

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Timothy Brown, Anthony Hall, Myles Hannigan

(b) County of Residence of First Listed Plaintiff Philadelphia (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

Sean Marler, Warden, FDC Philadelphia

County of Residence of First Listed Defendant Philadelphia (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

E.D. Pa. U.S. Attorney's Office

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff and Defendant citizenship (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country) and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 2241

Brief description of cause: Unconstitutional exposure to deadly virus at FDC Philadelphia

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/15/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Linda Dale Hoffa

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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*Counsel for Petitioners
and Proposed Class Members*

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TIMOTHY BROWN, MYLES HANNIGAN,	:	
and ANTHONY HALL, individually and on	:	Case No. _____ cv _____
behalf of all others similarly situated,	:	
	:	
Petitioners,	:	
	:	
v.	:	COMPLAINT—CLASS ACTION
	:	FOR DECLARATORY AND
SEAN MARLER, in his capacity as Warden	:	INJUNCTIVE RELIEF AND
of the Federal Detention Center of Philadelphia,	:	PETITION FOR WRITS OF
	:	HABEAS CORPUS
Respondent.	:	

This class action raises an urgent challenge to the confinement of more than one thousand pretrial detainees and sentenced inmates (collectively “detainees”) at the Federal Detention Center of Philadelphia (FDC). FDC detainees Timothy Brown, Myles Hannigan, and Anthony Hall (Petitioners), on behalf of themselves and others similarly situated, and by and through their undersigned attorneys, allege as follows:

PRELIMINARY STATEMENT

1. The entire human race faces a pandemic without modern precedent. Life has changed nearly overnight across the planet, as citizens, institutions, and governments have dramatically altered everyday activities in order to slow the spread of COVID-19.
2. But change has been halting in the FDC. The facility has been slow—dangerously slow—to adopt the basic life-saving precautions that have become familiar parts of life beyond its walls. As of this filing, conditions in the FDC remain appallingly hospitable to the spread of COVID-19.

3. Detainees are crowded two per cell. Staff members come and go with scant screening for symptoms or personal protective equipment (PPE). Conditions are unsanitary. Detainees have no meaningful ability to take the most fundamental precautions recommended by federal, state, and local officials and public-health experts: social distancing, minimizing the number of people with whom one physically interacts, frequent and thorough handwashing, and regular disinfecting of commonly touched surfaces.
4. Testing of FDC detainees for COVID-19 is nonexistent. And medical treatment options for detainees with serious COVID-19 cases are unavailable in the FDC.
5. Even as glimmers of hope are emerging in Pennsylvania and Greater Philadelphia that precautionary measures have begun to slow the spread of the virus, the environment remains dangerous for everyone in the FDC, and especially so for detainees like Petitioners, whose preexisting medical conditions leave them highly vulnerable to serious or deadly cases of COVID-19.
6. Danger to detainees also poses a danger to the community in Greater Philadelphia. A severe COVID-19 outbreak inside the FDC could quickly grow to dozens or hundreds of cases. Staff heading home after their shifts would risk spreading the disease to everyone they encounter on the outside. And a sudden surge in inmates needing hospital care would strain Philadelphia's healthcare system.
7. Petitioners have thus filed this class action petition for writs of habeas corpus and class complaint for declaratory and injunctive relief. Petitioners seek temporary release to home confinement for themselves and other detainees at elevated risk from COVID-19. They also seek measures to mitigate the serious risks of illness, death, and harm from COVID-19 for those who will remain confined at the FDC during this pandemic, and the

appointment of a Special Master with a focus on public health and safety to chair a committee that will make recommendations about those measures.

PARTIES

8. Petitioner Timothy Brown is a 46-year old man who currently resides in Philadelphia, Pennsylvania. At all times relevant to this Complaint, Mr. Brown was in the custody of the Federal Bureau of Prisons (BOP) at the FDC. His inmate number is 60758-066. Mr. Brown has underlying health conditions that put him at greater risk for life-threatening complications from COVID-19.
9. Petitioner Myles Hannigan is a 47-year old man who currently resides in Philadelphia, Pennsylvania. At all times relevant to this Complaint, Mr. Hannigan was in the custody of BOP at the FDC. His inmate number is 77357-066. Mr. Hannigan has underlying health conditions that put him at greater risk for life-threatening complications from COVID-19.
10. Petitioner Anthony Hall is a 46-year old man who currently resides in Philadelphia, Pennsylvania. At all times relevant to this Complaint, Mr. Hall was in the custody of BOP at the FDC. His inmate number is 75509-066. Mr. Hall has underlying health conditions that put him at greater risk for life-threatening complications from COVID-19.
11. Sean Marler (Respondent) is the Warden at the FDC. As Warden of the FDC, Respondent Marler is responsible for and oversees all day-to-day activity at the FDC. He is in charge of all aspects of the operations and functions of the FDC. His responsibilities include ensuring the safety of all in the institution and ensuring the orderly running of the institution. Respondent Marler is aware of and has adopted and enforced policies that leave Petitioners and all those similarly situated exposed to infection, severe illness, and

death due to COVID-19. Respondent is the immediate and physical custodian responsible for the detention of the Petitioners. He is sued in his official capacity only.

JURISDICTION AND VENUE

12. The Petitioners bring this action pursuant to 28 U.S.C. § 2241 for release from custody that violates the Fifth and Eighth Amendments to the U.S. Constitution, and pursuant to 28 U.S.C. § 1331 for relief from conditions of confinement that are in violation of the Fifth and Eighth Amendments to the U.S. Constitution.
13. The Court has subject-matter jurisdiction over this Petition pursuant to Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the Fifth and the Eighth Amendments to the U.S. Constitution; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 2241 (habeas corpus). In addition, the Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.
14. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to these claims occurred and continue to occur in this district.
15. This Court has personal jurisdiction over Respondent because at all times relevant to this action Respondent has been employed in Philadelphia, Pennsylvania, and all the actions and omissions complained of herein have occurred in Philadelphia, Pennsylvania.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Petitioners are all excused from 28 U.S.C. § 2241's exhaustion requirement. While a petitioner is generally required to exhaust all administrative remedies before bringing a habeas petition, the exhaustion requirement does not apply where the petitioner is likely

to suffer an irreparable injury without immediate judicial relief or where the administrative remedy would be futile. Here, both exceptions are met. *See Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 239 n.2 (3d Cir. 2005) (noting that a petitioner's failure to exhaust will be excused where exhaustion would be futile); *Cerverizzo v. Yost*, 380 F. App'x 115, 116 (3d Cir. 2010) (acknowledging that Section 2241's administrative exhaustion requirement may be excused if an attempt to obtain relief would be futile or where the purposes of exhaustion would not be served); *Carling v. Peters*, No. 00-CV-2958, 2000 WL 1022959, at *2 (E.D. Pa. July 10, 2000) (finding that petitioner would suffer an irreparable injury if forced to wait for the resolution of the administrative process); *Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (noting that "[e]xhaustion is not required if administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury"); *United States v. Colvin*, No. 3:19-CR-179, 2020 WL 1613943, at *2 (D. Conn. Apr. 2, 2020) (finding that petitioner exhausted administrative remedies where exhaustion would be futile, the administrative process would be incapable of granting adequate relief, and pursuing agency review would subject petitioner to undue prejudice).

17. First, the densely populated conditions at the FDC render any effective social-distancing measures impracticable. Given the absence of effective social-distancing measures, and the other deficient conditions as described herein, there is an alarming and imminent risk that COVID-19 will overrun the FDC before Petitioners can meaningfully engage in any administrative-remedy process. The exponential spread of COVID-19 poses especially significant risks for individuals with certain medical conditions that make them more

susceptible to severe illness and/or death from COVID-19. Accordingly, forcing Petitioners to engage in a protracted administrative process during the throes of a rapidly spreading pandemic is likely to result in the very catastrophic health consequences that Petitioners now seek to avoid. Petitioners thus will remain exposed to irreparable injury if they do not receive immediate judicial relief.

18. Second, the only process ostensibly available to Petitioners here is BOP's Administrative Remedy Program (ARP). However, ARP is a lengthy process that does not purport to provide the requested relief of release to home confinement. In other words, it would be futile for Petitioners to engage in ARP in this case.

19. In sum, the rapidly spreading COVID-19 pandemic presents extraordinary circumstances—especially for high-risk individuals housed in a detention facility. Petitioners are likely to suffer irreparable injury if they are required to wait for the ARP process to unfold. Also, it would be futile for Petitioners to engage in ARP, because it cannot provide the requested and necessary relief. For each of these independent reasons, Petitioners are excused from the requirement of exhausting administrative remedies.

STATEMENT OF FACTS

I. The COVID-19 Crisis

20. The novel coronavirus that causes COVID-19 has led to a global pandemic. As of April 13, 2020, worldwide there were more than 1.8 million reported COVID-19 cases and over 100,000 confirmed deaths.¹ In the United States, as of April 13 the case count stands

¹ World Health Org., *Coronavirus disease (COVID-19) Pandemic*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>.

at 554,849 and the death count at 21,942.² In Pennsylvania, the case count as of April 14 is 25,345, including 7,121 in Philadelphia.³

21. To date, the virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.
22. People who are at least fifty years old face greater chances of serious illness or death from COVID-19. Preliminary analyses report that individuals age 60-69 had an overall 3.99% case fatality ratio. For individuals age 40-49, the case fatality ratio was 0.295%, and for individuals 29 years and younger, it was under 0.1%.⁴
23. According to the Centers for Disease Control and Prevention (CDC), people of any age who suffer from certain underlying medical conditions, including chronic lung disease, moderate to severe asthma, serious heart conditions, chronic kidney disease, liver disease, diabetes, compromised immune systems (such as from cancer treatment, HIV, or autoimmune disease), and severe obesity are at elevated risk as well.⁵ One analysis has found mortality rates of 13.2% for patients with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.⁶

² Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

³ Pa. Dep't of Health, *COVID-19 Cases in Pennsylvania*, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>.

⁴ Robert Verity et al., *Estimates of the Severity of Coronavirus Disease 2019*, *The Lancet Infectious Diseases Online* (Mar. 30, 2020) at 5, [https://doi.org/10.1016/S1473-3099\(20\)30243-7](https://doi.org/10.1016/S1473-3099(20)30243-7).

⁵ CDC, *Groups at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

⁶ World Health Org., *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* at 12 (Feb. 28, 2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

24. In many people, COVID-19 causes fever, cough, and shortness of breath. But for people over the age of fifty or with medical conditions that increase the risk of serious COVID-19 infection, shortness of breath can be severe. Most people in higher-risk categories who develop serious illness will need advanced support. This level of supportive care requires highly specialized equipment that is in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse-to-patient ratios, respiratory therapists, and intensive-care physicians.
25. In patients who do not die, COVID-19 can severely damage lung tissue, requiring an extensive period of rehabilitation, and in some cases, can cause a permanent loss of respiratory capacity. COVID-19 may also target the heart muscle, causing a medical condition called myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure that limits exercise tolerance and the ability to work.
26. Emerging evidence also suggests that COVID-19 can trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days.
27. Even some younger and healthier people who contract COVID-19 may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation.

28. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from seasonal influenza. According to recent estimates, the fatality rate of people infected with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective healthcare systems.⁷
29. There is no vaccine against COVID-19 and there is no known medication to prevent or treat infection from COVID-19. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including frequently and thoroughly washing hands with soap and water and cleaning and disinfecting high-touch surfaces, are the only known effective measures for protecting people from COVID-19.

II. Incarcerated People and Staff Are Particularly Vulnerable

30. The COVID-19 pandemic has spread rapidly through Philadelphia. As of April 14, 2020, Philadelphia County reported 7,121 confirmed cases of COVID-19, about three times the number of cases than any other county in the state.⁸ Approximately twenty-eight percent of 25,345 confirmed COVID-19 cases in Pennsylvania are in Philadelphia.⁹ To date, there have been 584 deaths from COVID-19 in Pennsylvania, with 190 of those deaths in Philadelphia.¹⁰

⁷ E.g., Noah Higgins-Dunn & Berkeley Lovelace Jr., *Top US Health Official Says the Coronavirus Is 10 Times 'More Lethal' Than the Seasonal Flu*, CNBC (Mar. 11, 2020) (citing testimony of Anthony S. Fauci, M.D., Director of the National Institute of Allergy and Infectious Diseases), <https://www.cnbc.com/2020/03/11/top-federal-health-official-says-coronavirus-outbreak-is-going-to-get-worse-in-the-us.html>.

⁸ Pa. Dep't of Health, *COVID-19 Data for Pennsylvania* (last updated Apr. 14, 2020), <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>.

⁹ *Id.*

¹⁰ *Id.*; see also *City Provides Update on COVID-19 for Monday, April 13, 2020*, City of Phila. (Apr. 13, 2020), <https://www.phila.gov/2020-04-13-city-provides-update-on-covid-19-for-monday-april-13-2020/>.

31. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships¹¹ and nursing homes.¹² People who are confined in prisons, jails, and detention centers will find it virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, even with the best laid plans. The CDC also warns of “community spread” where the virus spreads easily and sustainably within a community where the source of the infection is unknown.
32. State and local officials have been taking aggressive action in Pennsylvania and Greater Philadelphia. On March 22, 2020, Governor Wolf imposed strict measures to fight the virus’s spread, issuing a “stay at home” executive order for all residents in seven hard-hit counties, including Philadelphia. On April 1, Governor Wolf expanded that order to all 67 counties, stating the move is the “most prudent option to stop the spread of COVID-19.”¹³ In a statement to the public, Governor Wolf explained that the order prohibits non-essential gatherings of any size, requires all non-life-sustaining businesses to close, and

¹¹ E.g., Jason Hanna & Melissa Alonso, *Coral Princess Docks in Miami With 2 Dead and Several Ill of Coronavirus, After Ports Shunned it For Days*, CNN (Apr. 4, 2020), <https://www.cnn.com/2020/04/04/us/coral-princess-cruise-ship-docks-miami-coronavirus/index.html>.

¹² E.g., Stacey Burling, *Assume Coronavirus is Already There, Says a Philly Nursing Home Doctor Who Learned the Hard Way*, Phila. Inquirer (Apr. 3, 2020), available at <https://www.inquirer.com/health/coronavirus/coronavirus-renaissance-nursing-home-philadelphia-20200403.html>; see also Suzy Khimm & Laura Strickler, *Nursing Homes Overwhelmed By Coronavirus*, NBC News (Apr. 1, 2020), <https://www.nbcnews.com/news/us-news/nursing-homes-overwhelmed-coronavirus-it-impossible-us-stop-spread-n1174171>.

¹³ *Pennsylvania on Statewide Stay-at-Home Order*, Governor Tom Wolf (Apr. 1, 2020), <https://www.governor.pa.gov/newsroom/gov-wolf-sec-of-health-pennsylvania-on-statewide-stay-at-home-order-beginning-at-8-pm-tonight-most-prudent-option-to-stop-the-spread/>.

recommends that people stay at least six feet away from others.¹⁴ He said: “This statewide stay at home order is not just to protect ourselves from exposure to COVID-19, but it protects those on the front lines. Our doctors, nurses, police, fire, EMTs need us to do this.”¹⁵

33. On April 9, Governor Wolf continued taking strict measures when he extended school closures to the end of the academic year throughout the Commonwealth because of the COVID-19 pandemic.¹⁶
34. Correctional facilities increase the risk of rapid spread of an infectious disease, like COVID-19, because of the high numbers of people with chronic, often untreated, illnesses housed in a setting with minimal levels of sanitation, limited access to personal hygiene, limited access to medical care, and no possibility of staying at a distance from others.¹⁷
35. A recent COVID-19 outbreak in an Arkansas state prison quickly spread to 43 out of 46 inmates in a single housing unit.¹⁸
36. Correctional facilities frequently have insufficient medical care for the population, and, in times of crisis, even medical staff often cease coming to the facility. Hot water, soap, and paper towels are frequently in limited supply. Incarcerated people, rather than

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Governor Wolf Extends School Closure for Remainder of Academic Year*, Governor Tom Wolf (Apr. 9, 2020), <https://www.governor.pa.gov/newsroom/governor-wolf-extends-school-closure-for-remainder-of-academic-year/>.

¹⁷ See generally I.A. Binswanger et al., *Prevalence of Chronic Medical Conditions Among Jail and Prison Inmates in the USA Compared With the General Population*, 63 *J. Epidemiology & Community Health* 912 (2009) (concluding that people incarcerated in U.S. jails and prisons had a higher burden of most chronic medical conditions than the general population, even when adjusting for sociodemographic differences and alcohol consumption).

¹⁸ *43 Arkansas state inmates test positive for COVID-19*, ABC 20/49 (Apr. 13, 2020), <https://www.4029tv.com/article/43-arkansas-state-inmates-test-positive-for-covid-19/32131327>.

professional cleaners, are responsible for cleaning the facilities and often are not given appropriate supplies. This means there are more people who are susceptible to infection all congregated together in a location where fighting the spread of an infection is nearly impossible.

37. For these reasons, correctional public health experts have recommended the release from custody of people most vulnerable to COVID-19. Release protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk-mitigation for all people held or working in a prison, jail, or detention center. Release of the most vulnerable people from custody also reduces the burden on the region's health care infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.
38. Internationally, governments and jail and prison staff have recognized the threat posed by COVID-19 and released detainees. In Iran, for example, more than 70,000 people were temporarily released from jails to curb the spread of coronavirus.¹⁹
39. Some jurisdictions, including Philadelphia and Allegheny Counties in Pennsylvania, New York City, Los Angeles, and Chicago, have already taken steps to protect people in custody from the impending spread of COVID-19 by releasing people in an effort to reduce populations.²⁰

¹⁹ *Iran Temporarily Releases 70,000 Prisoners as Coronavirus Cases Surge*, Reuters (Mar. 9, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5>.

²⁰ *See, e.g.,* Jeremy Roebuck & Chris Palmer, *Racing Against a Coronavirus Clock, Philly Courts Release 200+ Jail Inmates in the First Week of Fast-Track Emergency Hearings*, Phila. Inquirer (April 11, 2020), available at <https://www.inquirer.com/news/coronavirus-philadelphia-jail-inmate-release-bail-infection-larry-krasner-court-20200411.html>; *701 Inmates Released From Allegheny County Jail Due to Coronavirus Concerns*, WTAE Pittsburgh (Apr. 2, 2020), available at <https://www.wtae.com/article/inmates-released-from-allegheny-county-jail-due-to->

40. Recent experience in the Rikers Island facility in New York City bears out the devastating impact of COVID-19 infection in a jail setting.²¹ On April 6, a state court in New York granted eighteen pretrial detainees' petitions for release from Rikers Island on due-process grounds because their medical conditions made them particularly susceptible to COVID-19.²²
41. Officials in Pennsylvania have echoed the calls to release vulnerable people. On April 10, 2020, Governor Wolf ordered Pennsylvania Department of Corrections officials to establish a Temporary Program to Reprieve Sentences of Incarceration to help aid the Department in the transfer of qualifying individuals to community corrections facilities or home confinement amid the pandemic.²³

[coronavirus-concerns/31953103](https://www.timesunion.com/news/article/Deaths-surge-again-in-New-York-from-coronavirus-15160973.php); Brendan J. Lyons, *NY to Release 1,100 Parole Violators as Coronavirus Spreads*, Albany Times Union (Mar. 27, 2020), available at <https://www.timesunion.com/news/article/Deaths-surge-again-in-New-York-from-coronavirus-15160973.php>. Thirty-one district attorneys from around the country put out a joint statement calling for a reduction in jail populations. Jurisdictions in California, Illinois, and Ohio have already released people from jail, and officials in Louisiana, Oregon, and Virginia have made announcements that they will begin releasing people soon. Other cities are putting plans in place to do the same. *See, e.g.* Allen Kim, *Cities in the US Move to Lower Inmate Populations as Coronavirus Fears Grow*, CNN (Mar. 16, 2020), <https://www.cnn.com/2020/03/16/us/inmates-released-jail-coronavirus-trnd/index.html>; Megan Cassidy, *Coronavirus: San Francisco, Contra Costa Prosecutors Join National Call for Jail Releases*, S.F. Chron. (Mar. 17, 2020), available at <https://www.sfchronicle.com/crime/article/Coronavirus-San-Francisco-Contra-Costa-15137291.php>.

²¹ *See, e.g.*, Rebecca Rosenberg, *Second Rikers Island Inmate Dead From Coronavirus After Failed Release*, N.Y. Post (Apr. 14, 2020), available at <https://nypost.com/2020/04/14/second-rikers-island-inmate-dead-from-coronavirus/>.

²² *People of State of N.Y. ex rel. Stoughton v. Brann*, No. 451078/2020, ___ N.Y.S.3d ___, 2020 NY Slip Op 20081 (N.Y. Sup. Ct. Apr. 6, 2020).

²³ Press Release, Office of Governor Tom Wolf, *Gov. Wolf: Dep't of Corrections to Establish Temp. Program to Reprieve Sentences of Incarceration* (Apr. 10, 2020), <https://www.governor.pa.gov/newsroom/gov-wolf-department-of-corrections-to-establish-temporary-program-to-reprieve-sentences-of-incarceration/>.

42. Lancaster County officials have released about ten percent of the county's inmates in an effort to stop the virus's spread.²⁴ Lancaster County Court of Common Pleas President Judge David Ashworth said that steps would include "supervision with parole and probation, house arrest and electronic and alcohol monitoring" with the goal of limiting "exposure to those who remain incarcerated and minimize risk to those who are vulnerable as much as possible while still maintaining the highest level of protection to the community."²⁵
43. The CDC has also issued guidance encouraging local law enforcement and court officials to explore strategies to prevent overcrowding of correctional and detention facilities during a community outbreak.²⁶ The CDC guidance acknowledges that effective social distancing may be challenging to implement in prisons, jails, and detention centers, but nevertheless refers to it as "a cornerstone of reducing transmission of respiratory disease such as COVID-19." *Id.* It recommends not only social distancing, but also measures for separating detainees and staff who have (or presumably have) COVID-19 from those who do not have (or presumably do not have) the virus.

²⁴ Dan Nephin & Carter Walker, *Releasing Inmates Early from Lancaster Prison Amid Coronavirus a 'Moral Decision'; Not a Get-out-of-Jail-Free Card: Judge*, LNP Lancaster Online (Apr. 7, 2020), https://lancasteronline.com/news/local/releasing-inmates-early-from-lancaster-prison-amid-coronavirus-a-moral-decision-not-a-get-out/article_8cdccb0-7834-11ea-a7d9-c7a06ef1cf8a.html.

²⁵ Dan Nephin & Carter Walker, *Lancaster County Officials Considering Releasing Some Inmates Because of Coronavirus*, LNP Lancaster Online (Mar. 20, 2020), https://lancasteronline.com/news/local/lancaster-county-officials-considering-releasing-some-inmates-because-of-coronavirus/article_38a31fb0-6af3-11ea-9ab6-53a5887726d7.html.

²⁶ U.S. Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (CDC Guidance) (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

44. As COVID-19 spreads in Pennsylvania, the same phenomenon seen at Rikers Island is likely to repeat itself in correctional facilities across the Commonwealth.
45. On April 6, 2020, the Philadelphia Department of Public Health again noted clusters of positive cases in congregate settings, including in the Philadelphia Department of Prisons (DOP) where, among the 4,134 people incarcerated,²⁷ 66 people in custody have tested positive for COVID-19.²⁸ This is a higher rate of infection than seen outside of detention facilities.
46. In an effort to slow the virus' spread by reducing DOP's population, the Defender Association of Philadelphia and the Philadelphia District Attorney's Office are working quickly to get people released from custody.²⁹ Over three days, Philadelphia judges released approximately 240 nonviolent offenders who had completed their minimum sentences and those held on cash bail or with certain "low-level" charges.³⁰ Operating under the same goal, Pennsylvania jails in Bucks and Delaware Counties have reduced their populations by more than 20%. As of March 30, 2020 Bucks County judges had

²⁷ Phila. Dep't of Prisons, *Daily Headcount and Census* (Apr. 12, 2020),

<https://www.phila.gov/media/20200413144245/Prisons-daily-census-20200412.pdf>.

²⁸ See Press Release, City of Phila., *City Provides Update on COVID-19 for Monday, April 13, 2020* (Apr. 13, 2020), <https://www.phila.gov/2020-04-13-city-provides-update-on-covid-19-for-monday-april-13-2020/>; see also Sarah Reyes, Phila. Dep't of Prisons, *How Philadelphia Dep't of Prisons is Responding to COVID-19* (Apr. 14, 2020), <https://www.phila.gov/2020-03-30-how-philadelphia-department-of-prisons-is-responding-to-covid-19/>.

²⁹ Jeremy Roebuck & Chris Palmer, *Racing Against a Coronavirus Clock, Philly Courts Release 200+ Jail Inmates in the First Week of Fast-Track Emergency Hearings*, Phila. Inquirer (Apr. 11, 2020), <https://www.inquirer.com/news/coronavirus-philadelphia-jail-inmate-release-bail-infection-larry-krasner-court-20200411.html>.

³⁰ *Id.*

released 141 people from custody to create space for a medical isolation unit for inmates testing positive for the virus.³¹

47. Transmission in prisons and jails will endanger not only the incarcerated, but also the broader community. As correctional staff enter and leave the facility, they will carry the virus with them. Like the incarcerated people in the facilities where they work, correctional officers face an increased risk of COVID-19 exposure because they are less able to engage in social distancing and because of the shortage of PPE. Indeed, as of April 13, the BOP has reported 201 confirmed infections among its prison staff nationwide.³²
48. On an accelerating basis since mid-March of this year, courts in this Circuit and across the country have ordered the release of inmates and detainees in response to the COVID-19 crisis.³³

³¹ Jo Ciavaglia, *Bucks, Montgomery County Jails Taking Steps to Reduce Inmate Populations*, Bucks County Courier Times (Mar. 29, 2020), <https://www.buckscountycouriertimes.com/news/20200329/coronavirus-bucks-montgomery-county-jails-taking-steps-to-reduce-inmate-populations>.

³² See Fed. Bureau of Prisons, *COVID-19* (last accessed Apr. 14, 2020), <https://www.bop.gov/coronavirus/>.

³³ See, e.g., *United States v. Xue*, No. 18-CR-122, ECF 42 (E.D. Pa. Apr. 10, 2020) (ordering pretrial release in light of compelling reason of COVID-19, subject to requirements); *United States v. Giordano*, No. 14-CR-206, ECF 72 (E.D. Pa. Apr. 10, 2020) (granting release of petitioner with medical conditions rendering him particularly vulnerable to the effects of COVID-19 and that petitioner's fear of infection while incarcerated far outweighs any likelihood of fleeing); *United States v. Rodriguez*, No. 03-CR-271, ECF 135 (E.D. Pa. Apr. 1, 2020) (granting motion for compassionate release where the presence of COVID-19, the inmate's health conditions, the proximity to his release date, and his demonstration of rehabilitation created extraordinary and compelling reasons justifying release); *Thakker v. Doll*, No. 1:20-CV-480, ECF 47 (M.D. Pa. Mar. 31, 2020) (granting release of 14 ICE detainees with chronic medical conditions where plaintiffs established they faced a risk of serious, listing illness or death if COVID-19 spreads within Pennsylvania's prisons); *United States v. Colvin*, No. 3:19-CR-179, 2020 U.S. Dist. LEXIS 57962 (D. Conn. 2020) (waiving exhaustion requirement and granting motion for compassionate release for vulnerable inmate at FDC Philadelphia where "the

III. The Efforts of the Bureau of Prisons to Curb the Spread and Lethality of COVID-19 in Federal Jails and Prisons Are Inadequate

49. The Bureau of Prisons (BOP) has failed in every respect to respond appropriately to the ongoing COVID-19 pandemic. The BOP failed to anticipate and prepare for the magnitude of the threat that COVID-19 poses to its own staff and the people it holds; it then failed to respond in any meaningful way to initial signs of uncontrolled outbreaks at several of its facilities across the country; and it has continued to fail to implement even the baseline measures that would assure the safety of its own staff, of Petitioners and their fellow class members and others incarcerated by the BOP, and of the communities into which staff and others travel on a daily basis.
50. The BOP's preparations were inadequate from the start. Initial guidance from the BOP was not issued until March 9, 2020, and it addressed only the possibility of telework for some employees at an agency where the vast majority of workers must physically appear at facilities to do their jobs, and it mentioned restrictions only for people who had traveled to already-impacted countries.³⁴
51. Moreover, the BOP did not make any changes to protocols that call for inmates to purchase their own cleaning supplies from commissary—shutting out many without the

risks faced by the Defendant will be minimized by her immediate release to home, where she will quarantine herself"); *Coronel v. Decker*, No. 20 Civ. 2472, ECF 26 (S.D.N.Y. Mar. 27, 2020) (granting release of four detainees with medical conditions that render them particularly vulnerable to severe illness or death if infected by COVID-19); *People of State of N.Y. ex rel. Stoughton v. Brann*, No. 451078/2020, 2020 NY Slip Op 20081 (N.Y. Sup. Ct. Apr. 6, 2020) (“[C]ommunicable diseases could not ask for a better breeding ground than a crowded prison. . . . Certainly no American prison is equipped to deal with a health crisis of the severity of this one.”).

³⁴ See BOP Memorandum (Mar. 9, 2020),

https://cdn.govexec.com/media/gbc/docs/pdfs_edit/031020cb.pdf.

money on their books to buy those supplies—and for them to maintain responsibility for cleaning and sanitizing their spaces (whether they have supplies or not).³⁵

52. In fact, as late as March 26—weeks after many cities and states had closed restaurants and non-essential businesses, restricted travel, and ordered people to shelter in place—the BOP Director announced that the Bureau had merely taken an inventory of soap, rather than taken steps to distribute it at no cost or even at a reduced cost.³⁶

53. Because of the BOP’s failure to take the threat seriously or to take meaningful steps to prepare, stakeholders from every part of the system highlighted preparations that it had not undertaken, possible dangers faced by employees, and open questions that required urgent attention and answers.³⁷

54. Similarly, before the BOP began losing control of COVID-19 in its facilities, press accounts had already highlighted the impending storm.³⁸

55. The manifest failure to prepare by the BOP ensured that when COVID-19 hit facilities, it hit hard. By the end of March, press accounts described COVID-19 as having “cripple[d]” FCI Oakdale in Louisiana, where dozens of prisoners tested positive before

³⁵ See, e.g., *Inmate Information Handbook, Federal Bureau of Prisons FCI Elkton, Ohio* at 9, Bureau of Prisons (2012), https://www.bop.gov/locations/institutions/elk/ELK_aohandbook.pdf.

³⁶ That day the BOP Director issued a statement that “all cleaning, sanitation, and medical supplies have been inventoried. Ample supplies are on hand and ready to be distributed or moved to any facility as deemed necessary.” Federal Bureau of Prisons, *Statement from BOP Director* (Mar. 26, 2020), available at https://www.bop.gov/resources/news/20200326_statement_from_director.jsp.

³⁷ See Letter from U.S. Senators (Mar. 9, 2020), available at <https://www.warren.senate.gov/imo/media/doc/2020-03-09%20Senator%20Warren%20Letter%20to%20BOP%20re%20Coronavirus.pdf>; see also AFGE Testimony to House Oversight Committee (Mar. 11, 2020), available at <https://www.afge.org/globalassets/documents/congressional-testimony/2020/afge-sfr-house-committee-on-oversight-and-reform-coronavirus-preparedness-and-response.pdf>.

³⁸ See, e.g., Michael Balsamo & Michael R. Sisak, *Federal Prisons Struggle to Combat Growing COVID-19 Fears*, AP (Mar. 27, 2020), <https://apnews.com/724ee94ac5ba37b4df33c417f2bf78a2>.

the BOP ceased testing entirely and just presumed that people had COVID-19.³⁹ Even at best, officials at Oakdale were testing only prisoners who were so sick that they had to be transported to an outside hospital.⁴⁰ A pending lawsuit seeks immediate relief for at-risk inmates in FCI Oakdale.⁴¹

56. Among other failures that contributed to that explosion at Oakdale, officers reported that even as of late March, they were given only gloves—not masks, face shields, or other PPE—when interacting with prisoners sick enough to be transported to the hospital.⁴² Those same officers were ordered back to the job in defiance of CDC guidance that called for self-isolation by correctional staff who had been exposed. *Id.* And as a result of that, as of this writing, six prisoners at FCI Oakdale have already died from COVID-19.
57. By the time the BOP stopped testing for COVID-19 at FCI Oakdale, dozens of inmates had deteriorated to the point of needing to go to local hospitals, straining the local hospital system, as well. One attorney called contracting COVID-19 at Oakdale “a death sentence.”⁴³

³⁹ Kimberly Kindy, *An Explosion of Coronavirus Cases Cripples a Federal Prison in Louisiana*, Wash. Post (Mar. 29 2020), available at https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html.

⁴⁰ Kimberly Kindy, *Inside the Deadliest Federal Prison, the Seeping Coronavirus Creates Fear and Danger*, Wash. Post (Apr. 10, 2020), available at https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0_story.html.

⁴¹ See *Livas v. Myers*, No. 1:20-cv-422, ECF 10 (W.D. La. Apr. 13, 2020).

⁴² Joseph Neff & Keri Blakinger, *Federal Prisons Agency “Put Staff in Harm’s Way” of Coronavirus: Orders at Oakdale in Louisiana Help Explain COVID-19 Spread*, The Marshall Project (Apr. 3, 2020), <https://www.themarshallproject.org/2020/04/03/federal-prisons-agency-put-staff-in-harm-s-way-of-coronavirus>.

⁴³ Keegan Hamilton, Vice News, *Third Inmate Dies from COVID-19 at Louisiana Prison as Entire Federal System Goes on Lockdown* (Apr. 1, 2020),

58. FCI Oakdale is hardly unique. Federal facilities all over the country—including in the Mid-Atlantic region—have been similarly overrun with the virus. Facilities with uncontrolled outbreaks include FCI Danbury, in Connecticut (83 combined positive tests as of April 14), FCI Butner, in North Carolina (87 combined positives as of April 14 and four inmate deaths), and USP Lompoc, in California (86 combined as of April 14).⁴⁴
59. Even those numbers do not tell the full story. The BOP has repeatedly understated the scope of the problem and refused to take steps to assess the situation honestly and openly. For example, as of April 9, the BOP reported 10 inmates and 9 staff had tested positive at FCI Elkton, in Ohio. *Id.* Press accounts, however, reported that medical staffing had fallen to fifty percent of capacity, and that three inmates had already died as of April 6. (As of April 14, the BOP now reports 24 inmates and 15 staff and four inmate deaths.)
60. Conditions had deteriorated so thoroughly that the Ohio Governor called in the state's National Guard to FCI Elkton, a federal prison.⁴⁵ At the press conference announcing that decision, Governor DeWine called on the BOP to stop sending new prisoners to FCI Elkton—a practice that the BOP had purportedly stopped nearly a week earlier, but nevertheless continued.⁴⁶ And the accuracy of the BOP's reporting of COVID-19 cases in FCI Elkton is in doubt.⁴⁷

https://www.vice.com/en_us/article/5dmend/second-inmate-dies-from-covid-19-at-louisiana-prison-as-entire-federal-system-goes-on-lockdown.

⁴⁴ *Id.*

⁴⁵ *Ohio Gov. Mike DeWine Authorized Ohio National Guard to Assist Elkton Prison*, WKYC (Apr. 6, 2020), <https://www.wkyc.com/article/news/health/coronavirus/ohio-gov-mike-dewine-authorizes-ohio-national-guard-to-assist-elkton-prison/95-d620f3c6-c560-486f-9eac-ebce7c09d4e7>.

⁴⁶ Cory Shaffer, *Ohio National Guard Will Assist With Response at Elkton Federal Prison*, Cleveland.com (Apr. 6, 2020), <https://www.cleveland.com/coronavirus/2020/04/ohio-national-guard-will-assist-with-coronavirus-response-at-elkton-federal-prison.html>; see also Brandon Brown, *Sen. Portman Urges Prisoners Not to be Transferred to FCI Elkton*, WFMJ (Apr. 6,

61. Unicor, an entity that runs prisoner work programs for the BOP, continued operating throughout the pandemic and only last week began distributing masks to prisoner workers and correctional officers.⁴⁸
62. Across facilities, the BOP has been “scrambling” to address staffing and resource needs. Despite this, the BOP has continued to limit the number of contractors who can supply PPE, does not have enough tests, and has been sued by its own staff for requiring them to work in hazardous working conditions.⁴⁹
63. The BOP’s own employees have not only sued across all its facilities—staff at FDC Philadelphia joined staff from several other facilities in filing an OSHA complaint about the conditions at their facilities.⁵⁰
64. Among other things, the OSHA complaint points to the BOP having “directed staff through the Bureau of Prisons who have come in contact with, or been in close proximity to, inmates who show or have shown symptoms of COVID-19, to report to work and not be self-quarantined for 14 days per the CDC guidelines.” It also complains of the BOP having failed to undertake any workplace or administrative controls to address

2020), <https://www.wfmj.com/story/41979544/sen-portman-urges-prisoners-not-be-transferred-to-fci-elkton>.

⁴⁷ Elkton Union President Reports Different COVID-19 Stats Than Federal Bureau of Prisons, WKVB (Apr. 9, 2020), <https://www.wkbn.com/news/coronavirus/elkton-union-president-reports-different-covid-19-stats-than-federal-bureau-of-prisons/>.

⁴⁸ Cary Aspinwall, Keri Blakinger, & Joseph Neff, *Federal Prison Factories Kept Running as Coronavirus Spread*, The Marshall Project (Apr. 10, 2020), <https://www.themarshallproject.org/2020/04/10/federal-prison-factories-kept-running-as-coronavirus-spread>.

⁴⁹ Luke Barr, *Federal Prisons Facing Shortages of Resources Amid Coronavirus Outbreak*, ABC News (Apr. 1, 2020), <https://abcnews.go.com/Health/federal-prisons-facing-shortages-resources-amid-coronavirus-outbreak/story?id=69920966>.

⁵⁰ OSHA Complaint (Mar. 31, 2020), available at <https://www.afge.org/globalassets/documents/generalreports/coronavirus/4/osha-7-form-national-complaint.pdf>.

transmission, to require social distancing or other measures in the CDC guidance, or to provide sufficient PPE.

65. Ostensibly responding to that, the BOP released a short document titled “Correcting Myths and Misinformation about BOP and COVID-19.”⁵¹ In purporting to rebut the assertion that staff who had been in contact with inmates who showed symptoms of COVID-19 still had to come to work, the BOP simply confirmed that such employees would have to come to work, but would have masks.⁵²
66. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law on March 27, makes funding available for federal prisons to purchase PPE and test kits for COVID-19 and authorizes the Justice Department to lengthen the maximum amount of time that a prisoner can be placed in home confinement during the pandemic.⁵³ Acting under that authority, Attorney General William Barr made a finding that emergency conditions are materially affecting the functioning of the BOP, and on April 3 he directed BOP Director Michael Carvajal to review inmates with COVID-19 risk factors to determine their eligibility for home confinement, stating that the BOP’s efforts to prevent COVID-19 from entering BOP facilities and infecting inmates have “not been perfectly successful at all institutions.”⁵⁴

⁵¹ See BOP, *Correcting Myths and Misinformation About BOP And COVID-19* (Apr. 11, 2020), https://www.bop.gov/coronavirus/docs/correcting_myths_and_misinformation_bop_covid19.pdf.

⁵² *Id.* at 3 (“In keeping with CDC ‘Guidance for Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19,’ the BOP performs pre-screening of all employees reporting to work and requires exposed workers to wear a mask for 14 days after last exposure. They are also expected to perform regular self-monitoring for symptoms, practice social distancing and to disinfect and clean their work spaces. Anyone who develops signs or symptoms of illness are sent home.”).

⁵³ CARES Act, Pub. L. No. 116-136, § 12003(b), 134 Stat. 281 (2020).

⁵⁴ Memorandum from Attorney General Barr to Director Carvajal (Apr. 3, 2020), *available at* <https://www.justice.gov/file/1266661/download>.

67. Attorney General Barr also released a series of belated letters suggesting that some BOP prisoners should be released.⁵⁵ Those letters, however, have failed to achieve the desired effect because they do not make very many people eligible, only encourage the BOP to exercise discretion that it has declined to use, and do not actually direct release (much less on a scale that would allow for safe social distancing in the facilities or with the speed that the health crisis requires). And for those few released, the BOP has not counted in its numbers those who were released and then subsequently died.
68. The appalling conditions of BOP facilities across the country have forced federal courts to address BOP failures in a large number of individual cases seeking compassionate release;⁵⁶ bail pending appeal, trial, or sentencing;⁵⁷ delayed self-surrender;⁵⁸ writs of habeas corpus;⁵⁹ class-wide relief for groups of inmates;⁶⁰ and furloughs.⁶¹

⁵⁵ See Mar. 26, 2020 and Apr. 3, 2020 Memoranda For Director of Bureau Prisons from Attorney General Barr, available at <https://www.justice.gov/coronavirus>.

⁵⁶ E.g., *United States v. Rodriguez*, No. 03-cr-271, ECF 135 (E.D. Pa. Apr. 1, 2020) (granting release after finding risk factors for COVID-19 constitute extraordinary and compelling reason and noting that prisons are “tinderboxes for infectious disease”); *United States v. Foster*, No. 14-cr-324-02, ECF 191 (M.D. Pa. Apr. 3, 2020) (noting the “unprecedented” circumstances facing “our prison system” and finding that COVID-19 is an extraordinary and compelling basis for release; indeed, “[n]o rationale is more compelling or extraordinary”); *United States v. Smith*, No. 12-cr-133, ECF 197 (S.D.N.Y. Apr. 13, 2020) (granting release; finding exhaustion waivable and waived); *United States v. Zukerman*, No. 16-cr-194, ECF 116 (S.D.N.Y. Apr. 3, 2020) (waiving exhaustion and granting immediate compassionate release in light of COVID-19 to defendant convicted in multi-million dollar fraud scheme); *United States v. Sawicz*, No. 08-cr-287, ECF 66 (E.D.N.Y. Apr. 10, 2020) (releasing child-pornography offender); *United States v. Clagett*, No. 97-cr-265, ECF 238 (W.D. Wash. Apr. 9, 2020); *United States v. Oreste*, No. 14-cr-20349, ECF No. 200 (S.D. Fla. Apr. 6, 2020); *United States v. Hakim*, No. 05-cr-40025, ECF 158 (D.S.D. Apr. 6, 2020); *United States v. Hernandez*, No. 18-cr-20474, ECF 41 (S.D. Fla. Apr. 2, 2020).

⁵⁷ E.g., *United States v. Chavol*, No. 20-50075 (9th Cir. Apr. 2, 2020) (stipulation in a FRAP(9) appeal to release on conditions); *United States v. Nkanga*, No. 18-cr-713, ECF 120 (S.D.N.Y. Apr. 7, 2020); *United States v. Hector*, No. 2:18-cr-3-2, ECF 748 (W.D. Va. Mar. 27, 2020); *United States v. Kennedy*, No. 18-cr-20315, ECF 77 (E.D. Mich. Mar. 27, 2020); *United States v. Meekins*, No. 18-cr-222, ECF 75 (D.D.C. Mar. 31, 2020).

69. Rather than address any of this, the BOP has focused instead on spending money on unproven remedies that medical authorities do not believe work to treat COVID-19.⁶²
70. For all of these reasons, the threat posed to people incarcerated by the BOP remains ongoing and acute. As of April 14, 2020, at least 388 inmates have tested positive, along with 201 BOP staff.⁶³ As noted, that understates the scope of the spread because of the number of facilities that have ceased testing entirely because of a presumption of transmission. For example, as of April 14 the BOP's website still listed Oakdale as

⁵⁸ *United States v. Roeder*, No. 20-1682, ___ F. App'x ___ (3d Cir. Apr. 1, 2020) (reversing district court's denial of defendant's motion to delay execution of his sentence because of the COVID-19 pandemic); *United States v. Garlock*, No. 18-CR-418, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) (observing that "[b]y now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided"); *United States v. Claudio-Montes*, No. 10-cr-212, ECF 3374 (D.P.R. Apr. 1, 2020); *United States v. Matthaei*, No. 19-CV-243, 2020 WL 1443227, at *1 (D. Idaho Mar. 16, 2020) (extending self-surrender date by 90 days in light of pandemic).

⁵⁹ *E.g.*, *Xochihua-James v. Barr*, No. 18-71460, ___ F. App'x ___ (9th Cir. Mar. 23, 2020) (*sua sponte* releasing detainee from immigration detention "in light of the rapidly escalating public health crisis"); *Thakker v. Doll*, No. 1:20-cv-480, ECF 47 (M.D. Pa. Mar. 31, 2020); *United States v. Davis*, No. 20-cr-9, ECF 21 (D. Md. Mar. 30, 2020) (releasing defendant because of the "urgent priority" of decarcerating, to protect both the defendant and the community); *Fraihat v. Wolf*, No. 5:20-CV-590, ECF 18 (C.D. Cal. Mar. 30, 2020).

⁶⁰ *E.g.*, *In re Request to Commute or Suspend County Jail Sentences*, Docket No. 084230 (N.J. Mar. 22, 2020) (releasing large class of defendants serving time in county jail "in light of the Public Health Emergency" caused by COVID-19); *Basank v. Decker*, No. 20-cv-2518, ECF 11 (S.D.N.Y. Mar. 26, 2020) (granting TRO and releasing high-risk plaintiffs because "[t]he nature of detention facilities makes exposure and spread of the [coronavirus] particularly harmful"); *Thakker v. Doll*, No. 1:20-cv-480, ECF 47 (M.D. Pa. Mar. 31, 2020).

⁶¹ *E.g.*, *United States v. Stahl*, No. 18-cr-694, ECF 53 (S.D.N.Y. Apr. 10, 2020); *United States v. Underwood*, No. 18-cr-201, ECF 179 (D. Md. Mar. 31, 2020) (noting that although there has not yet been a positive COVID-19 test in elderly petitioner's facility, "there is significant potential for it to enter the prison in the near future").

⁶² Lachlan Markay, *The Bureau of Prisons Just Bought a Ton of Hydroxychloroquine, Trump's COVID-19 Miracle Drug*, *The Daily Beast* (Apr. 7, 2020), <https://www.thedailybeast.com/the-bureau-of-prisons-just-bought-a-ton-of-hydroxychloroquine-trumps-covid-19-miracle-drug>.

⁶³ BOP, *COVID-19 Coronavirus*, <https://www.bop.gov/coronavirus/> (last accessed Apr. 14, 2020).

having 38 confirmed cases among inmates, a number suspiciously unchanged since March.

71. Notably, the BOP's own rosy data show that among closed cases, the fatality rates for prisoners in its care may dwarf rates among any other populations. Of cases the BOP has marked as closed as of April 14, 19 inmates have recovered while 13 have died.
72. Even in the midst of the virus's rapid spread across the country, the BOP persists in transferring detainees between prisons. In their recently filed OSHA complaint, BOP employees report that BOP "continuously mov[es] inmates by bus and/or airlift to various prison sites across the nation. They have authorized movement of infected inmates, inmates suspected of being infected, inmates who have been in close contact or proximity to infected inmates, to areas of the Country that do not have any rate of infections, or to Institutions that otherwise have not shown signs of any introduction of the virus, thus introducing the virus into an uninfected area."⁶⁴ In response to ongoing concerns about BOP's continued transfers, U.S. Representative Fred Keller (PA-12) has introduced the Pausing All New Detention and Ending Movement of Inmates for Coronavirus (PANDEMIC) Act, H.R. 6427. The PANDEMIC Act would require BOP to stop all transfers for the time being.

IV. The FDC is Failing to Take Proper Precautions, Placing People at an Increased Risk

73. The conditions at the FDC pose a heightened public health risk for the spread of COVID-19 that is even greater than in non-carceral institutions.

⁶⁴ OSHA Complaint (Mar. 31, 2020), *available at* <https://www.afge.org/globalassets/documents/generalreports/coronavirus/4/osha-7-form-national-complaint.pdf>.

74. The FDC lacks adequate medical infrastructure to address the spread of infectious disease and treat the people most vulnerable to COVID-19.
75. Approximately 1,027 people are held at the FDC. The majority of these people are pretrial detainees, who in non-pandemic times may remain at the FDC for periods ranging from weeks to years. The FDC also holds a substantial number of sentenced inmates, including inmates generally assigned to other facilities who have been brought to Philadelphia on writs, as well as female inmates who have been assigned to the FDC to serve their sentences.
76. Correctional officers, who live all over the Greater Philadelphia area, come in and out of the FDC each day without sufficient medical screening.
77. The FDC's actions to limit the introduction of sick people into the building have been slow and inadequate.
78. The FDC temporarily halted social visitation and most attorney visitation on or about March 13.
79. Before approximately March 26, the only precautionary measures the FDC took with new detainees were to measure the temperature of new detainees entering the facility and to ask them questions about recent travel. Such steps were woefully inadequate given the public-health advisories already well known by early March cautioning that the virus is commonly spread by asymptomatic people and the particular risks of spread of the virus within jails and prisons.⁶⁵

⁶⁵ See, e.g., Roni Caryn Rabin, *They Were Infected With the Coronavirus. They Never Showed Signs.*, N.Y. Times (Feb. 26, 2020) (“‘I don’t think there’s any question that someone who is without symptoms and carrying the virus can transmit the virus to somebody else,’ said Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases.”), available at <https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html>.

80. On or about March 26, the FDC implemented new procedures for new detainees coming into the facility. Under these new procedures, the FDC kept new detainees housed separately from existing detainees for 14 days. However, under these procedures the FDC took no steps to house new detainees separately from one another.
81. On or about April 1, the FDC began a two-week lockdown, during which all detainees are confined to their cells, except for up to one hour per day for use of the shower, email, and telephone.
82. In spite of this lockdown, the FDC continues to accept new arrestees, and corrections officers and other staff continue to come and go to work each day without the ability to quarantine, which continues to present significant risk to FDC detainees. Wearing of masks by staff and inmates did not begin at all until approximately April 1 and has never been more than sporadic. Moreover, the FDC's delayed and flawed implementation of quarantine protocols before April makes it highly likely the virus has already entered the FDC, in light of the timing of community spread in the Philadelphia area.
83. The structure of the FDC increases the risk of contagion. For example, most detainees are held two per cell, with a shared toilet and sink in each cell. A standard FDC cell is smaller than 100 square feet, which is too small for effective social distancing or self-quarantine precautions as recommended by the CDC.
84. Last week detainees for the first time were given masks, but they still have no gloves. There is no enforcement by staff to require detainees to wear their masks. Staff members have masks and gloves but fail to wear them consistently.
85. Detainees continue to use shared resources outside their cells, including telephones, computers, and showers. These shared resources are ripe for transmission of COVID-19.

86. Even under the new lockdown, a typical inmate will come into close contact with some 15-20 people per day. In addition, inmates frequently come into contact with surfaces that have been touched by many other people without being sanitized. The FDC has insufficient supplies of disinfectant products for sanitizing surfaces.
87. As such, it is not possible for detained individuals to engage in social distancing or self-quarantine precautions as recommended by the CDC.
88. FDC detainees have limited access to personal-hygiene items such as tissues, soap, alcohol-based disinfectant, sanitary options for drying hands, and gloves. All of these conditions prevent individuals from being able to take CDC-recommended precautions to minimize the spread of the virus.
89. The FDC is not testing inmates for COVID-19.
90. The FDC is not even routinely measuring inmates' temperatures.
91. People who contract COVID-19 can deteriorate rapidly, even before a test result can be received. Detainees who do contract COVID-19 are at higher risk for developing acute symptoms than if they were in the community, because the FDC lacks the medical resources to care for symptomatic inmates.

V. Petitioners Are Particularly Vulnerable

92. **Petitioner Timothy Brown** is 46 years old. He has been incarcerated at the FDC since approximately March 28, 2019. Mr. Brown suffers from serious coronary artery disease. He has a 100% blockage in his anterior artery. He has latent tuberculosis and a lifelong history of asthma, which has caused him to have numerous cases of pneumonia. He is obese (5'9" height and 250 pounds). He has a compromised immune system from approximately 20 years of drug addiction. He has twice overdosed, causing his heart to

stop and requiring him to be brought back to life. His most recent overdose occurred as recently as January 2019. Mr. Brown is critically vulnerable to COVID-19 because of his significant health problems.

93. **Petitioner Myles Hannigan** is 47 years old. He has been incarcerated at the FDC since approximately February 14, 2020. He has advanced heart disease and coronary artery disease. He has diabetes. He suffers from high blood pressure, high cholesterol, and sleep apnea, all of which the FDC has failed or refused to properly monitor and treat since Mr. Hannigan's incarceration there began. He has latent TB. Mr. Hannigan is critically vulnerable to COVID-19 because of his significant health problems.
94. **Petitioner Anthony Hall** is 46 years old and has been incarcerated at the FDC since approximately September 12, 2016. Mr. Hall suffers from renal failure and hypertension. Mr. Brown is critically vulnerable to COVID-19 because of his significant health problems.

LEGAL ALLEGATIONS

I. Section 2241 is an Appropriate Vehicle to Address Unconstitutional Conditions of Confinement

95. Section 2241(c)(3) authorizes courts to grant habeas corpus relief when a person is "in custody in violation of the . . . laws or treaties of the United States." The Third Circuit has long allowed § 2241 to challenges regarding "'conditions' of [] confinement." *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 241 (3d Cir. 2005) (granting *habeas* petition alleging that the BOP must consider in good faith whether the petitioner could complete the last six months of his sentence in a Community Corrections Center rather a Federal Correctional Institution). Courts have allowed challenges solely on the basis of

detention conditions that pose a threat to petitioners' medical wellbeing. *See e.g., Roba v. United States*, 604 F.2d 215, 218–19 (2d Cir. 1979) (approving the use of Section 2241 to challenge a prisoner's transfer where that transfer created a risk of fatal heart failure). Given the plain language of § 2241, courts are authorized to grant relief both to pretrial detainees and convicted inmates because both are "in custody" within the meaning of the statute. *See Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) (explaining that "the Fourteenth Amendment affords pretrial detainees protections 'at least as great as the Eighth Amendment protections available to a convicted prisoner'" (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)); *see also Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475 (2015) (explaining that "pretrial detainees (unlike convicted prisoners) cannot be punished at all. . . .").

96. In response to COVID-19, courts have delayed or canceled individuals' entry into criminal custody. *See, e.g., United States v. Garlock*, No. 18-CR-418-VC-1, 2020 WL 1439980 (N.D. Cal. Mar. 25, 2020) (*sua sponte* extending criminal defendant's surrender date because "[b]y now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided" given "the health risks—to inmates, guards, and the community at large—created by large prison populations"); *Waterkeeper All. Inc. v. Spirit of Utah Wilderness, Inc.*, No. 10-CV-1136, 2020 WL 1332001, at *1 (S.D.N.Y. Mar. 23, 2020) (extending criminal defendant's surrender date "[i]n light of recent COVID-19 pandemic affecting New York" and related directives from court's chief judge); *United States v. Barkman*, Case No. 3:19-cr-52, 2020 U.S. Dist. LEXIS 45628, at *1, *3 (D. Nev. Mar. 17, 2020) (suspending confinement order because "[c]onditions of pretrial confinement create the ideal

environment for the transmission of contagious disease”); *United States v. Raihan*, No. 20-cr-68, Dkt. No. 20 at 10:12–19 (E.D.N.Y. Mar. 12, 2020) (ordering that criminal defendant continue on pretrial release rather than be remanded to detention center due, in part, to court’s recognition of the fact that “[t]he more people we crowd into that facility, the more we’re increasing the risk to the community”).

97. In this case, the unconstitutional threat to Petitioners’ health and life posed by being held in Respondent’s custody is ongoing, not simply imminent. Every hour that Petitioners are held in the FDC, they are at a significantly elevated risk of contracting coronavirus, and because of their medical conditions, their risk of dying from coronavirus is significant.

II. Respondent’s Failure to Take Steps to Mitigate Transmission of Coronavirus Constitutes Deliberate Indifference to the Serious Medical Needs of Plaintiffs

98. Respondent is violating Petitioners’ Fifth and Eighth Amendment rights by continuing to incarcerate them in conditions where it is virtually impossible to take steps to prevent transmission of an infectious disease that may prove deadly because of Petitioners’ vulnerable conditions.
99. All people held in the FDC, whether convicted or not, are entitled to be protected from conditions of confinement that create a serious risk to health or safety, including through release from custody when necessary. *Brown v. Plata*, 563 U.S. 493, 531-32 (2011) (upholding lower court’s order releasing people from state prison even though release was based on prospect of future harm caused by prison overcrowding); *see also Farmer v. Brennan*, 511 U.S. 825, 834 (correctional official violates Eighth Amendment by consciously failing to prevent “a substantial risk of serious harm”); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (“deliberate indifference” to serious medical needs violate the Eighth Amendment).

100. Petitioner Myles Hannigan has been sentenced and therefore his treatment is governed by the Eighth Amendment; Petitioner Timothy Brown is awaiting trial and Petitioner Anthony Hall is awaiting sentencing, and they are therefore protected from deliberate indifference by the Fifth Amendment. Although pretrial (including presentenced) class members are entitled to at least as much protection from unsafe conditions as sentenced class members, *see Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”), for present purposes the distinction is immaterial because Respondent’s continued detention of the class plainly violates both the Eighth and Fifth Amendments.
101. The threat of exposure to a deadly infectious disease such as COVID-19 constitutes a serious risk to health, particularly for the Petitioners and the vulnerable class members described herein. *Helling v. McKinney*, 509 U.S. 25, 34 (1993) (noting with approval Eighth Amendment claims based on exposure to serious contagious diseases). Under the FDC’s current conditions, Respondent has not and cannot protect Petitioners and the class from this risk of serious harm. In these circumstances, increased release to home confinement is required to protect Petitioners and other inmates with high-risk health conditions from unconstitutional treatment.
102. Government officials act with deliberate indifference when they “ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” even when “the complaining inmate shows no serious current symptoms.” *Helling*, 509 U.S. at 33. This Court need not “await a tragic event” to find that Respondent is maintaining unconstitutional conditions of confinement. *Id.*

Instead, showing that the conditions of confinement “pose an unreasonable risk of serious damage to [Petitioners’] future health” is sufficient. *Id.* at 35.

103. The reach of the Fifth and Eighth Amendments includes “exposure of inmates to a serious, communicable disease.” *Helling*, 509 U.S. at 33; *see also Karolis v. N.J. Dep’t of Corr.*, 935 F. Supp. 523, 527 (D.N.J. 1996) (“[P]rison officials have an affirmative duty to protect inmates from infectious disease.”) (citations omitted). The Third Circuit Court of Appeals has even allowed prisoners to maintain a cause of action for mental anguish suffered as a result of exposure to tuberculosis, even when the risk had subsided. *Plummer v. United States*, 580 F.2d 72 (3rd Cir. 1978).
104. In this case, as established by the facts above, Petitioners face a significant risk of exposure to coronavirus, with the attendant risk of death that follows given their vulnerable conditions. Respondent is well aware of this risk, having been alerted to it by the CDC, the Attorney General, (belated) Agency guidance, and widespread news reporting. Indeed, the Second Circuit Court of Appeals, unprompted, acknowledged the “grave and enduring” risk posed by COVID-19 in the correctional context. *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, No. 19-1778, ___ F.3d ___, 2020 WL 1320886, at *12 (2d Cir. Mar. 20, 2020); *see also Jovel v. Decker*, No. 20 Civ. 308, 2020 WL 1467397, at *1 (S.D.N.Y. Mar. 26, 2020) (finding “extraordinary circumstances” of COVID-19 pandemic justified release of immigration detainee from federal detention).
105. Finally, as established above, Respondent has not taken steps sufficient to protect Petitioners from the grave risks that are present every moment they are in detention in the FDC. Respondent simply is not capable of managing the risk to Petitioners in the FDC’s current environment. Whether judged under the Fifth or Eighth Amendment, Respondent

is holding Petitioners in violation of the Constitution by detaining them in the face of significant threats to their health and safety without taking sufficient steps to prevent that harm.

III. The Number of People Currently in the Facility Ensures that Respondents Cannot Implement Recommended Measures Required to Protect Petitioners' Health, and Violates the Fifth and Eighth Amendments

106. As alleged above, the BOP has thus far failed to implement effective social distancing across its facilities, including the FDC, often with disastrous effects. Part of this failure reflects the nature of correctional confinement, but in Philadelphia, part owes to the particular circumstances of FDC Philadelphia's capacity and population.
107. While a facility like FDC Philadelphia might not be overcrowded under normal circumstances, emergency situations sometimes render an otherwise constitutionally-acceptably-populated facility overcrowded relative to its maximum safe capacity.
108. The current FDC population of approximately 1,000 detainees might not present a constitutional problem in ordinary circumstances, but that population in the context of the ongoing pandemic ensures that effective social distancing is impossible, and it stymies Respondent's ability to follow and implement the CDC Interim Guidance and other viral-transmission prevention measures.
109. Courts have long found that facilities' populations may exacerbate existing harms entirely unrelated to the fact of crowding itself, including cases where populations may inhibit a facility's ability to mitigate detainees' risk of contracting dangerous diseases. The Supreme Court itself has recognized that correctional defendants can violate the Eighth Amendment when they crowd prisoners into cells with others who have "infectious maladies." *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *see also Hutto v.*

Finney, 437 U.S. 678, 682-85 (1978) (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases).

110. Subsequent decisions have recognized that such crowding need not occur solely at the cell level, and indeed can happen across facilities. *See Lareau v. Manson*, 651 F.2d 96 (2d Cir. 1981) (medical services strained by overcrowding could amount to a constitutional violation); *see also Plata v. Brown*, 2013 WL 3200587, *8-10 (N.D. Cal. June 24, 2013). That *Plata* Court ordered removal of prisoners at elevated risk of Valley Fever from prisons where Valley Fever was prevalent and where those prisoners faced an elevated risk of contracting it. Other prisons facing outbreaks of diseases that pose a higher risk to detained populations than to non-incarcerated people generally, and to incarcerated people with certain underlying medical conditions in particular, have forestalled court orders by taking proactive steps to move certain people out of the riskiest facilities. *See Hines v. Youseff*, 914 F.3d 1218, 1224-25 (9th Cir. 2019).
111. Such decisions make particular sense in light of substantial corroborating evidence that transmission becomes more likely in light of, among other factors, relative crowding of people together. *See, e.g., Joseph A. Bick, Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases* 1047, 1047 (Oct. 2007) (“The probability of transmission of potentially pathogenic organisms is increased [in jails and prisons] by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise.”), *available at* <https://bit.ly/2QZA494>.
112. In this case, Petitioners face an elevated risk of disease both because of particular failures on the part of Respondents as alleged above, and because of the number of people in the facility. The current population of FDC Philadelphia, both of detained and sentenced

inmates and the staff who come through on a daily basis and work in the same confined space, ensures that any effective measures that would mitigate Petitioners' exposure to COVID-19 are impossible.

113. As noted, Respondents are well aware of the risk faced by Petitioners. Respondents' failure to take any steps to address the crowding-related exacerbation of the underlying risk of transmission to Petitioners provides another basis for relief in this case.

CLASS ACTION ALLEGATIONS

114. Petitioners bring this representative habeas action pursuant to 28 U.S.C. § 2241 and as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure and Local Civil Rule 23.1 on their own behalf and on behalf of all persons similarly situated.
115. Petitioners seek to represent a class consisting of all current and future pretrial detainees, presentenced detainees, and sentenced inmates in custody at the FDC during the course of the COVID-19 pandemic (the "Class").
116. The members of the Class are too numerous to be joined in one action, and their joinder is impracticable. Upon information and belief, the class exceeds 1,000 individuals.
117. Common questions of law and fact exist as to all Class members and predominate over questions that affect only the individual members. These common questions of fact and law include but are not limited to: (1) whether the conditions of confinement described in this Petition amount to constitutional violations; (2) what measures Respondent has taken and is taking in response to the COVID-19 crisis; (3) whether Respondent has implemented and is implementing an adequate emergency plan during the COVID-19 crisis; (4) whether Respondent's practices during the COVID-19 crisis have exposed and are exposing detainees at the FDC to a substantial risk of serious harm; (5) whether the

Respondent has known of and disregarded a substantial risk of serious harm to the safety and health of the Class; and (6) what relief should be awarded to redress the harms threatened to members of the Class as a result of the conditions.

118. Absent class certification, individuals detained at the FDC during the COVID-19 pandemic would face a series of barriers in accessing the relief sought. The FDC has suspended visitation and FDC detainees have limited access to communication with the outside world, impeding their ability to obtain legal representation and pursue litigation. And a large portion of the Class has limited educational backgrounds and financial means.
119. Respondent's practices and the claims alleged in this Petition are common to all members of the Class.
120. The claims of Petitioners are typical of those of the Class. Petitioners are threatened with imminent inhumane conditions of confinement at the FDC.
121. The legal theories on which Petitioners rely are the same or similar to those on which all Class members would rely, and the harms suffered by them are typical of those suffered by all the other Class members.
122. Petitioners will fairly and adequately protect the interests of the Class. The interests of the Class representatives are consistent with those of the Class members. In addition, counsel for Petitioners are experienced in class action and civil rights litigation and in criminal law.
123. Counsel for Petitioners know of no conflicts of interest among Class members or between the attorneys and Class members that would affect this litigation.

FIRST CAUSE OF ACTION
(Fifth and Eighth Amendments)

124. Petitioners incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
125. Petitioners bring this claim on their own behalf and on behalf of the Class.
126. The Due Process Clause of the Fifth Amendment guarantees pretrial detainees the right to be detained in a safe situation, free from punitive conditions of confinement. *See* U.S. Const. Amend V. The government violates that guarantee where a widespread outbreak of a contagious disease subjects detainees to inhumane conditions without adequate protection. The government also violates that guarantee when it acts in ways that do not rationally relate to a legitimate governmental objective.
127. The Eighth Amendment guarantees sentenced inmates the right to necessary and adequate medical care. *See* U.S. Const. Amend VIII. The Government's failure to provide adequate medical care in response to a widespread outbreak of a contagious disease constitutes deliberate indifference to the serious medical needs of detainees, thereby establishing a violation of the Eighth Amendment to the United States Constitution.
128. Because of the conditions at the FDC, Petitioners are not able to take steps to protect themselves—such as social distancing, using hand sanitizer, or washing their hands regularly—and the government has not provided adequate protections. As COVID-19 rapidly spreads at the FDC, the already deplorable conditions at the FDC will be exacerbated, and detainees will have no ability to protect themselves from this disease.
129. Respondent's failure to adequately protect Petitioners from these punitive conditions, or release them from the conditions altogether, constitutes an egregious violation of

Petitioners' due process rights and deliberate indifference to the serious medical needs of Petitioners, and all members of the Class, thereby establishing violations of the Fifth and Eighth Amendments to the United States Constitution.

130. Respondent was aware or should have been aware of these conditions, which were and are open and obvious throughout the entire FDC.
131. Respondent knew of and disregarded an excessive risk to health and safety.
132. Respondent failed to act with reasonable care to mitigate these risks, subjecting Petitioners to a grave and serious risk of harm of serious illness, permanent injury, or death.
133. Because Respondent failed to act to remedy Petitioners' and the Class's degrading and inhumane conditions of confinement in violation of their Fifth and Eighth Amendment rights, Petitioners seek relief under this Writ of Habeas Corpus Petition and Class Action Complaint.
134. Because of the unlawful conduct of Respondent, Petitioners and the Class are threatened with imminent physical injury, pain and suffering, emotional distress, humiliation, and death.

RELIEF REQUESTED

WHEREFORE, Petitioners and the Class members respectfully request that the Court enter a class-wide judgment:

- A. Ordering immediate release of vulnerable persons to home confinement, with appropriate precautionary public health and safety measures, including Petitioners Brown, Hannigan, and Hall, and all others confined at the FDC whom Respondent has identified as medically vulnerable by virtue of their underlying health conditions

- or age (Vulnerable Persons)—and therefore at higher risk of developing serious COVID-19 illness;
- B. Ordering Respondent to mitigate the serious risk of illness, death, and harm from COVID-19 to those who remain confined at the FDC;
 - C. Certifying this Petition as a Class Action;
 - D. Appointing a Special Master on an emergency basis to Chair a Coronavirus Release Committee to evaluate Vulnerable Persons and make recommendations for ameliorative action for other persons at the FDC; and
 - E. Ordering such other and further relief as this Court deems just, proper and equitable.

Respectfully submitted,

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