Decl.," attached as Exhibit 8 to this Complaint).

48. Ms. S█████ is seeking withholding of removal and relief under the Convention Against Torture ("CAT") based on her fear of persecution and/or torture in Trinidad and Tobago, where she is a citizen. *Id.* ¶¶ 8-10. After a merits hearing, the Immigration Judge ("IJ") found that Ms. S█████ and her brother testified credibly and that Ms. S█████'s criminal conviction was not a "particularly serious crime" and therefore did not bar her from eligibility for withholding of removal. However, the IJ ultimately held that she had not met her burden of establishing she would be persecuted or tortured on account of her sexual orientation and therefore denied her applications for relief and ordered her removed to Trinidad and Tobago on September 25, 2019. *Id.* ¶ 10.

49. Ms. S█████ appealed the IJ's decision to the Board of Immigration Appeals ("BIA"), and on March 26, 2020, the BIA held that the IJ had engaged in insufficient fact-finding and remanded the case with instructions for the IJ to engage in further fact-finding and

analysis on the existence of a pattern and practice of persecution in Trinidad and Tobago. *Id.* ¶ 11-12.

50. No significant delays in her removal proceedings are attributable to Ms. S [REDACTED]. *Id.* ¶ 2-12. And now, because of the IJ's insufficient fact-finding, Ms. S [REDACTED]'s removal proceedings will last for many more months, or longer, as additional proceedings must occur before the immigration court, and then, either side can engage in further appeals to the BIA. *Id.* ¶¶ 13-16. Ms. S [REDACTED] is also entitled to pursue judicial review of the BIA's decision to the Second Circuit, which could take over a year to resolve. *Id.* ¶ 17.

51. Ms. S [REDACTED] has never had a bond hearing in immigration court. Despite the fact that Ms. S [REDACTED] has been detained for over ten months and is unlikely to be released anytime soon, ICE has not provided her with any meaningful review of her detention. The IJ found that Ms. S [REDACTED] is detained under the mandatory detention statute, 8 U.S.C. § 1226(c), and therefore she is statutorily ineligible for a bond hearing in immigration court. *Id.* ¶ 2.

VI. ICE was on Notice of the Risks of COVID-19 to Medically Vulnerable Detainees.

52. Because Ms. S [REDACTED] brought her medical conditions to ICE's attention, the Defendants had actual knowledge of her high risk of harm from exposure to COVID-19.

53. Defendants have also long been on notice of the risk that COVID-19 poses generally to persons with certain underlying medical conditions. Indeed, medical experts who work with the DHS Office of Civil Rights and Civil Liberties raised concerns to the Department in February and March 2020.¹⁷ On March 19, 2020, they brought their concerns to the House and Senate Committees on Homeland Security. Allen & Rich Letter at 2. They explained that in

¹⁷ See March 19, 2020 letter from Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH to House and Senate Committees on Homeland Security, *available at* <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf> [hereinafter "Allen & Rich Letter"], (Ex. P to Haas Decl.).

order to save both the lives of detainees and in the community at large, “minimally, DHS should consider releasing all detainees in high risk medical groups[.]” *Id.* at 5-6.

54. John Sandweg, a former acting director of ICE, has written publicly about the need to release nonviolent detainees because ICE detention centers “are extremely susceptible to outbreaks of infectious diseases” and “preventing the virus from being introduced into these facilities is impossible.”¹⁸

55. Moreover, advocates put Defendants on notice of the risks posed to individuals in New Jersey on March 20, 2020. The April 10 Guidelines also note the severe danger COVID-19 could present to high-risk individuals with underlying medical conditions.

VII. No Other Forum Can Provide Meaningful Relief to Abate the Harm to Ms. S [REDACTED].

56. Despite the exigent circumstances, ICE continues to improperly deny release or bond to Ms. S [REDACTED], whose equities, strong ties to her family and community, and criminal history demonstrate that she is neither a danger to the community nor a risk of flight.

57. ICE has a range of highly effective tools at its disposal to ensure that individuals report for court hearings and other appointments, including conditions of supervision while released.

58. Counsel for Ms. S [REDACTED], The Legal Aid Society, routinely liaise with ICE officials and with counterparts at the U.S. Attorney’s Office to secure the release of clients with severe medical conditions or other compelling circumstances on conditions or reasonable bond. Consistent with this practice, The Legal Aid Society reached out to the government to identify high-risk clients, including Ms. S [REDACTED].

¹⁸ See John Sandweg, “I Used to Run ICE. We Need to Release the Nonviolent Detainees.” THE ATLANTIC (March 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/> (Ex. Q to Haas Decl.).

CAUSES OF ACTION

COUNT I: Violation of the Right to Substantive Due Process

59. Defendants' conduct violates Ms. S■■■■'s right to substantive due process under the Fifth Amendment of the United States Constitution.

60. Defendants' conduct violates Ms. S■■■■'s right to substantive due process under the Fourteenth Amendment of the United States Constitution.

COUNT II: Violation of the Right to Procedural Due Process

61. Defendants' conduct, including their unreasonably prolonged detention of Ms. S■■■■ without providing her a constitutionally-sufficient bond hearing, violates Ms. S■■■■'s right to procedural due process under the Fifth Amendment of the United States Constitution.

62. Defendants' conduct violates Ms. S■■■■'s right to procedural due process under the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Ms. S■■■■ prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue a Writ of Habeas Corpus or an Order for Injunctive Relief requiring Ms. S■■■■'s immediate release, with appropriate conditions as necessary;
3. Issue a declaration that Defendants' continued detention of Ms. S■■■■, who is at increased risk for severe illness from COVID-19, violates the Due Process Clause;
4. If the Court determines that Ms. S■■■■ is not entitled to immediate release, issue a Writ of Habeas Corpus or an Order for Injunctive Relief requiring Defendants to provide Ms. S■■■■ a constitutionally adequate, individualized bond hearing within 48 hours at which the Department of Homeland Security bears the burden of establishing by clear and convincing evidence that continued detention is justified in light of the grave risk to Ms. S■■■■ in ICE

custody, and at which Ms. S [REDACTED]'s vulnerability to COVID-19 is weighed as a factor in determining suitability for release; and at which ability to pay and less restrictive alternative conditions of release are considered, or to immediately release Ms. S [REDACTED];

5. Award reasonable attorneys' fees and costs for this action;
6. Grant any other and further relief that this Court deems just and proper.

Dated: April 27, 2020
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**Petition for permission to file pro hac vice
forthcoming*