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

BHARATKUMAR G. THAKKER, et al., Petitioners-Plaintiffs, vs. CLAIR DOLL, in his official capacity as Warden of York County Prison, et al., Respondents-Defendants.	Case No. 1:20-cv-00480 **Judge John E. Jones III**

PLAINTIFFS' EMERGENCY MOTION FOR STAY AND RECONSIDERATION

INTRODUCTION

Plaintiff Abdebodun Idowu left Clinton County Correctional Facility ("CCCF") pursuant to this Court's order on March 31, 2020, with a slight cough. MTS-Exhibit 1, Lymon Idowu Decl. at ¶ 4. Several days before his release, he had been exposed to another detainee who was vomiting, coughing and ran a fever. Ex. 33-3 at ¶ 1. Four days after returning home, his health began to deteriorate; and four days thereafter he needed 9-1-1 emergency services to transport him to a nearby Newark, New Jersey hospital, where he has remained, for a time in the ICU, and is now barely coherent. MTS-Exhibit 2, Stine Decl. at ¶ 7. The timing of events makes it nearly certain that he contracted the virus while at CCCF. *See* Exhibit 3,

Declaration of Dr. Judd Walson ("Walson Decl.) at ¶ 12-13.[1] This one tragic instance demonstrates why the Court's reliance on the absence of confirmed cases to conclude that even medically vulnerable people detained at York and Clinton cannot satisfy the irreparable harm test is dangerously misguided.[2] Plaintiffs respectfully and urgently ask this Court to reconsider the April 27 order, ECF No. 89, and vacate the portion of that order directing seven Plaintiffs to surrender for re-detention.

The stakes in this case are too high for the Court to resolve the matter on an incomplete record. It literally is a matter a life and death. To ensure sound decision-making and minimize the possibility of life-endangering errors, Plaintiffs ask the Court to (1) consider *new* evidence presented here, as well as the expert report and new Plaintiff declarations attached to Plaintiffs' Amended Complaint, ECF No. 62, which apparently the Court did not consider; (2) vacate the portion of the order directing seven of the Plaintiffs to be re-detained, or at least stay that portion of the order pending development of a fuller record on current conditions in the Detention

[1] Another plaintiff released on that same day from York County Prison ("YCP"), Catalino Domingo Gomez Lopez, developed symptoms of COVID-19 a week after he was released. He has not yet been tested. See MTS-Exhibit 4, Supp. Decl. Catalino Domingo Gomez Lopez at ¶¶ 2-6.

[2] The April 27 order rests on a finding that because "there are no reported cases at CCCF and the single reported case at YCP appears to have been effectively contained … the allegations of irreparable harm at YCP and CCCF are largely speculative and cannot satisfy the second element of our Preliminary Injunction analysis." *Id*. at 19.

Facilities; and (3) direct Defendants to file with the Court a report indicating for each institution the number of COVID tests conducted; the results of those tests broken down by positive, negative, and awaiting confirmation; and the number of people currently in quarantine or isolation. Whatever inchoate risk may exist by allowing the seven Plaintiffs to remain at liberty until the Court can consider a fulsome evidentiary record simply cannot outweigh the heightened risk of contagion and thereby serious illness and potentially death caused by returning them to the Detention Facilities.

ARGUMENT

I. Despite the Lack of Confirmed Cases, the Risk Remains Dangerously High.

Returning the Plaintiffs, or other medically vulnerable people, to any of the three detention facilities, even though at the moment they might have zero confirmed cases of COVID-19 or only one confirmed positive case, still poses a substantial risk of imminent COVID-19 infection. *See*, *e.g.*, *Bent v. Barr*, No. 4:19-cv-06123, 2020 WL 1812850, at *3 (N.D. Cal. Apr. 9, 2020) ("Given the exponential spread of the virus [and] the ability of COVID-19 to spread through asymptomatic individuals . . . effective relief for [petitioners] may not be possible if they are forced to wait until their particular facility records a confirmed case.").[3] Especially at York and Clinton,

[3] *See also Ixchop Perez v.Wolf*, 5:19-cv-05191, 2020 WL 1865303, at *12 (N.D. Cal. Apr. 14, 2020) ("The mere fact that no cases have been reported in [a particular

neither publicly available reports nor Mr. Dunn's declaration indicate how many people have been tested, quarantined or isolated, all of which are necessary metrics for assessing risk.[4] ICE's own statistics indicate that nationwide it has tested very few detainees, only 400 people out of more than 32,000 in ICE detention. *See* ECF 76-4 (Ex. 51). This strikingly low-test rate means that ICE has only tested about 1.25% of the people it holds in custody for COVID-19. Without adequate testing, "a lack of proven COVID-19 cases . . . is functionally meaningless for determining if there is a risk for COVID-19 transmission in a community or institution." March 23 Declaration of Dr. Jonathan Golob ("Golob Decl.") at ¶ 7 (ECF No. 2-2).

Newly released data raises cause for alarm as to what the actual rates may be if testing were widespread in the ICE facilities: in prisons where testing was

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facility] is irrelevant—it is not a matter of ***if*** COVID-19 will enter the facility, but ***when*** it will be detected there.") (emphasis in original);; *Ortuño v. Jennings*, No. 3:20-cv-02064, 2020 WL 1701724, at *2 (N.D. Cal. Apr. 8, 2020); *Christian A.R. v. Decker*, 2:20-cv03600-MCA, slip op. at 3 (D.N.J. Apr. 12, 2020).

[4] Pike is the only one of the three facilities that has issued any public information about testing or infection rates in recent weeks, with no updates from York since April 4 or Clinton since March 31. ICE's COVID-19 webpage only reports the number of COVID-19-positive ICE employees, but York, Pike, and Clinton have county employees and have not provided information about how many staff (or detained individuals) have COVID-19 for weeks. *See* FACC (ECF No. 62). Pike County Prison's last update is from April 6, 2020. *See* ECF 61-3. York County Prison's last update is from April 4, 2020. *See* York County Prison News Report, (ECF No. 87-3). Clinton County Correctional Facility's last public update is from March 31, 2020. *See* March 31, 2020 Clinton News Report (ECF No. 87-4).

completed for all detained individuals, some facilities have seen an infection rate of over 80%. Of these, almost ***all*** those testing positive were asymptomatic.[5] Without universal and periodic testing, there are likely many more cases of undetected COVID-19 infection than have been reported. *See* Walson Decl. at ¶ 15. Studies now show that "transmission of COVID-19 is approximately 19 times more likely in closed environments," such as the three ICE facilities. *Id.* at ¶ 7. The absence of positive test results is not cause for celebration just yet, especially given the troubling signs on the horizon.

COVID-19 cases among ICE detainees nationwide have grown at an alarming rate. Nothwithstanding the low rate of testing in ICE detention facilities, the number of individuals who have tested positive for COVID-19 in ICE detention facilities has more than doubled over a five-day period, jumping from 124 detained individuals who tested positive on April 17, 2020 to 287 people on April 22. *See* ECF No. 76, Apr. 23, 2020 Letter to Court; ECF No. 76-2, Apr. 22, 2020 ICE COVID-19 Statistics; ECF No. 76-3, Apr. 17, 2020 ICE COVID Statistics. These numbers only account for those who are tested, but do not include the many who have been in

[5] *See* MTS-Exhibit 5, Linda So & Grant Smith, *In Four U.S. State Prisons, Nearly 3,300 Inmates Test Positive for Coronavirus—96% Without Symptoms*, Reuters (Apr. 25, 2020), https://www.reuters.com/article/us-health-coronavirus-prisons-testing-in/in-four-u-s-state-prisons-nearly-3300-inmates-test-positive-for-coronavirus-96-without-symptoms-idUSKCN2270RX (last accessed Apr. 27, 2020).

contact with those who tested positive but have not yet themselves been tested. *See* T.S.N. Decl. at ¶ 23 (ECF No. 63-3).

Moreover, the rate of COVID-19 infections in Pennsylvania has grown exponentially since this Court first considered the risk of infection in these facilities, with an average increase of 25% *per day* over the past month. Amon-New Decl. at ¶ 5 (ECF No. 62-1). The rising infection rates include York, Clinton and Pike counties: Clinton County has seen a nearly three-fold increase over a twelve-day period; York County has increased by 200 cases; and Pike has 100 people newly confirmed.[6] Unfortunately, these numbers continue to grow, causing opportunities for community spread into the facilities to multiply. *See* Amon-New Dec. at ¶ 51 (ECF No. 62).

Mr. Idowu's case is further proof of three critical facts: 1) we do not and cannot know that a person is positive for COVID-19 until and unless they are tested, 2) an individual who has not been tested while detained may be infected and spreading the virus before becoming symptomatic; and 3) the consequences of unnecessarily exposing a person with a pre-existing medical condition can be severe.

[6] *Compare* MTS-Exhibit 6, *COVID-19 Data for Pennsylvania*, Pennsylvania Department of Health (last updated April 26, 2020) https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx *with* Amon-New Decl. at ¶ 51.

Mr. Idowu had a cough at the time of release from Clinton but was not tested while at the facility. *See* Ms. Idowu Decl. at ¶ 4. Given the timing of the onset of his symptoms, he almost certainly was infected while detained at Clinton, and only tested positive after he was released and hospitalized. Walson Decl. at ¶ 12. He remains hospitalized, has an active lung infection, and is receiving oxygen. Ms. Idowu Decl. at ¶ 11. Mr. Idowu remains at high risk for potential deterioration and need for invasive ventilation. Walson Decl. at ¶ 14. A medical expert reviewing Mr. Idowu's situation indicated that he simply could not be returned to a detention facility:

> In light of Mr. Idowu's reported current condition, it is impossible for him to surrender for re-detention. He is currently on oxygen and is at high risk for potential deterioration and need for invasive ventilation. He is also at high risk of other complications of COVID-19 and will require careful clinical monitoring and care. In addition, patients with COVID-19 continue to shed virus for extended periods (weeks) and he may be a potential transmission risk to other patients and staff.

Id. at ¶ 14. His critical health condition lays bare the stark consequences of deficiencies at the facilities. Inadequate testing cannot mask this reality.

A just-released scientific study that models the spread of COVID-19 at ICE detention facilities shows that, once introduced at a facility, 72% to 80% of the detainee population can be expected to become infected within ninety days, with 15.1% hospitalized. *See* Irvine *et al.*, *Modeling COVID-19 & Impacts on U.S. Immigration & Enforcement (ICE) Detention Facilities, 2020*, J. Urban

Health (2020) (forthcoming) (attached as MTS-Exhibit 7). It may also take a long time to reach the peak at a facility, with more populated facilities, like the York facility, taking closer to 70 days or longer. *Id.* Researchers demonstrate that unmitigated spread of the virus within detention centers will overwhelm local hospitals with COVID-19 patients from these facilities. *Id.* at 7.

The fact the disease has penetrated all three facilities means the danger remains, despite the absence of widespread positive tests. Dr. Walson observes that "in a congregate setting such as the Clinton Correctional Facility, without universal and periodic testing, there may be many more cases of COVID-19 infection that have remained undetected. Without testing and proper isolation of COVID-positive individuals, COVID-19 infection is likely to spread in the congregate setting and is particularly dangerous for people of older age (over 50 years) and those with co-morbidities (including diabetes, hypertension, cardiac disease and lung disease)." Walson Decl. at ¶ 15. And evidence not considered by this Court in the April 27 order, filed with Plaintiffs' Amended Complaint, demonstrates that Defendants are neither testing nor isolating people properly. *See e.g.* T.S.N. Decl. at at ¶ 22-25 (ECF No. 63-3); Brown Decl. at ¶ 20 (ECF No. 63-9); Roberts Decl. at ¶ 14 (ECF No. 63-11).

II. The Court Did Not Consider Plaintiffs' Evidence Refuting Defendants' Claimed Improvements and Expert Testimony that ICE Still Fails to Abide by CDC Guidelines

The Court in the April 27 order appears not to have considered evidence accompanying Plaintiffs' Amended Complaint, *see* ECF No. 89 at 1 n.1, which includes fact declarations disputing Defendants' claimed practices on social distancing, hygiene and sanitization, and a new expert declaration discussing how Defendants' new guidelines and practices on cohorting and isolation do not, in fact, conform to CDC guidance. *See* ECF Nos. 62 and 63-1 through 6-11.

ICE's own guidelines admit that CDC-recommended social distancing may be impossible at many facilities, and thus do not require safe social distancing. Amon-New Decl. at ¶ 35(c) (ECF No. 62-1); FACC at ¶ 99 (ECF No. 62). The failure to mandate and ensure safe social distancing at the Facilities renders any risk-mitigation strategy ineffective in preventing COVID-19 infection. *Id.* Plaintiffs have submitted eleven new declarations attesting to the impossibility of practicing social distancing within cramped living spaces with overused bathrooms and shared common areas. *See* FACC at ¶¶ 43-46; *see also* ECF Nos. 63-1 to 63-11. Defendants have not provided any testimony to the Court on social distancing to refute these declarations.

Despite the fact that the CDC emphasizes the need for medically isolating confirmed and suspected cases, Defendants are leaving individuals with symptoms

in common dorm spaces for days. FACC at ¶ 103 (ECF No. 62).[7] Rather than adhere to the isolation protocol—which they likely have neither the physical space nor staffing capacity to implement— Defendants fall back on the problematic practice of "cohorting." The CDC identifies this practice as a measure of *last resort* in detention facilities. Amon-New Decl. at ¶ 41(b) (ECF No. 62-1); *see also* FACC at ¶¶ 105-106 (ECF No. 62). But ICE's manner of implementing this measure—confining *all* individuals exposed to a confirmed COVID-19 patient in spaces where it is impossible to practice social distancing—runs afoul of public health guidance and will, in fact, *facilitate* transmission to those who are not yet infected. Amon-New Decl. at ¶ 41(f) (ECF No. 62-1); *see also* FACC at ¶¶ 105-106 (ECF No. 62).

The Government has also confirmed, once again, that it has no intention of testing staff or detained individuals unless they are symptomatic. *See* Amon New-Decl. at ¶¶ 37(a), (d) (ECF No. 62-1) (describing how ICE's current protocols of a verbal screening and temperature check are insufficient given that the "entire state of Pennsylvania is listed as having "widespread" community transmission and that effective screening of staff would have to be "frequent (daily) tests," which seems

[7] *See also* Gumbs Navarro Decl. at ¶ 23 (ECF No. 63-2) (describing symptomatic individuals who are left in the dorms); David Decl. at ¶¶ 17-18 (reporting that it took a week for the facilities to remove a sick individual and that people left behind are now coughing); T.S.N Decl. at ¶ 22-23 (ECF No. 63-3) (recounting how it took six days before a sick individual was removed, and how others now have symptoms but are only receiving temperature checks); D.F. Decl. at ¶ 19 (ECF No. 63-10) (describing someone in the dorm with flu-like symptoms).

unlikely given costs and test shortages). Because individuals may be infected and spreading the virus to others for days or even weeks while exhibiting mild symptoms or no symptoms at all, awaiting the development of symptoms before acting is a recipe for an outbreak—which we have already seen at Pike and is virtually guaranteed if Defendants continue to maintain their defiance of basic epidemiological consensus. *See* Walson Decl. at ¶¶ 13, 15; *Bent v. Barr*, No. 4:19-cv-06123, 2020 WL 1812850, at *3 (N.D. Cal. Apr. 9, 2020) (holding that temperature screening "is of limited benefit").

Sanitization measures at the Facilities further fall short of the protocols Defendants describe. Plaintiffs have no control over their soap rations or access to other sanitization products, which are often in short supply. *See* FACC at ¶¶ 48, 108. No hand sanitizer is provided at the York facility, and the Clinton facility regularly runs out of it. *Id.* at ¶ 48. The CDC recognizes that risk of spread is heightened where facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants. Amon-New Decl. at ¶ 55 (ECF No. 62-1). Yet despite these dangers, the Pennsylvania facilities do not strictly adhere to ICE's most recent written guidance. *Id.* at ¶ 42(a).

Moreover, sanitation measures alone, even if they were adequate, are woefully insufficient to stop the spread of COVID-19. If such measures were remotely adequate, government officials across the country would not have made the painful

but necessary decision to close high-density spaces, nor would people throughout Pennsylvania and all over the nation be advised to stay home for all but the most essential purposes. This is why other courts have similarly recognized that ICE's mitigation measures cannot protect those who are particularly vulnerable to COVID-19. *See, e.g.*, *Hernandez Roman v. Wolf*, No. 20-cv-768, 2020 WL 1952656 *7-8 (C.D. Cal. Apr. 23, 2020) (finding insufficient measures by the government where class members are not required, or even given an opportunity, to socially distance at all times); *Durel B. v. Decker*, No 2:20-cv-03430, 2020 WL 1922140, at *8 (D.N.J. Apr. 21, 2020) ("While Respondents have undertaken significant measures to try and prevent COVID-19 from further spreading throughout the facility, those measures appear insufficient to protect Petitioner whose allegedly compromised immune system puts him at greater risk of severe illness"); *Jeferson V. G. v. Decker*, No. CV 20-3644, 2020 WL 1873018, at *8 (D.N.J. Apr. 15, 2020) ("Although Respondents have delineated the numerous measures they have undertaken to prevent the spread of COVID-19 in HCCC, those measures are insufficient to protect Petitioner whose asthma puts him at higher risk of severe illness from COVID-19.").

The new evidence of (1) Mr. Idowu's hospitalization for serious medical problems caused by COVID-19, which he almost certainly contracted at the CCCF; (2) ICE's failure to rebut evidence that despite population decreases in the facilities they continue to house people in ways that makes safe social distancing impossible;

(3) ICE's failure to follow its protocols, guidelines and alleged practices on hygiene and sanitization; and (4) ICE's failure to follow CDC recommended practices on testing, quarantine and isolation, all warrant granting the motion for reconsideration and vacating, or at least staying, that part of the order directing the seven Plaintiffs to surrender for re-detention.

III. The Danger of Returning Medically Vulnerable People to the Detention Facilities Eclipses any Risk of Harm to Defendants or the Public.

In assessing any risk of harm to Defendants or the public, the status of Plaintiffs as civil immigration detainees is of critical importance. For those with criminal histories, they have already served the sentences required by a criminal conviction, if any. If they were U.S. citizens, they would *already* be free from any kind of state confinement, deemed rehabilitated and no further risk to the public. The notion that their different immigration status transforms them into such a public danger that they categorically cannot be released—even under careful supervision and even during a life-threatening pandemic—is unfounded. *See Basank v. Decker*, No. 1:20-cv-02518, 2020 WL 1953847, at *13 (S.D.N.Y. Apr. 23, 2020) ("Petitioners are confined for civil violations of the immigration laws. In the highly unusual circumstances posed by the COVID-19 crisis, the continued detention of aging or ill civil detainees does not serve the public's interest. To the contrary, public health and safety are served best by rapidly decreasing the number of individuals held in confined, unsafe conditions."); *Zaya v. Adducci*, No. 5:20-cv-10921, 2020

WL 1903172, at *6 (E.D. Mich. Apr. 18, 2020) (granting temporary restraining order directing detainee's release and noting "critically for this case…[for a petitioner who has several drug related convictions, as well as convictions for murder and domestic violence], Petitioner has completed is sentences for each of these convictions.").

Plaintiffs also respectfully request reconsideration of this Court's determination that the balance of the equities weighs in favor of reinstating the detention of Plaintiffs Idowu, Gomez-Hernandez, Juarez, Pratt, Augustin, Oyediran, and Lopez. Although "protect[ing] the public" may serve the government's interests, ECF NO. 89 at 8, this Court has observed that "[t]he vast majority of [] Plaintiffs present little risk to the public," *id*. at 8 n.4. Importantly, each Plaintiff's detention must be reasonably related to the government's interest; otherwise, such detention becomes unconstitutionally punitive. *E. D. v. Sharkey*, 928 F.3d 299, 307 (3d Cir. 2019). And as numerous other courts have observed, there is a strong public interest in releasing Plaintiffs with serious medical vulnerabilities from unsafe conditions. *See, e.g., Basank v. Decker, supra*, 2020 WL 1953847 at *13.

Additionally, a closer review of each Plaintiff's facts shows that any legitimate government interest in reinstated detention is highly attenuated. Specifically:

- This Court cited the interest in ensuring Mr. Idowu's continued appearance at immigration proceedings as warranting his re-detention. Order at 22. However, there is no evidence that Mr. Idowu would fail to appear for his hearings if he remained at liberty. He is married to a

U.S. citizen and has a U.S. citizen adult daughter. Lymon Idowu Decl. at ¶ 2. Mr. Idowu poses even less of a flight risk now, as he has contracted COVID-19 and is currently hospitalized and receiving oxygen. Lymon Idowu Decl. at ¶ 2. And as this Court observed, there is no reason to believe that he would pose any risk to the public. Order at 8 n.4. Because he is currently hospitalized for COVID-19 and receiving oxygen, re-detaining him would pose a grave risk to his health as well as the health of staff and other detained individuals at the facility to whom he could transmit the virus. *See* Walson Decl. at ¶¶ 14-15.

- This Court cited Mr. Pratt's "imminent removal" as supplying a basis for his redetention. Order at 26. But his removal is far from "imminent" – he has been detained for over three years because of ICE's inability to obtain travel documents for him because records were destroyed in the civil war that caused Mr. Pratt to seek asylum in the United States. Pratt Supp. Decl. at ¶ 9 (ECF No. 63-13). And there is no reason to believe that he would pose any risk to the public. Order at 8 n.4.

- Mr. Oyediran, an asylum seeker, and Mr. Gomez-Lopez, who has deep community ties, similarly pose no dangers to the community, as this Court has found. Order at 8 n.4. And there is no reason to believe they would fail to appear for their immigration hearings, or fail to comply with any reasonable release conditions. To the contrary, both have lived at liberty for the last few weeks with no sign of noncompliance.

This Court also noted "concerns" with the prior criminal convictions of three Plaintiffs. Order at 8 n.4, 24-25, 26-27. Plaintiffs respectfully maintain that none of the three have histories that would support a finding that they are a danger to the community, particularly given that each has served his sentence and has lived at liberty without violating the terms of his release. *See, e.g.*, *Malam v. Adduci*, No. 5:20-cv-10829, 2020 WL 1899570, at * 7 (E.D. Mich. Apr. 17, 2020) ("[T]he Court

will only note that Respondent's assertion regarding Petitioner's criminal history is irrelevant… Petitioner was released on April 6, 2020; Respondent has provided no evidence that Petitioner has failed to comply with the terms of her release or the requirements of Michigan's executive orders since her release. Respondent's argument is conclusory and does not relate to Petitioner's claim regarding the risks posed by her continued detention."); *Zaya*, *supra*, 2020 WL 1903172, at *6. Specifically:

- As to Mr. Gomez Hernandez, an immigration judge accounted for his criminal history and the totality of the circumstances, and found that Mr. Gomez-Hernandez had shown he had "good moral character" under the immigration statute, and warranted non-lawful permanent resident cancellation of removal (a form of relief that grants a person lawful permanent residency, e.g. a green card). ECF No. 1 at ¶ 80. DHS has appealed the immigration judge's findings, but those findings undercut the notion that Mr. Gomez-Hernandez's criminal history is serious enough to justify detention in light of the current pandemic. And Mr. Gomez-Hernandez has a strong interest in complying with his conditions of release, given the reasonable likelihood he will ultimately succeed in winning immigration relief.

- As to Mr. Juarez Juarez, his criminal history does not support a finding that he is a danger to the community. In 2018, Mr. Juarez Juarez was charged with a single DUI and placed in ARD in April 2019. *See* Juarez Juarez, Decl. at ¶ 3 (ECF No. 2-8); MTS-Exhibit 8, Suppl. Juarez Juarez Decl., at ¶ 3. He successfully completed ARD and completed community service hours. *Id*, at ¶ 4. Around February, ICE came to his house and told him that he was falsely identifying as a U.S. citizen in the application for a firearm. *Id.* at ¶ 5. He wants to understand what happened, and to comply with the law. *Id.* He has followed all of the conditions pursuant to the order extending the TRO by remaining at home with his parents, who have been helping to take care of his essential needs. *Id.* at ¶ 6.

- As to Mr. Augustin, his criminal history does not support a finding that he is a danger to the community. Both of his offenses are nonviolent and happened after a deeply traumatic event in Mr. Augustin's life. MTS-Exhibit 8, Augustin Decl. at ¶¶ 4-5. In 2015, Mr. Augustin was a victim of a violent crime which almost resulted in his death and he went into a semi-dissociative state until the time of his arrest. *Id.* at ¶ 4. Mr. Augustin suffers from severe symptoms of trauma and depression and the Immigration Judge adjudicating his case found him to be mentally incompetent. *Id.* at ¶ 6. Mr. Augustin has significant ties to the U.S. He has lived in the U.S. since he was 15 years old. ECF No. 2-11 at ¶ 1. Most of his family, including his 5-year-old daughter are either U.S. citizens or lawful permanent residents. Augustin Decl. at ¶ 7 He is currently living with and taking care of his uncle in Philadelphia who has lung disease and a pacemaker. *Id.* at ¶ 8. He has followed all of the conditions pursuant to the order extending the TRO.

CONCLUSION

It is premature to declare victory over the virus and risk Plaintiffs' lives. We know that two individuals in custody at Pike County Correctional Facility have died. ¶ 51 (ECF No. 62-1). The fact that they were county detainees is beside the point, given that ICE detainees at all three facilities are co-housed with county detainees. Mr. Idowu was in intensive care and remains hospitalized, almost certainly as a result of contracting COVID-19 while detained at CCCF. Given the potentially serious and even lethal consequences that attend the virus in people who are older or have a pre-existing medical condition, we urgently ask the Court to vacate the portion of its order directing the Plaintiffs' re-detention, or at least stay that portion of the order pending the development of additional information about what is really occurring inside the Detention Facilities. Neither Plaintiffs' counsel nor this Court know the

level of contagion inside the facilities, and neither do the Defendants, unless they have performed widespread testing. Without knowing the number of tests performed at each facility, the results of those tests, and how people are suspected of infection by virtue of placement in quarantine or isolation, all the parties to this case are flying blind. Despite the absence of positive tests—as of now, that we know—returning medically vulnerable plaintiffs to the Facilities would be reckless and potentially catastrophic. A brief stay to augment the record will not materially harm the Defendants, but could well save Plaintiffs' lives.

If the Court declines to reconsider its order, the Plaintiffs request a stay pending appeal.

Dated: April 28, 2020

Respectfully Submitted,

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CERTIFICATION PURSUANT TO LOCAL RULE 7.8

Pursuant to Local Rule 7.8(b)(2), I hereby certify that the foregoing PLAINTIFFS' EMERGENCY MOTION FOR STAY AND RECONSIDERATION complies with the word-count limited described therein and does not exceed 5,000 words.

Dated: April 28, 2020

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