

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION

SARAIL MICHAEL ARCHILLA, et al.,

Petitioners,

v.

DIANNE WITTE, et al.,

Respondents.

Civil Action Number  
4:20-cv-596-RDP-JHE

**FEDERAL RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION  
FOR A TEMPORARY RESTRAINING ORDER**

**INTRODUCTION**

Petitioners are eighteen individuals<sup>1</sup> lawfully subject to immigration detention at the Etowah County Detention Center (ECDC) on account of their significant criminal histories and final orders requiring their removal from the United States. They have filed a motion for a temporary restraining order seeking release on the basis of health conditions they allege place them at risk for a complication from COVID-19. COVID-19 has presented significant and well-known challenges for the

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<sup>1</sup> Ordinarily, consolidation of eighteen habeas petitions is not appropriate; however, in the interest of efficiency and case management, the government is not objecting to jointly briefing the requests for preliminary relief on the facility-based claims. If, however, preliminary relief is denied, any continued litigation regarding Petitioners' additional claims should proceed on individual writs.

Nation. The current pandemic does not, however, give this Court the authority to order Petitioners' release from custody, or otherwise change the legality of their detention. Accordingly, the motion should be denied.

The Court lacks jurisdiction to enter a temporary restraining order requiring the release of the eighteen Petitioners. The relief sought is not cognizable through a habeas petition brought pursuant to 28 U.S.C. § 2241. Rather, Petitioners' claims—which challenge “improper practices” or “conditions”—must be litigated as civil rights claims for which the appropriate remedy is not release. *See Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990). In addition, the Court lacks jurisdiction to order Petitioners' immediate release on a temporary restraining order. Neither of the jurisdictional grounds asserted by Petitioners support entry of a temporary restraining order that changes (rather than preserves) the status quo pending further litigation or that awards Petitioners relief that would be appropriate only after a final determination on the merits of their claims.

Further, Petitioners have not satisfied the high standard for obtaining preliminary relief. First, Petitioners cannot show that they are facing immediate, irreparable harm as many of the Petitioners are members of a certified class actively seeking relief for the same claims in *Fraihat v. U.S. Immigration & Customs Enf't*, No. EDCV191546JGBSHKX, 2020 WL 1932393, at \*1 (C.D. Cal. Apr. 20, 2020). Second, Petitioners are unlikely to succeed in establishing that their conditions of

confinement constitute a “punishment” without due process of law. Petitioners are in immigration detention because they have violated the immigration laws of the United States and are subject to detention under those laws. Consistent with the requirements of due process, their confinement is thus “reasonably related” to a legitimate government interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979). Moreover, Petitioners cannot establish a substantive-due-process violation based on the government’s purported deliberate indifference to their medical needs. At ECDC, ICE has proactively mobilized to prevent, contain, and treat COVID-19 cases: ICE has implemented CDC guidance, including screening and appropriately quarantining all new and returning detainees for 14 days as well as anyone showing COVID-19 symptoms; suspended social visitation; and increased the scope and frequency of sanitation procedures and the availability of cleaning supplies, soap, and masks. Finally, the public interest is not served by the release of these individuals. The vast majority of Petitioners have serious criminal convictions. These offenses including numerous child sex offenses, drug manufacturing and distribution offenses, and murder. In addition, all but two Petitioners have final orders of removal that the government has expended significant resources to obtain and have a considerable interest in seeking to enforce. Respondents request that the motion be denied.

## FACTUAL BACKGROUND

### I. CDC and ICE Guidance.

In March 2020, the CDC issued guidance to correctional detention centers regarding the management of COVID-19. *See* Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>. Because detention centers integrate custody, housing, education, recreation, healthcare, food service, and other aspects of daily living in a single physical setting, the CDC has acknowledged that they present unique challenges for the control of COVID-19. In an effort to prevent or mitigate the introduction and spread of COVID-19 in detention facilities, the CDC recommends that a number of steps be taken at detention facilities. These steps include restricting or suspending the transfers of detained persons and to subject any transfers to medical isolation to evaluate if COVID-19 testing is appropriate; quarantining all new inmates for 14 days before they enter into the general population; cleaning and disinfecting surfaces that are frequently touched multiple times per day, including the use of disinfectants effective against the virus; providing detainees, at no cost, with soap, running water, and hand drying machines or paper towels; implementing social distancing strategies to increase the physical space between each detained person; and medically isolating

confirmed or suspected COVID-19 cases. The CDC recommends that staff stay home if they are sick and that daily temperature checks be performed on all staff.

ICE has maintained a pandemic workforce protection plan since February 2014, which was last updated in May 2017. Exhibit 1, Facility Response Declaration of Bryan S. Pitman, Supervisory Detention and Deportation Officer, ICE, dated May 4, 2020 (Facility Response Decl.) ¶ 8. This plan provides specific guidance for biological threats such as COVID-19. *Id.* ICE instituted applicable parts of the plan in January 2020 upon the discovery of the potential threat of COVID-19 in an effort to prevent and mitigate the spread of the novel coronavirus among the detainee population and staff. *Id.* In January 2020, the U.S. Department of Homeland Security (DHS) Workforce Safety and Health Division provided additional guidance to DHS components to address assumed risks and interim workplace controls. *Id.* This guidance included the use of N95 masks, available respirators, and additional Personal Protective Equipment (PPE). *Id.*

In addition, in March 2020, ICE Health Services Corps (IHSC) issued the *IHCS Interim Recommendations for Risk Assessment of Persons with Potential 2019-Novel Coronavirus (COVID-19) Exposure in Travel-, Community-, Custody Settings*. *Id.* Since the onset of reports of COVID-19, ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential

exposure among detainees.<sup>2</sup> *Id.* ¶ 9. In testing for COVID-19, IHSC is also following guidance issued by the CDC to safeguard those in ICE custody and care. *Id.* ¶ 10.

On April 10, 2020, ICE Enforcement and Removal Operations (ERO) released its *ERO COVID-19 Pandemic Response Requirements (PRR)*, a guidance document that builds upon previously issued guidance and sets forth specific mandatory requirements to be adopted by all detention facilities housing ICE detainees, as well as best practices for such facilities, to ensure that detainees are appropriately housed and that available mitigation measures are implemented during this pandemic. *See* U.S. Immigration and Customs Enforcement, *ERO COVID-19 Pandemic Response Requirements* (Apr. 10, 2020), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>. The ERO guidance requires non-dedicated ICE detention facilities to comply with the CDC's interim guidance. *Id.* ERO requirements also provide that cloth face coverings should be worn by detainees and staff. *Id.* Similar to CDC guidelines, detention facilities are to provide detainees and staff with no-cost, unlimited access to supplies for hand cleansing, including liquid soap, running water, hand drying machines or disposable paper towels, and no-touch trash receptacles. *Id.* Screening should take place before staff and new intakes enter the facility (or just inside the

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<sup>2</sup> ICE closely follows the CDC's *Interim Guidance on Management of Coronavirus 2019 (COVID-19) in Correctional and Detention Facilities*, and its general public guidance at <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

facility), including visual and temperature checks. *Id.* As it relates to social distancing, ERO recommends efforts at reducing facility population to 75% of capacity, housing detainees in individual rooms to the extent possible, staggering access to recreation and mealtimes, avoiding congregating in groups of ten or more, and maintaining a distance of six feet. *Id.*

## **II. The Etowah County Detention Center (ECDC).**

ICE contracts with the Etowah County, Alabama, Sheriff's Office (ECSO) for the management and operation of the ECDC pursuant to a rider agreement on a U.S. Marshal Service contract. The provision of health care services provided at ECDC are overseen by Field Medical Coordinators (FMCs), who work for the IHSC. Facility Response Decl. ¶¶ 4-6. IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps officers, federal civil servants, and contract health professionals. *Id.* ¶ 7. Medical care at the ECDC is provided by medical professionals employed by ECSO, with oversight by the IHSC. Exhibit 2, Detainees' Status Declaration of Bryan S. Pitman, Supervisory Detention and Deportation Officer, ICE, dated May 5, 2020 ("Detainees' Status Decl.") ¶ 5. The ECDC, to include its medical operations, are inspected annually by ICE independent contractors. *Id.* ¶ 5. Additionally, ICE's Office of Professional Responsibility (OPR) inspects ECDC twice a year. *Id.* ECDC routinely achieves an outstanding rating by the independent contractor and OPR, whose inspections are

posted publicly. *Id.*; U.S. Immigration and Customs Enforcement, Facility Inspections, <https://www.ice.gov/facility-inspections>.

ECDC has an ICE detainee population well below its maximum capacity. *See* Facility Response Decl. ¶¶ 13, 19. ECDC has the capacity to house 320 ICE detainees. Detainees' Status Dec. ¶ 6. At this time, there are 110 ICE detainees housed at the facility. *Id.* Once a pandemic was recognized, the entire long-term population was quarantined in a single unit for 14 days in individual cells until the population was confirmed to be asymptomatic. Facility Response Decl. ¶ 13. This allowed ECDC to free up a separate unit apart from the general population for new ICE admissions to be quarantined and screened for COVID-19. *Id.* The long-term population continues to be housed in this "sterile" unit with no new detainees being introduced prior to being quarantined for a two-week period. *Id.* Any contact with staff, medical, or other essential individuals is minimized to the highest degree. *Id.*

At ECDC, detainees are assessed for COVID-19 symptoms and administered tests for COVID-19 as set forth in CDC guidelines. *Id.* ¶¶ 10, 14. Each detainee is asked to confirm if he or she has had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether he or she has traveled from or through area(s) with sustained community transmission in the past two weeks. *Id.* Out of an abundance of caution, ECDC has taken the position that all incoming detainees may have been in areas with sustained community transmission. *Id.*

ICE and ECDC have instituted screening guidance for new arrivals to identify individuals who meet the CDC's criteria for epidemiological risk of exposure to COVID-19. *Id.* ¶ 15. Entry into the facility is denied to any incoming detainee who exhibits a fever and/or respiratory symptoms unless that detainee has tested negative for COVID-19. *Id.* ECDC has established procedures to continue closely monitoring the population's health and symptoms, including additional temperature checks of detainees where medical circumstances warrant. *Id.*

In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure) and are monitored daily for COVID-19 symptoms such as a fever and respiratory illness. *Id.* ¶ 16. As identified in the PRR, a cohort is a group of persons with a similar condition grouped or housed together for observation over a period of time. *Id.* Cohorting is an infection-prevention strategy which involves housing detainees together who were exposed to a person with an infectious organism but are asymptomatic. *Id.*

Given the significant variance in facility attributes and characteristics, cohorting options and capabilities will differ across the various detention facilities housing ICE detainees. *Id.* At ECDC, cohorting is achieved in the following manner:

- 1) Detainees exhibiting any COVID-19 symptoms once inside the facility are examined by a medical professional and are sent to be

- housed in Unit 1 in their own single occupancy cell. Unit 1 is separate from other units and the general population.
- 2) Any ECDC personnel entering Unit 1 must wear PPE (masks, gloves, and a gown if necessary). There are no more than two deputies dedicated to the operation of this unit. Unit 1 is a non-direct supervised unit in that the detainees are observed through video monitors and glass partitions. The deputies monitor these detainees from the secured area without having to enter the unit.
  - 3) Medical personnel check the detainee's vital signs, such as heart rate, blood pressure, oxygen levels, and temperature, and other symptoms every four hours, starting at 8:00 a.m., and document them in the Unit Log. During this medical screening process, the detainee is not allowed to fully exit their cell and instead must come out only far enough to be reached by the medical personnel. Any changes to the detainee's medical condition are immediately communicated to medical personnel.
  - 4) The detainees housed in Unit 1 are issued a N95 mask. Any time the detainee leaves their cell for medical appointments, to shower, or other reasons the detainee must put on their mask before their cell door is opened and must wear the mask while moving through the dayroom. Any surfaces and objects the detainee touches while they are outside their cell must be sanitized afterwards. The detainees are not allowed to stop at any other cells.
  - 5) Unit 1 is sanitized twice a day by using a forced air machine that distributes a disinfectant solution into the air and on surfaces in order to disinfect common areas. This process takes place after the detainees have vacated the targeted area.

*Id.* ¶ 16.

ECDC, which manages male detainees only, provides daily access to sick calls in a clinical setting, 36 observation beds, and access to specialty services, such as mental health and dental services. *Id.* ¶ 17. The facility can admit patients to the local

hospital for a higher level of care, when necessary. *Id.*

As of May 4, 2020, ICE has reported that there is one ICE detainee who is positive for COVID-19 at ECDC. *Id.* ¶ 18. That detainee is on medical observation per CDC guidelines. *Id.* The detainee in question entered ECDC custody on April 21, 2020 and has been quarantined since that date consistent with ECDC procedure for new transfers. *Id.* The detainee has had no known contact with any other detainee at the facility, including the Petitioners. *Id.* In response and as a precautionary matter, ECDC has increased medical screenings in the form of daily vital sign checks of all detainees in order to further mitigate the spread of the virus. There are no other suspected COVID-19 cases among the ICE detainee population at Etowah.<sup>3</sup> *Id.* ¶ 18.

The ECDC has increased sanitation frequency and provides sanitation supplies as follows:

- 1) ECDC provides industrial cleaner, soap, hot water, paper towels, and face masks to staff and cleaning crews. CDC-recommended cleaning and disinfection above and beyond normal activity has been implemented. *Id.* ¶ 20.
- 2) All common areas in the facility are being disinfected multiple times per day. The common areas included are detainee housing areas, law libraries, medical areas, intake areas, door handles throughout the facility, desk and counter surfaces in high traffic areas, lobby seating areas, restrooms, and any other areas the facility identified as needing such cleaning. *Id.* ¶ 20.
- 3) Disinfectant in excess quantities is maintained in the general population area to be accessed by the detainees for cleaning, mopping, and wiping

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<sup>3</sup> ICE is unable to provide any case information on non-ICE inmates as they are in county custody. However, county inmates and ICE detainees are housed separately.

down of any areas the detainees would like to clean. *Id.* ¶ 20.

- 4) ECDC utilizes daily a forced air machine that distributes a disinfectant solution into the air and on common area surfaces in order to disinfect all areas throughout the facility. This process takes place after the detainees have vacated the targeted area. *Id.* ¶ 20.
- 5) Any food trays that are delivered to the individual units are disinfected prior to leaving the kitchen. The trays are covered with a lid by kitchen personnel with gloved hands and served contact-free to the detainees. *Id.* ¶ 20.
- 6) Additional cleaning products such as soap for showers and hand soap for sink handwashing have been added to housing areas and are available at no cost to detainees. Detainees have sinks in each individual cell as well as in the general population area for handwashing at any time. Each cell also has a toilet. Detainees can wash their hands as frequently as they want and are encouraged to do so. Detainees are encouraged to communicate with local staff when additional hygiene supplies or products are needed. *Id.* ¶ 20.
- 7) Alcohol based disinfectant dispensers have been placed in lobby areas for public and staff use. Internal facility areas have been equipped with disinfectant dispensers as well. ECDC also provides soap and paper towels that are present in bathrooms and work areas within the facilities. Everyday cleaning supplies such as soap dispensers, bars of soap, and paper towels are routinely checked and are available for use. *Id.* ¶ 20.
- 8) Each detainee has received a face covering or mask as a precautionary measure to prevent any spread of the virus from an asymptomatic person. Detainees have been instructed to wear the face coverings when they are in common areas. *Id.* ¶ 20.
- 9) Detainees have been educated through in-person town halls on best practices to keep from spreading any contagions. For instance, detainees have been advised to keep at least six feet away from others as much as possible. Educational posters with illustrations and instructions in English and Spanish demonstrating good hygiene practices have been placed throughout the facility, including in detainee living areas. *Id.* ¶ 20.

10) The administration is encouraging both staff and the detainee population to use these tools often and liberally. *Id.* ¶ 20.

11) Detainees, inmates, and staff are all provided with a face mask to wear. *Id.* ¶ 24.

ECDC has also implemented important safeguards for detainees while ensuring that they have access to important amenities. Detainees have access to dayrooms, telephones, and law library computers within specified guidelines. *Id.* ¶ 22. The detainees are required to wear their masks in these areas and to maintain the appropriate social distancing of six feet separation. *Id.* Access to dayrooms and telephones has not been impacted by COVID-19. *Id.*

Additionally, ECDC has limited professional visits to non-contact visits and suspended in-person social visitation and facility tours. *Id.* ¶ 21. In-person legal visitation remains permitted at ECDC. However, non-contact legal visits (e.g., video conferences) are offered first and strongly encouraged to limit exposure to ICE detainees. *Id.* However, if the attorney believes the legal visit requires contact, attorneys are able to meet with their clients at ECDC in the attorney visiting rooms while maintaining the appropriate social distancing of six feet separation. *Id.* For contact attorney visits, detainees must wear surgical masks, which are provided by ECDC. *Id.* Attorneys must also wear personal protective equipment, masks and gloves, in order to enter the facility. *Id.* ¶ 23. All attorneys are allowed 24/7 access to contact and non-contact visitation with detainees. *Id.* ¶ 21.

All persons seeking entry into ECDC, including attorneys, undergo a comprehensive evaluation before they are permitted inside. *Id.* ¶ 23. ECDC screens all staff and vendors as they enter the facility, including checking body temperatures. *Id.* All visitors must also wear personal protective equipment (surgical or N95 mask, and latex gloves or equivalent) in order to enter the facility. *Id.* The ECDC screens all detainee intakes when they enter the facility, including travel histories, taking medical histories, and checking body temperatures and other symptoms of COVID-19. *Id.* ¶ 24. ECDC has procedures to continue monitoring the populations' health. *Id.*

ECDC also provides education on COVID-19 to staff and detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, requesting to seek medical care if they feel ill, and maintaining at least six feet of separation, when possible. *Id.* ¶ 25. The facility provides detainees daily access to sick call. *Id.* At ECDC, all new arrival detainees as well as detainees who are transported to any offsite location (hospitals, medical appointments, interviews) are, upon return, instructed to shower, provided with new uniforms, and housed separate from the general population for 14 days to monitor for the onset of any symptoms related to COVID-19. *Id.* ¶ 26. This separate housing and monitoring process is in addition to the initial intake screenings and temperature checks described above. *Id.*

ICE routinely reviews its “at-risk population” at ECDC to include the elderly, detainees with compromised immune systems, those with chronic care conditions, and those who are “at higher risk for severe illness” as identified by the CDC, to ensure that when detention is mandated or appropriate. *Id.* ¶ 27; Detainees’ Status Decl. ¶ 26. These reviews are completed on a case-by-case basis and consider the totality of circumstances, including the detainee’s health, public safety that a release could create, flight risk, the requirement to detain certain aliens under law. *Id.*; see 8 U.S.C. § 1226. ICE adjusts custody conditions when appropriate, to protect the health, safety and well-being of its detainees. Facility Response Decl. ¶ 27. ICE’s reviews of its “at-risk population” are done to ensure that custody is safe, humane, and in an appropriate environment given the circumstances. Detainees’ Status Decl. ¶ 26. ICE will continue to review its “at-risk population” in the days and weeks ahead when deciding whether any detainees should be released from custody. *Id.* ICE detainees at ECDC fall under the authority of the New Orleans field office which to date has released more than 75 “at-risk” detainees. *Id.*

### **III. The Petitioners.**

The Petitioners are eighteen individuals who, at the time of the filing of the petition, were detained at ECDC. They alleged that they have pre-existing conditions that place them at increased risk of contracting a serious case of COVID-19. As a result of these medical conditions, fifteen of the Petitioners are members of the

certified class in *Fraihat v. U.S. Immigration & Customs Enf't*, No. EDCV191546JGBSHKX, 2020 WL 1932570, at \*20 (C.D. Cal. Apr. 20, 2020), seeking revised release procedures to address the same deliberate indifference and Rehab Act claims raised in the Petition here.

ICE has closely reviewed the medical background, as well as the criminal and immigration history of each of the Petitioners to identify whether they are at a higher-risk for serious illness from COVID-19. Detainees' Status Decl. ¶ 27. ICE undertook these steps in order to determine whether continued detention remains appropriate in light of the COVID-19 pandemic. *Id.* Given the precautions that ICE and ECDC have taken, the agency has determined that, at this time, detention should continue for each Petitioner except for Joseph Debonnaire Soho. The relevant the person and immigration histories for the remaining seventeen Petitioners are set forth below.

**1. Allen Roger Olano-Esparaza**

Allen Roger Olano-Esparaza is a 37-year-old citizen of Peru. *Id.* ¶ 8. In 1997, Olano-Esparaza was admitted to the United States at the Miami Port of Entry as a nonimmigrant. *Id.* Six years later, Olano-Esparaza adjusted his status to that of Lawful Permanent Resident. *Id.* On November 30, 2016, Olano-Esparaza was encountered by ERO-San Diego at the Vista Detention Center in San Diego. *Id.* Olano-Esparaza was issued a Notice to Appear, charging removability under Section

237(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act). *Id.* On December 22, 2016, Olano-Esparza entered ICE custody. *Id.* On April 3, 2018, an immigration judge in San Diego ordered Olano-Esparza removed to Peru. *Id.* On September 14, 2018, the Board of Immigration Appeals dismissed his appeal. *Id.* On October 10, 2018, Olano-Esparza filed a Petition for Review in the Ninth Circuit Court of Appeals, resulting in an automatic stay of removal (Case No. 18-72758). *Id.* This Petition is still pending. *Id.* On January 7, 2019, Olano-Esparza was transferred to ECDC. *Id.* Olano-Esparza has the following criminal history: On November 21, 2016, he was convicted in San Diego of Lewd and Lascivious Acts- with the Victim being 14-15 Years Old. *Id.* He was sentenced to 180 days of confinement. *Id.*

## **2. Edson Flores.**

Edson Flores is a 48-year-old citizen of Honduras. *Id.* ¶ 9. On January 17, 2008, Flores was encountered by ERO New York at the Rikers Island Prison Complex in New York. *Id.* Flores was issued a Notice to Appear, charging inadmissibility under Section 212(a)(6)(A)(i) of the Act. On June 10, 2011, Flores entered ICE custody at the Buffalo, New York Service Processing Center. *Id.* On January 6, 2012, an immigration judge in New York ordered Flores removed to Honduras. *Id.* On May 22, 2012, the Board of Immigration Appeals dismissed Flores' appeal. *Id.* On June 15, 2012, Flores filed a Petition for Review in the Second Circuit Court of Appeals resulting in a forbearance stay of removal. *Id.* On February

26, 2015, the Second Circuit Court remanded the case to the Board of Immigration Appeals. *Id.* On February 3, 2016, the Board of Immigration Appeals remanded the case to the immigration court. *Id.* On March 23, 2017, an immigration judge in New York again ordered Flores removed to Honduras. *Id.* On October 17, 2017, the Board of Immigration Appeals dismissed Flores' second appeal. *Id.* On October 23, 2017, Flores filed a second Petition for Review in the Second Circuit resulting in a forbearance stay of removal. *Id.* On November 1, 2017, Flores transferred to ECDC. *Id.* On October 29, 2019, the Second Circuit Court granted the Petition for Review and remanded the case to the Board of Immigration Appeals. *Id.* This decision is pending with the Board of Immigration Appeals. *Id.* Flores has the following criminal history: On January 10, 2008, the Supreme Court in New York County convicted Flores of Act in a Manner to Injure a Child Less than 17 and sentenced him to one year of confinement. *Id.* On January 10, 2008, the Supreme Court in New York County convicted Flores of Sexual Abuse 1st Degree-Sexual Contact with Individual Less than 11 Years Old and sentenced him to 42 months of confinement. Flores is a registered sex offender. *Id.*

### **3. Alex Giovanni Hernandez**

Alex Giovanni Hernandez is a 48-year-old citizen of Honduras. *Id.* ¶ 10. On September 29, 2016, Hernandez was encountered by ERO-Fresno, California at the Corcoran, California State Prison. *Id.* Hernandez was processed as an Administrative

Removal under Section 238(b) of the Act for having committed an aggravated felony under Section 237(a)(2)(A)(iii) of the Act. *Id.* On June 19, 2017, an immigration judge in San Francisco granted Hernandez relief from removal. *Id.* On July 6, 2017, Hernandez and DHS appealed that decision to the Board of Immigration Appeals. *Id.* On November 24, 2017, the Board of Immigration Appeals dismissed Hernandez's appeal and sustained the appeal of the DHS, effectively ordering Mr. Hernandez removed to Honduras. *Id.* On December 14, 2017, Hernandez filed a Petition for Review in the Ninth Circuit Court of Appeals, resulting in an automatic stay of removal. *Id.* This case is currently pending. *Id.* On December 20, 2018, Hernandez was transferred to the ECDC. *Id.* On January 9, 2019, Hernandez filed a Petition for Writ of Habeas Corpus with the United States District Court, Northern District of Alabama. *Id.* On May 22, 2019, the District Court dismissed that Petition. *Id.* On January 23, 2020, Hernandez filed a second Petition for Writ of Habeas Corpus with the United States District Court, Northern District of Alabama. *Id.* The Petition is still pending. *Id.* Hernandez has the following criminal history: On December 17, 1990, the Superior Court in Los Angeles convicted Hernandez of Robbery in the Second Degree. He was sentenced to two years of confinement. *Id.* On November 19, 1991, the Superior Court in Los Angeles convicted Hernandez of Felon in Possession of a Firearm. *Id.* He was sentenced to two years of confinement. *Id.* On October 28, 1997, the Superior Court in Los Angeles convicted Hernandez

of Robbery in the Second Degree and Possession of a Firearm by a Felon. *Id.* He was sentenced to 25 years of confinement. *Id.* Hernandez is a certified class representative for the *Fraihat* class. *Fraihat*, 2020 WL 1932570.

#### **4. Tesfa Miller**

Tesfa Miller is a 38-year-old citizen of Saint Vincent. *Id.* ¶ 11. On February 20, 2018, Miller was encountered by ERO-Atlanta at the Georgia Diagnostic and Classification Prison in Jackson, Georgia. *Id.* Miller was issued a Notice to Appear, charging removability under Section 237(a)(2)(A)(iii) of the Act. *Id.* On March 12, 2019, an immigration judge in Atlanta ordered Miller removed to Saint Vincent. *Id.* On August 26, 2019, the Board of Immigration Appeals dismissed Miller's appeal. *Id.* On September 23, 2019, Miller filed a Petition for Review in the Eleventh Circuit Court of Appeals. *Id.* On November 1, 2019, the Eleventh Circuit granted a stay in Miller's case, and on December 23, 2019, the Eleventh Circuit remanded the case to the Board of Immigration Appeals. *Id.* This case is currently pending. *Id.* On May 8, 2019, Miller transferred to the ECDC. *Id.* Miller has the following criminal history: On November 10, 2016, the Superior Court in Fulton County, Georgia convicted Miller of False Imprisonment. *Id.* He was sentenced to ten years with the first seven years to be served in confinement and the remainder to be served on probation. *Id.* On November 10, 2016, the Superior Court in Fulton County, Georgia convicted Miller of Terroristic Threats. *Id.* He was sentenced to five years to be served on

probation. *Id.* On November 10, 2016, the Superior Court in Fulton County, Georgia convicted Miller of Battery. *Id.* He was sentenced to 12 months to be served on probation. *Id.* As a result of these convictions, Miller is currently subject to mandatory detention under 8 U.S.C. 1226(c).

### **5. Karim Golding**

Karim Golding is a 35-year-old citizen of Jamaica. *Id.* ¶ 12. On April 10, 2015, Golding was encountered by ERO New York at the Federal Bureau of Prisons' Metropolitan Detention Center-Brooklyn in Brooklyn, New York. *Id.* Golding was served with an I-247, Immigration Detainer-Notice of Action. *Id.* On October 27, 2016, Golding entered ICE custody at the Varick Street Service Processing Center, New York City, and was issued a Notice to Appear, charging inadmissibility under Section 212(a)(6)(A)(i) of the Act. *Id.* On September 15, 2017, an immigration judge in New York ordered Golding removed to Jamaica. *Id.* On March 5, 2018, the Board of Immigration Appeals dismissed Golding's appeal. *Id.* Fourteen days later, Golding filed a Petition for Review and Motion for Stay of Removal in the Second Circuit Court of Appeals, resulting in a forbearance stay of removal. *Id.* On April 5, 2019, Golding filed a Petition for Writ of Habeas Corpus with the United States District Court, Northern District of New York. *Id.* On July 28, 2019, Golding was transferred to the ECDC. *Id.* December 10, 2019, United States District Court, Northern District of New York, granted the Petition for Writ of Habeas Corpus in

part and denied it in part, granting Golding a bond hearing within 10 days. *Id.* On December 17, 2019, an immigration judge denied bond to Golding. *Id.* On January 16, 2020, Golding filed a Motion to Reopen and appeal of the bond denial with the Board of Immigration Appeals. *Id.* That motion to reopen and appeal are currently pending. *Id.* Golding has the following criminal history: On March 23, 2005, Golding was convicted in the Queens County, New York Supreme Court of the offence of Criminal Possession of a Loaded Firearm and was sentenced to one year of confinement. *Id.* On March 12, 2015, Golding was convicted in the United States District Court for the Eastern District of New York of Conspiracy to Distribute and Possess with the Intent to Distribute Cocaine Base, three counts of Distribution and Possession with Intent to Distribute Cocaine Base, and Attempted Distribution and Possession with Intent to Distribute Cocaine Base. *Id.*

## **6. Sarail Archilla**

Sarail Archilla is a 44-year-old who claims to be a citizen of Canada. *Id.* ¶ 13. He is detained at the ECDC. *Id.* On May 4, 2017, Archilla was encountered by ERO-Atlanta at the D. Ray James Federal Correctional Institution in Folkston, Georgia. *Id.* Archilla was processed as a final administrative removal order under Section 238(b) of the Act for having committed an aggravated felony under Section 237(a)(2)(A)(iii) of the Act. *Id.* On July 26, 2017, Archilla entered ICE custody at the Stewart Detention Facility in Lumpkin, Georgia. *Id.* On December 21, 2017,

Archilla transferred to the ECDC. *Id.* Archilla has the following criminal history: On July 15, 2010, Archilla was convicted in the United States District Court, District of Massachusetts, for the offense of conspiracy to possess with intent to distribute cocaine and possession with intent to distribute cocaine. *Id.* He was sentenced 144 months of confinement. *Id.* Archilla is currently in Failure to Comply Status for refusing to cooperate with removal efforts. *Id.* Archilla claims to be from Canada, but Canada has no records to confirm his citizenship. *Id.* Archilla is believed to be from Jamaica, due to statements made during his criminal investigation. *Id.* However, he has not been cooperative with ICE in determining citizenship. *Id.* ICE is working with the Jamaican government to determine citizenship. *Id.* Archilla has been in multiple altercations while in ICE custody and has threatened ICE Officers with physical harm during liaison. *Id.*

#### **7. Randane Junior Williams**

Randane Junior Williams is a 30-year-old citizen of Jamaica. *Id.* ¶ 14. On August 20, 2004, Williams was admitted to the United States at Boston as a temporary visitor for pleasure with authorization to remain until February 19, 2005. *Id.* On October 14, 2008, Williams adjusted status to that of a Lawful Permanent Resident. *Id.* On February 6, 2018, Williams was released from the Nevada Department of Corrections to ICE custody at the Las Vegas Field Office. *Id.* Williams was issued a Notice to Appear, charging him with removability under

section 237 (a)(2)(A) (iii) of the Act. On July 17, 2018, an immigration judge at Las Vegas ordered Williams removed to Jamaica. *Id.* On December 18, 2018, the Board of Immigration Appeals dismissed his appeal. *Id.* On September 9, 2018, Williams was transferred to the ECDC. *Id.* On January 14, 2019, Williams filed a Petition for Review with the Ninth Circuit Court of Appeals, triggering a stay of his removal. *Id.* On July 31, 2019, a request for a stay of removal was granted by the Ninth Circuit. *Id.* Williams has the following criminal history: On June 23, 2016, Williams was convicted in the District Court of Clark County, Nevada for possession with the intent to sell a controlled substance (trafficking). *Id.* Williams was sentenced to a term of 12 to 32 months of confinement which was suspended with Williams being placed on supervised probation for a period of three years. *Id.* Williams subsequently violated the terms of the court's probation order and his probation was revoked on October 13, 2017. *Id.*

#### **8. Maxime Peter Blanc**

Maxime Peter Blanc is a 46-year-old citizen of the Dominican Republic. *Id.*

¶ 15. On April 16, 1994, Blanc was admitted to the United States at New York as an Immigrant. *Id.* On March 2, 2018, Blanc was encountered by ICE while in custody of the Federal Bureau of Prisons, D. Ray James Federal Correction Facility in Folkston, Georgia. *Id.* He was issued a Notice to Appear, charging him with removability under section 237(a)(2)(A) (ii) and (iii) of the Act. *Id.* On June 26,

2018, Blanc was transferred to ICE custody and detained without bond due to his criminal convictions. *Id.* On December 31, 2018, an immigration judge in Lumpkin, Georgia ordered Blanc removed to the Dominican Republic. *Id.* On March 26, 2019, Blanc was transferred to the ECDC. *Id.* On June 6, 2019, the Board of Immigration Appeals dismissed Blanc's appeal. *Id.* On July 3, 2019, Blanc filed a Petition for Review with the Eleventh Circuit Court of Appeals. *Id.* On August 16, 2019, a temporary stay of removal was granted by the Eleventh Circuit. *Id.* Blanc has the following criminal history: On July 12, 2012, Blanc, was convicted in the United States District Court, Southern District of Florida, of Possession of 15 or more Unauthorized Access Devices, that is, Social Security Numbers, with the Intent to Defraud and Aggravated Identity Theft. *Id.* Blanc was sentenced to 30 months of imprisonment. *Id.* On January 11, 2016, Blanc was convicted in the United States District Court, Southern District of Florida, of the offense of Possession of 15 or more Unauthorized Access Devices and Aggravated Identity Theft. *Id.* Blanc was sentenced to 33 months of imprisonment. *Id.*

#### **9. Churvin Roswill Webster**

Churvin Roswill Webster is a 57-year-old citizen of Anguilla. *Id.* ¶ 16. On June 22, 1976, Churvin was admitted to the United States at San Juan, Puerto Rico as an Immigrant. *Id.* On October 20, 2017, Webster was encountered by ICE near New Brunswick, New Jersey. *Id.* Webster was issued a Notice to Appear, charging

him with removability under sections 237 (a)(2)(A)(iii) and (a)(2)(B)(i) of the Act. *Id.* On November 15, 2018, Webster was ordered removed to Anguilla. *Id.* On May 17, 2019, the Board of Immigration Appeals dismissed Webster's appeal. *Id.* On May 31, 2019, Webster filed a Petition for Review with the Third Circuit Court of Appeals. *Id.* A temporary stay of removal was granted the same day. *Id.* On April 7, 2019, Webster was transferred to the ECDC. *Id.* Webster has the following criminal history: On February 13, 1991, Webster was convicted in the Superior Court of Middlesex County, New Jersey for Possession with the Intent to Distribute a Controlled Substance (cocaine) within 1000 feet of a school zone. *Id.* Webster was sentenced to three years of confinement. *Id.* On March 27, 2009, Webster was convicted in the Superior Court of Somerset County, New Jersey for Possession of a Controlled Substance 3rd degree (heroin) and Bail Jumping. *Id.* Webster was sentenced to three years supervised probation. *Id.*

#### **10. Bakhodir Sabitovich Madjitov**

Bakhodir Sabitovich Madjitov is a 38-year-old citizen of Uzbekistan. *Id.* ¶ 17. On March 12, 2006, Madjitov was admitted to the United States as a nonimmigrant with authorized to remain in the United States not to exceed July 20, 2006. *Id.* On January 17, 2007, Madjitov was issued a Notice to Appear, charging him with removability under with Section 237(a)(1)(B) of the Act. *Id.* On August 31, 2011, an immigration judge ordered Madjitov removed to Uzbekistan. *Id.* On December

30, 2011, the Board of Immigration Appeals remanded the case to the immigration judge. *Id.* On May 17, 2013, an immigration judge again ordered Madjitov removed to Uzbekistan. *Id.* On December 22, 2017, Madjitov was apprehended by Homeland Security Investigations in Windsor, Connecticut and entered ICE custody at the Bristol County, Connecticut Jail. *Id.* On January 26, 2018, Madjitov was placed into Failure to Comply Status by ERO Boston because he refused to complete travel document information. *Id.* On February 21, 2018, Madjitov was transferred to the ECDC. *Id.* On April 29, 2019, the Embassy of Uzbekistan issued a travel document for Madjitov. On June 7, 2019, Madjitov filed a Petition for Review and Motion for Stay of Removal with the Third Circuit Court of Appeals. *Id.* On June 11, 2019, Madjitov was scheduled for removal to Uzbekistan through John F. Kennedy Airport in New York City, but he refused to board the aircraft. *Id.* On July 30, 2019, the Third Circuit dismissed the Petition for Review and Stay of Removal. *Id.* On September 11, 2019, Madjitov filed an Emergency Motion for Temporary Restraining Order in the United States District Court in Connecticut, which was denied. *Id.* On September 30, 2019, Madjitov filed a Petition for Review and Motion for Stay of Removal with the Eleventh Circuit. *Id.* On October 29, 2019, the Embassy of Uzbekistan reissued the travel document for Madjitov. *Id.* On November 25, 2019, the Eleventh Circuit denied the Stay of Removal. *Id.* The Petition for Review remains pending. *Id.* On November 26, 2019, Madjitov filed an Emergency

Stay of Removal with the Second Circuit Court of Appeals, resulting in a forbearance stay of removal. *Id.* On November 27, 2019, Madjitov filed a Motion for Reconsideration of the Stay of Removal with the Eleventh Circuit. *Id.* On December 18, 2019, Madjitov filed an I-246, Request for Stay of Removal, with ICE, which was denied by the New Orleans Field Office. *Id.* On January 21, 2020, the Second Circuit denied the Motion for Stay of Removal. *Id.* On February 11, 2020, the Eleventh Circuit denied the Motion for Reconsideration of the Stay of Removal. *Id.* Madjitov has stated that he does not intend to comply with his removal. *Id.*

#### **11. Ray Fuller**

Ray Fuller is a 54-year-old citizen of Jamaica. *Id.* ¶ 18. On November 10, 1999 Fuller, was admitted to the United States at Chicago as a Conditional Immigrant (fiancée of a United States Citizen). *Id.* On November 29, 2004, his petition to remove conditions of his entry and do become a permanent resident was denied by United States Citizenship and Immigration Services. *Id.* On August 5, 2014, Fuller was encountered by ICE on his release from the Illinois Department of Corrections and issued a Notice to Appear, charging removability under Section 237(a)(2)(A) (iii) of Act. *Id.* On May 27, 2015, an immigration judge in Chicago ordered Fuller removed to Jamaica. *Id.* The Board of Immigration Appeals dismissed his appeal. *Id.* On October 23, 2017, Fuller filed a Petition for Review with the

Seventh Circuit Court of Appeals. *Id.* On March 21, 2018, Fuller was transferred to ECDC. *Id.* On May 18, 2018, the Seventh Circuit granted a Stay of Removal. *Id.* On January 23, 2019, the Seventh Circuit remanded the case to the Board of Immigration Appeals. *Id.* The case is currently pending with the Board of Immigration Appeals. *Id.* Fuller has the following criminal history: On March 9, 2012, Fuller was convicted in the Circuit Court of the 19th Judicial Circuit of Lake Charles, Illinois for Attempted Criminal Sexual Assault. *Id.* He was sentenced to a term of four and a half years of confinement. *Id.*

## **12. Kenneth Manning Hernandez**

Kenneth Manning Hernandez is a 61-year-old citizen of Jamaica. *Id.* ¶ 19. On August 25, 2016, Manning was encountered by ERO-New York at the Otisville Federal Correctional Institution in Otisville, New York. *Id.* Manning was issued a Notice to Appear, charging him with removability under Section 212(a)(6)(A)(i) of the Act. *Id.* On February 3, 2017, an immigration judge in New York ordered Manning removed to Jamaica. *Id.* On June 13, 2017, the Board of Immigration Appeals dismissed Manning's appeal. *Id.* On July 14, 2017, Manning filed a Petition for Review and Stay of Removal with the Second Circuit Court of Appeals, resulting in an automatic forbearance stay of removal. *Id.* On July 5, 2018, the Second Circuit granted Manning a stay of removal. *Id.* On July 29, 2018, Manning was transferred to the ECDC. *Id.* On March 31, 2020, the Second Circuit granted the Petition for

Review and remanded the case to the Board of Immigration Appeals, where it is currently pending. *Id.* Manning has the following criminal history: On February 14, 1990, Manning was convicted in Kings County Supreme Court, New York for Murder and Distribution of Cocaine. *Id.* He received a sentence of 20 years to life in prison. *Id.* Manning has also been involved in an altercation, while in ICE custody, where he became combative toward jail staff and caused significant damage to his dorm room. *Id.*

### **13. Sergio Quito**

Sergio Quito is a 45-year-old citizen of Ecuador. *Id.* ¶ 20. Quito entered the United States without inspection at an unknown date and location. *Id.* On March 29, 2007, Quito adjusted status to that of a Lawful Permanent Resident. *Id.* On June 9, 2016, Quito was issued a Notice to Appear, charging removability under section 237(a)(2)(A)(iii) of the Act. *Id.* On September 14, 2017, Quito was ordered removed by an immigration judge. *Id.* On March 19, 2018, the Board of Immigration Appeals dismissed Quito's appeal. *Id.* On April 10, 2018, Quito filed a Petition for Review with the Second Circuit Court of Appeals. *Id.* On May 23, 2018, Quito was transferred to the ECDC. *Id.* On May 13, 2019, Quito filed a Petition for a Writ of Habeas Corpus with the U.S. District Court, North District of Alabama. *Id.* On January 29, 2020, the Petition for Habeas Corpus was denied. *Id.* On January 24, 2020, the Second Circuit denied the Petition for Review. *Id.* On January 27, 2020, a

travel document request was sent to the Ecuadorian Consulate. *Id.* On February 12, 2020, Quito interviewed with the Consulate General of Ecuador and ERO was awaiting a decision on travel document issuance. *Id.* Quito has the following criminal history: On August 22, 2012, Quito was convicted in the New York County Supreme Court of Attempted Possessing a Sexual Performance by a child less than 16 years of age. *Id.*

#### **14. Domingo Castillo**

Domingo Castillo is a 56-year-old citizen of the Dominican Republic. *Id.* ¶ 21. Castillo entered the United States without inspection at an unknown date and location. *Id.* On November 11, 2013, Castillo was arrested by ICE following his release from the Lackawanna County Prison, Pennsylvania. *Id.* He was issued a Notice to Appear, charging him with removability under Section 237(a)(2)(A)(iii) of the Act. *Id.* Castillo claimed birth in Puerto Rico. *Id.* That claim was vetted by ICE and determined to not be credible. *Id.* On April 30, 2014, an immigration judge in York, Pennsylvania ordered Castillo removed to the Dominican Republic. *Id.* On May 7, 2014, Castillo interviewed with the Consulate of Dominican Republic and again claimed to be a United States citizen. *Id.* He was subsequently placed in Failure to Comply status. *Id.* On April 22, 2015, Castillo was transferred to the ECDC. *Id.* Castillo has the following criminal history: On January 27, 2006, Castillo was convicted in the Lackawanna Common Place Court, Pennsylvania, of Aggravated

Assault. *Id.* He was sentenced to five years of incarceration. *Id.* He has three prior convictions in Pennsylvania for assault. *Id.*

**15. Antonio Melquezideth**

Antonio Melquezideth Castro is a 34-year-old citizen of Belize. *Id.* ¶ 22. Castillo entered the United States at Houston on or about November 12, 2000, as a nonimmigrant visitor. *Id.* On October 16, 2014, Castro adjusted his status to that of a Lawful Permanent Resident. *Id.* On September 25, 2017, Castro was issued a Notice to Appear, charging him with removability under Sections 237(a)(2)(A)(i) and (a)(2)(E)(i) of the Act. *Id.* On July 18, 2018, an immigration judge in Elizabeth, New Jersey ordered Castro removed to Belize. *Id.* On November 28, 2018, he was transferred to the ECDC. *Id.* On December 13, 2018, the Board of Immigration Appeals dismissed his appeal. *Id.* On January 9, 2019, Castro filed a Petition for Review with the Third Circuit Court of Appeals and a stay was granted. *Id.* On July 22, 2019, Castro filed a second Petition for Review with the Third Circuit which was consolidated with the first petition and the stay continued. *Id.* On September 20, 2019, Castro filed a Petition for Writ of Habeas Corpus with the United States District Court, District of New Jersey. *Id.* On December 13, 2019, the Third Circuit dismissed the Petition for Review. *Id.* Castro has the following criminal history: On June 21, 2002, he was convicted of Endangering the Welfare of a Child in the Union County New Jersey Superior Court. *Id.*

**16. Gerardo Castellano Geovany**

Gerardo Castellano Geovany is a 60-year-old citizen of Nicaragua. *Id.* ¶ 23. Geovany entered the United States without inspection by an immigration officer at or near San Ysidro, California at an unknown date. *Id.* On July 31, 1979, Geovany was issued an Order to Show Cause by the United States Border Patrol, charging him with deportability under Section 241(a)(2) of the Act. *Id.* On August 2, 1979, Geovany was released on bond. *Id.* On February 6, 1988, Geovany was arrested by legacy INS and detained. *Id.* On April 1, 1988, an immigration judge ordered Geovany removed to Nicaragua. *Id.* On September 27, 1988, Geovany was released on an order of supervision. *Id.* On January 30, 2016, Castillo was turned over to ICE by another law enforcement agency. *Id.* On February 19, 2016, Geovany refused to complete a travel document application for Nicaragua, refused to be photographed, and refused to interview with the Consulate of Nicaragua for a travel document. *Id.* Geovany was subsequently placed in Failure to Comply status. *Id.* On November 2, 2016, he was transferred to the ECDC. *Id.* On April 27, 2017, a travel document request was submitted to the Nicaraguan Consulate and Geovany interviewed with the Consulate; however, he would not provide credible information. *Id.* Geovany has the following criminal history: On August 20, 1982, he was convicted in the Los Angeles Superior Court of Sale of Marijuana. *Id.* He was sentenced to 60 months, with a suspended sentence and placed on probation. *Id.* On August 5, 1983, his

sentence was reinstated and he received 180 days in jail. *Id.* On April 25, 1986, due to subsequent controlled substance arrests, his sentence was again reinstated and he received 365 days of incarceration. *Id.* On July 16, 1987, he was convicted in Los Angeles of Narcotic Manufacturing/Sale and sentenced to two years of incarceration. *Id.* On July 10, 1995, he was convicted of Petty Theft and received three days in jail. *Id.*

#### **17. Landry Mbendeke**

Landry Mbendeke is a 39-year-old citizen of Cameroon. *Id.* ¶ 24. On September 21, 2011, Castillo entered the United States at New York as a resident alien. *Id.* On November 24, 2017, Castillo was issued a Notice to Appear, and charged with removability under Section 237(a)(2)(A)(i) of the Act. *Id.* On December 7, 2018, an immigration judge ordered Mbendeke removed to Cameroon. *Id.* On May 20, 2019, the Board of Immigration Appeals dismissed Mbendeke's appeal. *Id.* On July 1, 2019, Mbendeke filed a Petition for Review with the Second Circuit Court of Appeals, resulting in a forbearance stay of removal. *Id.* That case is still pending. *Id.* On August 25, 2019, Mbendeke was transferred to the ECDC. *Id.* Mbendeke has the following criminal conviction: On August 25, 2016, Mbendeke pleaded guilty in the U.S. District Court, Eastern District of Virginia, of Conspiracy to Commit Marriage Fraud and was sentenced to 12 months of imprisonment. *Id.*

## **18. Joseph Debonnaire Soho**

Joseph Debonnaire Soho is a 46-year-old citizen of Cameroon or the Ivory Coast who was previously detained at the ECDC. *Id.* ¶ 25. On April 27, 2020, ICE released Soho on an order of supervision. *Id.* ¶ 25.

### **STANDARD OF REVIEW**

For a plaintiff to be entitled to a temporary restraining order, he or she must show “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the [defendants]; and (4) that entry of the relief would serve the public interest.” *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). While all of these elements must be established, no single element is controlling; this Court must instead consider all of these elements and the strength of the showing made as to each of them *together*, and a strong showing of (for instance) likelihood of success on the merits may compensate for a relatively weak showing of public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008); *Fla. Med. Ass’n, Inc. v. U.S. Dep’t of Health, Educ., & Welfare*, 601 F.2d 199, 203 n.2 (5th Cir. 1979).

### **ARGUMENT**

#### **I. The Court does not have jurisdiction to enter a Temporary Restraining Order.**

**A. Petitioners' claims are not cognizable under Section 2241 and must be brought in a civil rights action for which release is not an appropriate remedy.**

Because Petitioners are challenging the conditions of their confinement at ECDC, Petitioners are not entitled to bring their claims under 28 U.S.C. § 2241 and are not entitled to release as a remedy for their claims. The Court therefore lacks jurisdiction to order any relief for their claims as pleaded and, in any event, cannot grant their request for release.

**1. Petitioners' claim is a conditions of confinement claim, not a traditional section 2241 claim.**

Petitioners' constitutional claims are properly characterized as challenges to their conditions of confinement. Petitioners are challenging the adequacy of disease prevention measures within ECDC. ECF No. 1, at 41-45. Petitioners contend that, as individuals at increased risk of serious complications from COVID-19, ICE is failing to address their medical needs, and/or protect them from exposure. *See id.* This is a classic conditions of confinement claim. *Toure v. Hott*, --- F. Supp. 3d ----, 2020 WL 2092639, \*6 (E.D. Va. Apr. 29, 2020) (“Since protections afforded by and during detention are conditions of detention, a complaint about a lack of COVID-19 protections, or insufficient COVID-19 protections, is a complaint of the conditions of confinement.”). In the motion for a temporary restraining order, Petitioners are not challenging the fact of their detention, the duration of their detention, or the authority under which they are detained, the types of challenges

considered to be core habeas claims.<sup>4</sup> *Preiser v. Rodriguez*, 411 U.S. 475, 489-506 (1973).

Even though Petitioners are attempting to seek a classic habeas remedy (release), it does not transform their claim into one cognizable under section 2241. *Toure*, --- F. Supp. 3d ----, 2020 WL 2092639, at \*5 (“A challenge to the constitutional sufficiency of their confinement, even when paired with a request for immediate release, is a challenge to the conditions of their confinement.”). There are two parts to any core habeas claim: (1) a challenge to the “fact or duration of [ ] physical imprisonment,” and (2) a request for “a determination that [the petitioner] is entitled to immediate [ ] or a speedier release.” *Preiser*, 411 U.S. at 500. As noted above, Petitioners’ claims are not claims that go to the heart of habeas. Adding a request for relief that is otherwise not available for the claim does not make it a habeas claim. Otherwise, virtually all claims would be cognizable under section 2241 so long as the petitioner includes a prayer for release. The habeas remedy

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<sup>4</sup> The Petition also includes several claims on which they are not seeking emergency relief, including claims challenging the length of their confinement. ECF 1, at 44-52; 57-68. The prolonged detention claims do not provide a sufficient basis for emergency relief and some already been denied in separate habeas petitions, *see, e.g., Archilla v. Hassell*, 4:18-cv-00460-MHH-JEO (dismissing petition); *Flores v. Hassell*, 4:18-cv-01493-ACA-HNJ (same); *Hernandez v. Warden*, 4:19-cv-00853-RDP-JHE (same). Moreover, those claims are not proper for group adjudication, as they turn on individual facts related to their detention and the status of ICE’s removal efforts.

cannot be stretched that far or read to be coextensive with civil rights actions. *See Hutcherson v. Riley*, 468 F.3d 750, 754 (11th Cir. 2006) (“These avenues are mutually exclusive: if a claim can be raised in a federal habeas petition, that same claim cannot be raised in a separate § 1983 civil rights action.”).

**2. Conditions of confinement claims are not cognizable under section 2241.**

Petitioners’ attempts to plead their claims under section 2241 fail. The Supreme Court “left open the question whether [detainees] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus.” *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862-63 (2017); *see also Bell v. Wolfish*, 441 U.S. 520, 526 n.6 (1979) (“[W]e leave to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement.”); *Preiser*, 411 U.S. at 499 (“When a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making custody illegal.”). The circuits that have squarely addressed the issue are split on how to resolve it, with seven concluding that conditions claims are not cognizable under section 2241. *See Wilborn v. Mansukhani*, 795 F. App’x 157, 162-64 (4th Cir. 2019) (per curiam) (describing circuit split). Only three have reached a contrary conclusion. *Id.*

The weight of authority in the Eleventh Circuit supports the majority view. *See Gomez*, 899 F.2d at 1126 (“If these claims are considered in a habeas corpus

context, however, this Court has held that even if a prisoner proves an allegation of mistreatment in prison that amounts to cruel and unusual punishment, he is not entitled to release.”); *Vaz v. Skinner*, 634 F. App’x 778, 780 (11th Cir. 2015) (“Claims challenging the fact or duration of a sentence fall within the ‘core’ of habeas corpus, while claims challenging the conditions of confinement fall outside of habeas corpus law.”); *Cook v. Baker*, 139 F. App’x 167, 168 (11th Cir. 2005); *see also Daker v. Warden*, No. 18-cv-14984, 2020 WL 751817, at \*2 (11th Cir. Feb. 14, 2020). In addition, other district courts in this circuit have applied this reasoning to deny preliminary relief in similar COVID-19-based challenges. *See, e.g., A.S.M. v. Donahue*, No. 7:20-CV-62 (CDL), 2020 WL 1847158, at \*1 (M.D. Ga. Apr. 10, 2020) (finding that habeas corpus “is not the appropriate mechanism” for the ICE detainee petitioner’s request for release from confinement due to COVID-19); *Benavides v. Gartland*, No. 5:20-CV-46, 2020 WL 1914916, at \*5 (S.D. Ga. Apr. 18, 2020); *Gayle v. Mead*, No. 1:20-cv-21553-MGC, 2020 U.S. Dist. LEXIS 76040, \*17-18 (S.D. Fla. Apr. 30, 2020) (“The appropriate relief from prison conditions that violate the Eighth Amendment is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment. Requirement of a discontinued practice does not amount to releasing 10 detainees who complain of prison conditions.”).

**3. It is well-settled that the remedy for a conditions of confinement claim is an order curing the defective conditions, not release from custody.**

Even if pleaded as a civil rights claim, release from custody is not an available remedy. *See Gomez*, 899 F.2d at 1126 (“The appropriate Eleventh Circuit relief from prison conditions that violate the Eighth Amendment during legal incarceration is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment . . . . [R]elief of an Eighth Amendment violation does not include release from confinement.”). The remedy for this type of claim, is modification of the conditions of confinement to eliminate the constitutional violation.

Petitioners argue for an exception to this settled principle where no relief short of release can cure their conditions of confinement challenge. ECF 2-1, at 29. Notwithstanding that there is no precedent to support this exception, Petitioners have not demonstrated that they fall within it. Petitioners would have to establish a likelihood of proving that nothing short of releasing every individual with a preexisting condition will satisfy the deliberate indifference standard. But that assertion is contradicted by these same Petitioners’ claims in the *Frailhat* litigation where they are seeking nationwide changes to ICE review and release policies as a means of addressing these very same deliberate indifference claims. *See Frailhat*, 5:19-cv-01546-JGB-SHK (C.D. Cal.), ECF 87-1, Pets. Mot. For Emergency Class

Certification (seeking certification to challenge “ICE’s failure to take adequate preventative measures to address the COVID-19 pandemic” and seeking injunctive relief to address “system-wide failures”). It is disingenuous for Petitioners—including Petitioner Hernandez who is a certified representative of the *Fraihat* class—to argue here that the systemic changes the *Fraihat* class seeks are doomed to fail in order to justify a separate action here. The arguments made by the *Fraihat* class members demonstrate that there are changes, short of ordering release, available to address their allegations. Therefore, Petitioners cannot establish grounds for applying an exception here.

**B. The Court lacks authority to enter a temporary restraining order under either section 2241 or Rule 65.**

Section 2241 does not grant jurisdiction to enter anything other than a final judgment in the form of a writ of habeas corpus. 28 U.S.C. § 2241(c)(3). “Section 2241 does not permit preliminary grants of habeas. It prohibits the writ from issuing unless the prisoner ‘is’ being held ‘in custody in violation of the Constitution or laws or treaties of the United States,’ not merely because he likely could make that showing in the future.” *Hamama v. Adducci*, 946 F.3d 875, 877 (6th Cir. 2020). Thus, section 2241 does not provide authority for the relief requested by Petitioners in their motion.

Similarly, Petitioners are not entitled to the requested relief under Rule 65 of the Federal Rules of Civil Procedure. Under Rule 65(b)(1)(A), a court may issue a

temporary restraining order only if “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition.” Temporary restraining orders “have the effect of merely preserving the status quo rather than granting most or all of the substantive relief requested” by a plaintiff in a complaint. *Fernandez–Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982). “This Court must scrupulously honor Rule 65 requirements and thus it would be improper to issue a temporary restraining order absent compliance.” *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1255 (N.D. Fla. 2016). Here, release would change the status quo, and award the Petitioners substantive relief on their claims. *Fernandez–Roque*, 671 F.2d at 429. Rule 65(b)(1)(A) therefore does not allow for Petitioners to be ordered released on a temporary restraining order.

**C. Soho’s request for a TRO should be dismissed as moot.**

ICE has released Petitioner Soho. Detainees’ Status Decl. ¶ 25. As a result, his request for a temporary restraining order requiring his release is moot. *Ijaoba v. Holder*, 2013 WL 1490927, at \*1 (N.D. Ala. Mar. 4, 2013). His motion should therefore be denied and his habeas claim dismissed. *Nyaga v. Ashcroft*, 323 F.3d 906, 913 (11th Cir. 2003).

**II. Petitioners are not entitled to a temporary restraining order.**

**A. Petitioners have not demonstrated that they will face irreparable injury absent this Court’s action.**

Petitioners have not demonstrated that they will suffer irreparable injury absent the mandatory injunctive relief they seek. “The injury must be neither remote nor speculative, but actual and imminent.” *Ne. Fla. Chapter of the Ass’n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) (internal quotation marks and citation omitted). Merely showing a “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22.

Here, there is no need for further injunctive relief. All but two of the detained Petitioners are members of the certified class in *Fraihat* and are in the process of litigating their entitlement to release as a part of the compliance litigation in that case. *See Fraihat*, 2020 WL 1932570. Because Petitioners are not entitled to release as a remedy for their claims, the *Fraihat* case affords Petitioners the maximum relief available on their claims. The remaining Petitioners—Sergio Quito and Randane Williams—do not have confirmed pre-existing conditions, Detainees’ Status Decl. ¶ 27, and therefore are not at risk of irreparable harm alleged in the Petition.

**B. Petitioners are not likely to succeed in showing a substantive-due-process violation based on the government’s purported deliberate indifference to their medical needs.**

Substantive due process protects only those liberty interests that are “objectively, deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). Certain government conduct that “shocks the conscious” may violate substantive due process. *Sacramento v. Lewis*, 523 U.S. 833, 853 (1998). Where detention officials have the “luxury” of making unhurried judgments “largely uncomplicated by the pulls of competing obligations,” their “deliberate indifference to inmate welfare” can be “truly shocking” so as to abridge substantive-due-process limitations. *Id.* To challenge the conditions of confinement, a prisoner must make “an objective showing of a deprivation or injury that is sufficiently serious to constitute a denial of the minimal civilized measure of life’s necessities and a subjective showing that the official had a sufficiently culpable state of mind.” *Thomas v. Bryant*, 614 F.3d 1288, 1303 (11th Cir. 2010). The plaintiff must show “extreme deprivations” and the deliberate indifference of the defendants. *Id.* And courts applying the deliberate-indifference standard—which rests on the understanding that “the [government’s] responsibility to attend to the medical needs of prisoners does not ordinarily clash with other equally important governmental responsibilities”—must take due regard for the particular “constraints facing the official.” *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991).

Multiple factors demonstrate that Petitioners have failed to establish any substantive-due-process violations here. ICE has adequately and promptly responded to an unfolding, rapidly changing, public-health emergency. ICE has and continues to dutifully manage its responsibility for detainees' medical needs in the midst of a pandemic while continuing to manage other important public responsibilities, such as ensuring the continued enforcement of our Nation's immigration laws within real-world constraints involving existing resources and physical facilities. Even in normal contexts, moreover, neither general allegations of negligence nor a plaintiff's general disagreement with treatment received is enough to show deliberate indifference. *See Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976). Rather, that standard can be met "only when the decision by the [medical] professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982).

The evidence here defeats any suggestion of deliberate indifference. As explained above, at ECDC, ICE has actively sought to address COVID-19 by implementing CDC guidance to the maximum extent possible. ICE provides personal protective equipment such as masks to each detainee, Facility Response Decl. ¶¶ 16, 20; instructs detainees on hand washing and hygiene, *id.* ¶ 20; has

increased the scope and frequency of sanitation procedures, *id.*; and regularly replenishes cleaning supplies and hand soap for detainees, *id.* Staff at ECDC continually monitor for COVID-19 symptoms to permit facility staff to act quickly if needed and perform regular welfare checks, *id.* ¶¶ 15, 15, 18; conduct intake medical screenings for all detainees to detect disabilities, illnesses (including fever and respiratory illness), or other high-risk medical conditions identified in CDC and ICE guidance, *id.* ¶¶ 12, 14; and quarantine all new and returning detainees for 14 days, as well as anyone showing COVID-19 symptoms, *compare* Centers for Disease Control, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correction and Detention Facilities, 19 (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (CDC Guidelines), *with* Facility Response Decl. ¶¶ 14, 16. ECDC staff administer temperature checks to personnel entering the facility before they assume their posts. *Compare* CDC Guidelines 12 *with* Facility Response Decl. ¶ 23. ICE encourages social distancing in movements, housing, dining, common areas, showering, and throughout the facility, often by reducing occupancy limits in a given area. Facility Response Decl. ¶¶ 20, 22, 25.

Petitioners cannot show that ICE has responded to their medical needs with deliberate indifference, or substantially departed from accepted professional judgment, practice, or standards. *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982).

Indeed, such a conclusion is baseless here given the fast-developing pandemic-based challenges that ICE is facing. Given the “constraints facing” ICE at ECDC, *Wilson*, 501 U.S. at 302, the broader objectives that ICE is charged with furthering at ECDC, *id.*, and the need to make swift judgments in the pandemic context, *Lewis*, 523 U.S. at 853, ICE has performed soundly and effectively. In these circumstances, ICE’s thorough response plainly cannot be classified as ‘a substantial departure from accepted professional judgment, practice, or standards.’” *Youngberg*, 457 U.S. at 323.

**C. The balance of the harms does not support release.**

The public interest in enforcement of the United States’ immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.”) (internal quotation omitted).

Two of the Petitioners—Tesfa Miller and Edison Flores—are detained under 8 U.S.C. § 1226(c), which mandates detention pending completion of removal

proceedings. Congress has expressly prohibited release for individuals detained under 8 U.S.C. § 1226(c) as a result of the seriousness of their offenses. *Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018).

The remainder of the Petitioners have final orders of removal. The vast majority of those individuals, also have serious criminal convictions—including convictions for murder, assault, armed robbery, child exploitation, possession of child pornography, and the manufacture and sale of illegal drugs. If Petitioners' request is granted, numerous individuals who the United States has taken care to detain following their criminal convictions—will be released, and the government's efforts to protect the public and to remove them will be undermined. *See Demore v. Kim*, 538 U.S. 510, 518 (2003) (describing mandatory detention as Congress's solution to "[t]he INS' near-total inability to remove deportable criminal aliens").

**D. The Court should decline to issue temporary relief as a matter of discretion.**

As a practical matter, the temporary restraining order should be denied as an act of discretion. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) (“[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law”). Petitioners face additional risk from their transport and release to places with significantly larger COVID-19 outbreaks than Etowah County. *See* ECF 1 at 13-18 (requesting release to places including New York, New Jersey, and California). Although Petitioners may believe the short-term

risk is worthwhile to escape the alleged conditions at ECDC, it makes little sense to order release where there remains a possibility that Petitioners will be returned to custody at the expiration of the temporary restraining order. *See Thakker v. Doll*, No. 1:20-CV-480, 2020 WL 2025384, at \*12 (M.D. Pa. Apr. 27, 2020) (denying motion for preliminary injunction and returning individuals released on temporary restraining order to custody). Thus, the Court should decline to enter any temporary release order and should reserve consideration of release until after a more permanent adjudication of the claims.

**III. If release is ordered, the release order should be temporally limited and impose strict limitations.**

Should the Court order any Petitioner to be released, the United States requests that the Court impose strict limitations. Under Rule 65(b)(2), any temporary restraining order must expire within 14 days. And in the event that a preliminary injunction order is entered, the Court should consider the mailing address of each Petitioner, and require that the injunction expire with the shelter in place order governing that Petitioner's mailing address provided to ICE upon their release. The United States also requests that, in such an instance, that the Court require the individual to report to ICE within 48 hours of the expiration of that shelter in place order. In addition, Respondents respectfully request that any release order include the following conditions of release:

1. The released Petitioner is to reside and shelter in place at the address specified in the release order.
2. The Petitioner must obtain approval of the address from his parole officer (if any); and also provide Respondents with the name, date of birth, DHS alien number (if any), and telephone number of the person(s) at the residence who will be responsible for the Petitioner, so that Respondents may conduct their usual vetting process and advise the Court of any objections.
3. The Petitioner shall be transported by a person to be specified in said order from his or her place of detention to the residence where s/he will reside and shelter in place.
4. Pending further order of the Court, the Petitioner shall not leave the residence where he or she will shelter in place, except to obtain medical care, to appear at immigration court proceedings, or to obey any order issued by DHS.
5. The Petitioner shall not violate any federal, state, or local law.
6. If a Petitioner violates the conditions ordered by this Court or DHS, ICE may re-detain him or her at any time to complete removal proceedings without advance notice to the Court or Petitioner.
7. If a Petitioner's removal order becomes final and a travel document is obtained, ICE may re-detain him/her to effectuate his removal without advance notice to the Court or petitioner.

These additional conditions will place a released Petitioner on the same footing as detainees who obtain discretionary release consistent with Respondents' statutory and regulatory authority. To the extent any class member is subject to mandatory statutory detention, any temporary restraining order requiring release would be based solely on the COVID-19 pandemic. As such, for those individuals, there is no justification for requiring less supervision and authority over these individuals than Respondents have over released detainees who demonstrate their entitlement to release consistent with section 1226(a).

### CONCLUSION

For the reasons set forth above, the Federal Respondents request that the motion for a temporary restraining order be denied.

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