IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AARON HOPE, et al.,

Plaintiffs-Petitioners,

v.

CLAIR DOLL, in his official capacity as Warden of York County Prison, et al.,

Defendants-Respondents.

Case No. 1:20-cv-00562

Chief Judge John E. Jones III

PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER, OR ORDER PURSUANT TO THIS COURT'S INHERENT AUTHORITY, TO PREVENT PETITIONERS' RE-DETENTION FOR 14 DAYS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page(s)**

STATUTES

OTHER AUTHORITIES

INTRODUCTION

Petitioners Rakibu Adam, Alexander Alvarenga, Brisio Balderas Dominguez, Eldon Bernard Briette, Viviana Ceballos, Edwin Luis Crisostomo Rodriguez, Jesus De La Pena,[1] Duckens Max Adler Francois, Nahom Gebretnisae, Aaron Hope, Jesus Angel Juarez Pantoja, Yelena Mukhina, Coswin Ricardo Murray, Wilders Paul, and Dembo Sannoh seek emergency relief to prevent Respondents from re-detaining them before the already scheduled November 12 status conference.[2] For the past seven months, these 15 medically vulnerable Petitioners have sheltered at home in their communities and have complied with their release terms.[3] Because the

[1] Petitioner De La Pena is included in this emergency motion, even though ICE has no lawful basis to re-detain him. In May 2020, the Board of Immigration Appeals (BIA) affirmed the Immigration Judge's grant of immigration relief. The government's motion for reconsideration does not stay the decision. *Compare* 8 CFR §§ 1003.2(f) (providing the process for motions to reconsider, no stay specification) with 8 CFR § 1003.19(i)(2) (specifying automatic stay in certain cases involving bond).

[2] Petitioners will move to dismiss the seven Petitioners for whom relief is not sought.

[3] Petitioners recognize one exception, Coswin Ricardo Murray, who, as the government and this Court are aware, had subsequent contact with the criminal legal system. On July 5, 2020, Petitioner Murray was charged with a summary offense for Harassment-Subject Other to Physical Contact in Luzerne County and, on September 3, 2020, he was charged in Worcester County, Maryland with (1) violating an out of state order, (2) second degree assault, and (3) Theft $100 to under $1500, and (4) false statement to peace officer. He was detained for five days in Maryland, extradited to Luzerne County, where he was detained for one day before being released on unsecured bond. He has an upcoming criminal court hearing for the Maryland charges on November 23, 2020, and the summary

government has refused to agree to pausing any re-detention once the Third Circuit's mandate issues—which should be tomorrow, Tuesday, November 10—Petitioners respectfully ask this Court to enter an order immediately, enjoining the government from re-detaining Petitioners for 14 days. This limited but critical relief will allow the parties to confer with the Court about the orderly resolution of each Petitioner's individual claims for continued release at the November 12 status conference.

NOTICE TO RESPONDENTS

Counsel for the Petitioners emailed Respondents' counsel, Assistant U.S. Attorneys Richard Euliss and Harlan Glasser, and advised them Petitioners would be seeking this emergency relief.

FACTUAL BACKGROUND

On April 7, 2020, this Court ordered release of the 15 individual Petitioners who now seek emergency relief based upon the severe risk of death or permanent injury they faced as ICE detainees who are particularly vulnerable to severe harm from COVID-19 infection. Many of the Petitioners are longtime lawful permanent residents and/or have lived in the United States for most of their lives. Since April 10, 2020, they have returned home to their communities and families and have been complying with the terms of their release. In addition to weekly check-ins with their

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offense in Luzerne County has not been resolved. The other 14 Petitioners have complied with release terms.

attorneys and compliance with local, state, and federal guidelines, Petitioners have also been following terms of supervision set by U.S. Immigrations and Customs Enforcement ("ICE"). Those conditions include electronic monitoring (10 petitioners) and regular check-ins with ICE (13 petitioners). Petitioners have also enrolled in (and completed) substance abuse classes and, where applicable, have followed up with probation and parole.[4] They have been caring for infirm family members and children, attending virtual church services, and receiving medical attention for their health conditions.

On August 25, 2020, the Court of Appeals for the Third Circuit reversed this Court's injunctive order on procedural grounds and remanded for further proceedings. The Third Circuit denied Petitioners' petition for rehearing en banc on November 3, 2020, and the mandate is expected to issue tomorrow, November 10, 2020, two days in advance of the status conference on November 12. Petitioners' counsel have conferred with Respondents' counsel in an effort to secure their commitment to not re-detain Petitioners until, at a minimum, the parties confer with

[4] Contrary to the Third Circuit's assertion that, because this Court's Orders did not require "any report to the Government", this "additional protection against risk of absconsion" was lost, pursuant to this Court's April 10, 2020 order, ICE was permitted to impose conditions of release on each Petitioner. *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 334 (3d Cir. 2020). ICE has chosen to impose these conditions on many Petitioners and has thus been able to maintain contact with them and confirm their whereabouts throughout these proceedings.

this Court at the status conference. Respondents refused to do so. Ex. 1 (email exchange between counsel).

This Court has previously found that the Petitioners suffer from medical conditions that make them particularly vulnerable to death or serious injury from COVID-19. Re-detention of the 15 Petitioners now would unnecessarily put Petitioners' lives at risk. This Court can take judicial notice that COVID-19 cases are increasing dramatically in the United States. When this Court granted the Petitioners' release seven months ago, about 60,000 people (worldwide) had died from the virus and over 1 million had contracted it. ECF No. 11 at 7. Since then, the pandemic has grown exponentially worse. The United States is currently in the midst of its third and most severe wave. In the past week, an average of more than 100,000 people a day have been infected with the virus.[5] The United States continues to hold a grim position globally: it is the country with both the highest number of COVID-19 cases and the most deaths. Over 10 million people in the United States currently have the virus, and 237,566 people have died.[6]

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[5] Anurag Maan & Shaina Ahluwalia, *U.S. Becomes First Nation to Cross 10 Million COVID-19 Cases as Third Wave of Infections Surge*, U.S. News, Nov. 8, 2020, https://www.usnews.com/news/top-news/articles/2020-11-08/us-becomes-first-nation-to-cross-10-million-covid-19-cases-as-third-wave-of-infections-surge

[6] *Coronavirus in the U.S.: Latest Map & Case Count*, New York Times (Nov. 9, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html.

Pennsylvania is experiencing a similarly dangerous upward trend: on Saturday, November 7, the Commonwealth reported its highest daily total since the start of the pandemic—over 4,000 new cases.[7] There are now nearly a quarter of a million COVID-19 cases in Pennsylvania.[8] Both facilities at issue—York County Prison ("York") and Pike County Correctional Facility ("Pike")—have had or are still having COVID-19 outbreaks. At York, at least 477 detainees (out of approximately 1,200) have contracted COVID-19 and there are currently at least eight ICE detainees who currently have COVID-19.[9] The large outbreak at Pike resulted in 76 cases among staff and detainees and two detainee deaths, and an ICE Assistant Field Office Director recently testified that county detainees at Pike are currently infected.

Petitioners will submit evidence, on a schedule directed by the Court during the November 12 status conference, to demonstrate that they continue to face specific and individual risks upon re-detention at the two facilities, that their

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[7] Janet Pickel, *COVID-19 Numbers Soar in Pa. With Record 4000+ New Cases, 40 Deaths Reported Saturday*, PennLive, Nov. 6, 2020, https://www.pennlive.com/coronavirus/2020/11/covid-19-numbers-soar-in-pa-with-record-4000-new-cases-40-deaths-reported-saturday.html.

[8] Pennsylvania Department of Health, COVID-19 Data for Pennsylvania (last visited Nov. 8, 2020), https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx (227,985 people).

[9] U.S. Immigration and Customs Enforcement, *Confirmed Cases, ICE Guidance on COVID-19* (last visited Nov. 7, 2020), https://www.ice.gov/coronavirus.

individual circumstances make detention unnecessary, and that their re-detention is so dangerous that it would violate due process.

ARGUMENT

I. Petitioners Easily Meet the Standard for a Temporary Restraining Order, or Alternatively, this Court has Inherent Authority to Continue their Release.

This Court should issue a temporary restraining order, under Federal Rule of Civil Procedure 65, enjoining the re-detention of the 15 Petitioners for 14 days, which will allow this Court to convene the parties and discuss further proceedings in light of the Third Circuit's remand. Petitioners meet the standard for a TRO because: (1) they are likely to succeed on the merits of their underlying claims; (2) they are likely to suffer irreparable harm in the absence of such relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008); *Cerro Fabricated Prod. LLC v. Solanick*, 300 F. Supp. 3d 632, 647 n.5 (M.D. Pa. 2018).

The limited TRO is warranted based on the first two factors alone. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (first two factors are "most critical"), *as amended* (June 26, 2017) (footnotes omitted). Because of the severe, potentially fatal consequences for the Petitioners, and the very limited nature of the TRO relief sought, this Court should immediately enter the order. *See id.* at 178 ("[T]he more net harm an injunction can prevent, the weaker the plaintiff's claim on

the merits can be while still supporting some preliminary relief."). Additionally, because this is a non-commercial case that does not involve money and the balance of hardships favors Petitioners, the security bond requirement should be waived. Fed. R. Civ. P. 65(c); *B.H. v. Easton Area Sch. Dist.*, 827 F. Supp. 2d 392, 409 (E.D. Pa. 2011) (*citing Elliot v. Kiesewetter*, 98 F.3d 47, 59-60 (3d Cir. 1996)).

Additionally, besides this Court's authority under Rule 65 to maintain Petitioners' release, this Court also has inherent authority to fashion equitable remedies and enter protective orders against conduct that threatens to frustrate the fair and orderly progression of a case. *See* 28 U.S.C. § 1651 (providing that all federal courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"); *see also United States v. N.Y. Tel. Co.*, 434 U.S. 159, 173-174 (1977) ("a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it") (*quoting Adams v. United States ex rel. McCann*, 317 U.S. 269, 273 (1942)). Re-detention prior to this conference would clearly frustrate the fair and orderly progression of this case.

II. Petitioners are Likely to Succeed on the Merits of Their Claims.

A. Petitioners are Likely to Show that Re-detention Violates Their Substantive Due Process Rights.

Petitioners are likely to establish that their re-detention would violate their substantive due process rights for two reasons: (1) it would amount to punishment because their re-detention is not reasonably related to and/or is excessive in relation to legitimate government purposes; and (2) Respondents cannot keep Petitioners reasonably safe from COVID-19 at York or Pike. Importantly, the Third Circuit's decision in this case confirms this Court's jurisdiction to hear these claims and order appropriate relief. *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 324-25 (3d Cir. 2020).

1. Re-Detaining Petitioners Would Constitute Impermissible Punishment.

As the Third Circuit recently affirmed, Petitioners in civil immigration detention may not be subject to punitive conditions under the Fifth Amendment. *Hope*, 972 F.3d at 325; *see also E. D. v. Sharkey*, 928 F.3d 299, 306–07 (3d Cir. 2019). To evaluate whether detention is unconstitutionally punitive, the Court must determine whether detention is "reasonably related" to its purposes of preventing flight and danger to the community,[10] and whether there are adequate procedures to ensure that detention is actually serving those purposes. *Zadvydas* v. *Davis*, 533

[10] The Supreme Court has emphasized that preventative detention based on dangerousness is "limited to specially dangerous individuals and subject to strong procedural protections." *Zadvydas* v. *Davis*, 533 U.S. 678, 691, 700 (2001); *see also Demore v. Kim*, 538 U.S. 510, 519–21 (2003).

U.S. 678, 690-91 (2001). Detention also crosses the line into unconstitutional punishment where it is excessive in relation to these purposes. *See Hope*, 972 F.3d at 328 (citing *Bell v. Wolfish*, 441 U.S. 520, 538 (1979)).[11]

Here, Petitioners are likely to demonstrate that their re-detention would be in excess of and/or not reasonably related to the government's interests. Petitioners' safe return to their communities and their compliance with the terms of their release over seven months presents a materially different set of facts than in early April, when this Court issued an injunction. While back then the government claimed that detention was reasonably necessary to achieve its goals, Petitioners' safe release demonstrates that they do not pose a flight risk or risk of harm justifying re-detention. Indeed, Petitioners have participated in weekly check-ins with their attorneys and continue to be subject to conditions of release set by ICE that include electronic monitoring and regular ICE check-ins. As such, any re-detention does not bear a reasonable relation to the government's interests in preventing flight risk or danger. *See Orsen F. v. Green*, No. CV 16-4482 (SDW), 2020 WL 401813, at *3 (D.N.J. Jan. 24, 2020) (relying in part on "Petitioner's compliance with his bond

[11] Even where immigration detention is statutorily mandated, these constitutional constraints apply. *See e.g. German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 209, 213-214 (3d Cir. 2020) (reaffirming that the Due Process Clause prohibits "unreasonable" detention even when that detention is pursuant to a mandatory statutory provision).

order since his release" to determine that re-detaining him after a subsequent appellate decision (*Jennings v. Rodriguez*, 138 S. Ct. 830 (2018)) overturned the basis for the hearing at which he was granted bond would violate due process).

Re-detention would also be excessive because the conditions at York and Pike are demonstrably dangerous. The court in *Hope* directed this Court to consider the conditions at York and Pike at the time when relief is sought, along with the government's objectives in detaining Petitioners. *See Hope*, 972 F.3d at 328. Given the increased spread of COVID-19 over the months since Petitioners were released—including at York where there has been an ongoing and renewed outbreak, and at Pike where Respondents did not contain an earlier outbreak—and where the record now shows that alternatives to detention fully satisfy the government's purposes, Petitioners are likely to establish that their re-detention would be excessive. As the mandate will soon issue remanding the case to this Court, Petitioners are prepared to develop the record on current facility conditions.

2. Respondents Cannot Keep Petitioners Reasonably Safe.

Alternatively, Petitioners will demonstrate that Respondents are *currently* acting with "deliberate indifference" to their safety in violation of the Fifth and Fourteenth Amendments. To establish deliberate indifference, Petitioners must show the Government knew of *and disregarded* an excessive risk to their health and safety. *Hope*, 972 F.3d at 329 (alteration in original). Respondents cannot deny—

and indeed have not denied—knowledge of the serious risk of harm COVID-19 poses to Petitioners. *See* Golob Decl. ¶ 4, ECF No. 3-2 (one in seven medically vulnerable people will die, and those who will survive are likely to contract serious illness). Despite this knowledge, Respondents have subjected detainees to conditions of confinement that allowed first Pike, and now York, to undergo large-scale outbreaks that have infected a large percentage of the detained population since this Court ordered release in early April. Confirmed infections are again rising at York (and also have gone up among the county detainees at Pike). These outbreaks and the renewed infections at the facilities demonstrate that Respondents are not taking sufficiently reasonable steps to mitigate the substantial risk of harm to medically vulnerable individuals like Petitioners. *See Hope*, 972 F.3d at 330 (directing Court to consider recent efforts). This Court can act to protect against this future harm to Petitioners.

In refusing to agree to a three-day cessation of any action to re-detain Petitioners, Respondents have also shown a willingness to re-populate these facilities with medically vulnerable individuals during a third-wave of COVID-19 where confirmed infections in the facilities are on the rise. As such, Petitioners are likely to succeed in establishing that Respondents have acted with deliberate indifference to their lives and safety.

B. Petitioners Are Likely to Succeed on the Merits of an Additional Claim That is Now Ripe, Namely, that Procedural Due Process Requires a Hearing Before Any Re-Incarceration.

Petitioners have a protected liberty interest in remaining with their families and out of detention, particularly where re-detention could be a death sentence. Petitioners were conditionally released about seven months ago and since then have lived in their communities under the terms set by this court and ICE. "Termination [of the status of conditional release] inflicts a 'grievous loss' on [released individuals] and often on others." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Recognizing this "grievous loss," the Supreme Court has held that even individuals serving a criminal sentence have a protected interest in their conditional liberty. *Id.* (identifying interest in liberty for parolee requires pre-deprivation process); *Young v. Harper*, 520 U.S. 143, 145, 153 (1997) (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (individuals released on felony probation have a protected liberty interest that requires pre-deprivation process); *see also Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citations omitted). "Just as people on preparole, parole, and probation status have a liberty interest, so too does

[the non-citizen petitioner] have a liberty interest in remaining out of [immigration] custody" once released. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019), *appeal filed*, No. 20-15754 (9th Cir. Apr. 22, 2020); *see also Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (concluding that petitioner raised "serious questions going to the merits" that she had a "vested interest" in her continued release from confinement).

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), Petitioners will demonstrate that due process requires a pre-deprivation hearing to determine whether re-detention is permissible because: Petitioners' individual liberty interest is fundamental; re-detention without a hearing creates a significant risk of erroneously depriving Petitioners of their liberty in violation of due process; and, where Petitioners have demonstrated they are neither a danger nor flight risk, the government has no interest in re-detaining Petitioners without process. *See id.* at 335 (identifying relevant factors in determining what process is due).

III. In the Absence of Immediate Injunctive Relief, Petitioners Will Suffer Irreparable Harm.

Petitioners are seeking only a limited TRO so that the parties may confer with this Court as to an orderly process in this case. While this relief is limited, it is potentially lifesaving: The outbreaks at York and Pike demonstrate that re-detention would put Petitioners at an elevated risk of exposure to the coronavirus. Because of

each Petitioners' pre-existing medical conditions, they face a heightened risk of death or serious injury if they are exposed. Factual Background, *supra*.[12] The outbreaks at Pike and York demonstrate that Petitioners would face a higher risk of infection at these congregate detention facilities as compared to their homes, where, for the last seven months, they have practiced risk-mitigation measures and addressed their underlying medical conditions. *Hope*, 972 F.3d at 331–32 (directing the Court to consider the comparative risk of COVID-19 infection); *see also Roman v. Wolf*, 977 F.3d 935, 2020 WL 6040125, at *7 (9th Cir. Oct. 13, 2020) ("The district court also correctly concluded that Plaintiffs were likely to suffer irreparable harm absent relief given COVID-19's high mortality rate."). Petitioners face additional danger of infection during the process of re-arrest, transport back to ICE custody, and intake at the facilities.

Petitioners also face the harm of severed ties to the family and community with whom they have been living for the last seven months. *See Morrissey*, 408 U.S. at 482 (describing how individuals who are released on conditions of supervision are "free to be with family and friends and to form the other enduring attachments of normal life."). Without a temporary restraining order, they could be arrested from

[12] Respondents have not disputed the irreparable harm of COVID-19 infection for Petitioners. *See* ECF No. 16 at 34-35 (addressing balance of equities without discussion or irreparable harm).

their homes and brought to jails that the Third Circuit recently found "indistinguishable from criminal punishment." *German Santos*, 965 F.3d at 213 (describing conditions at Pike during COVID-19).

IV. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order.

The public interest favors continued release where re-detention in dangerous conditions violates petitioners' constitutional rights. *See, e.g.*, *Swartzwelder v. McNeilly*, 297 F.3d 228, 242 (3d Cir. 2002) (holding "the public interest is best served by eliminating . . . unconstitutional restrictions"); *Council of Alt. Political Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997) ("In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights."). The public also "has a strong interest in upholding procedural protections against unlawful detention." *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020). As described in Part II.B., *supra*, due process requires such protections before Petitioners who have proven to pose neither a danger nor a flight risk can be re-detained in dangerous detention centers. *See Malam v. Adducci*, 452 F. Supp. 3d 643, 662 (E.D. Mich. 2020), *as amended* (Apr. 6, 2020) ("The public interest and balance of equities demand that the Court protect Petitioner's constitutional rights and the public health

over the continued enforcement of a detention provision that, as applied to Petitioner, is unconstitutional.").

Petitioners' safe re-integration into their communities also demonstrates that continued release pending resolution of their constitutional claims will not harm ICE's interests in ensuring appearance at future hearings and preventing danger. Indeed, Petitioners have demonstrated that alternative conditions of release can adequately address these interests. *See Roman*, 977 F.3d 935, 2020 WL 6040125, at *7 (affirming the district court's conclusion "that the equities and public interest tipped in Plaintiffs' favor, particularly in light of . . . the alternative means available to prevent [detained individuals] from absconding if they were released, such as electronic monitoring."); *Barrera v. Wolf*, Civ. No. 4:20-CV-1241, 2020 WL 5646138, at *8 (S.D. Tex. Sept. 21, 2020) (recognizing ICE's use of alternatives to detention, including GPS units, SmartLink and telephone reporting, demonstrates that ICE "considers such tools to be a reasonable alternative to detention"); *Carlos M. R. v. Decker*, Civ. No. 20-6016 (MCA), 2020 WL 4339452, at *12 (D.N.J. July 28, 2020) (concluding that the government's "very important interests are adequately addressed here by fashioning appropriate conditions of release.") (citing other cases from D.N.J finding same). Thus, contrary to the Respondents' assertions

(which themselves are, at times, inaccurate),[13] Petitioners' past criminal convictions do not define their current level of flight risk or danger: their demonstrated compliance and lawfulness over the last seven months do. Additionally, their unnecessary and unlawful re-detention without any process imposes heavy costs upon the public, who pay for the high daily cost of detention and for ICE's enforcement actions. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (comparing high cost of immigration detention with lower cost of alternatives). At or after the status conference, Petitioners are prepared to supplement the record as to why maintaining each Petitioners' release is in the public interest and why Respondents have little legitimate interest in re-detention.

CONCLUSION

For the foregoing reasons, this Court should issue a TRO enjoining Respondents from re-detaining Petitioners for 14 days, thereby allowing the Court to confer with the parties' counsel and to determine future proceedings.

Dated: November 9, 2020

Respectfully Submitted,

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[13] Respondents purported to catalogue Petitioners' criminal histories, Joseph Dunn Decl. ¶ 20, ECF No. 12-1, but in numerous cases, Assistant Field Officer Director Dunn's representations are inaccurate or ignore the presumption of innocence for charges or arrests. Petitioners are prepared to present evidence regarding each Petitioner's history.

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**Admitted pro hac vice*
*** Petition for permission to file pro hac vice forthcoming; not admitted in DC; practice limited to federal court*
****Petition for permission to file pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that true copies of this Memorandum were served to all counsel of record via the CM/ECF system.

Dated: November 9, 2020

/s/ Vanessa L. Stine
Vanessa L. Stine

Attorney for Petitioners

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

I hereby certify that:

1. This brief complies with the typeface requirements contained in Local Rule 5.1 because this brief has been prepared using Times New Roman size 14 font, double spaced, in Microsoft Word.

2. This brief complies with Local Rule 7.8(b) because the body of the brief contains 3,975 words, as determined by the word count feature in Microsoft word.

3. In accordance with Local Rule 7.1, Petitioner's counsel sought concurrence from Respondents' counsel. Respondents' counsel does not concur in the relief sought.

Dated: November 9, 2020

/s/ Vanessa L. Stine
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Attorney for Petitioners