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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, et al., *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al., *Defendants*.	**Case No. 5:19-CV-01546 JGB (SHKx)** **DEFENDANTS' OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION** **Before The Honorable Jesus G. Bernal** **Hearing Date: April 13, 2020** **Hearing Time: 9:00 a.m.**

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I. INTRODUCTION

"This is not normal." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring). Justice Gorsuch made this statement in reference to the rampant uptick in universal injunctions, noting that they have little basis in "traditional equitable practice"; but, this statement also accurately describes the circumstances surrounding this litigation. *Id.* Here, Plaintiffs not only seek a nationwide, preliminary injunction, but they seek such an injunction amidst an unprecedented global pandemic, which governments all over the world are working tirelessly to address. Over the past week, hundreds of immigration detainees have filed scores of requests for temporary restraining orders seeking immediate release as a result of U.S. Immigration and Customs Enforcement's COVID-19 protocols and the fear of harm as a result of contracting COVID-19. This has led to emergency hearing after emergency hearing, all on expedited briefing schedules that allow for "little opportunity for the adversarial testing of evidence." *Id.* These are certainly not normal circumstances that serve as the backdrop to the instant motion for preliminary injunction.

Plaintiffs are a putative class of immigration detainees of a certain age or with pre-existing medical conditions that they claim render them at heightened risk of contracting the Coronavirus Disease 2019 ("COVID-19"). The particular Named Plaintiffs are immigration detainees with serious criminal histories as well as medical conditions that they contend render them at risk of COVID-19. These five Named Plaintiffs, three of whom remain detained at only three immigration detention facilities, seek an expansive, nationwide preliminary injunction requiring U.S. Immigration and Customs Enforcement ("ICE") to implement certain measures with respect to detainees who have a heightened risk of contracting COVID-19 as a result of their age or medical conditions. If ICE cannot implement the requested nationwide and class-wide preliminary injunction within 24 hours, Plaintiffs seek prompt release from detention.

Through this motion for a preliminary injunction and emergency motion for class certification, Plaintiffs seek accelerated review of longstanding grievances regarding medical treatment in immigration detention facilities based on a platform of specious allegations that ignore the authority and justification for civil immigration detention mandated by Congress and recognized by the Supreme Court, and which seeks relief that extends far beyond addressing the allegations of the Named Plaintiffs should they prove true. Plaintiffs' emergency filings in this case raise an entirely new set of factual allegations absent from the complaint that would have the Court go beyond the claims in the complaint to find that all immigration detention is punitive and that an unknown number of immigration detainees should be released without consideration of the compelling and Congressionally mandated reasons for their continued detention and without regard to the efforts U.S. Immigration and Customs Enforcement ("ICE") has taken to address the risks of COVID-19 in consideration of the Centers for Disease Control's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.

Defendants recognize that COVID-19 presents a significant and fast-developing challenge. And Defendants have therefore responded carefully, thoroughly, and expeditiously to that challenge. The circumstances concerning COVID-19 have been fluid and therefore so has the federal response. Throughout the past month, ICE has constantly monitored and reviewed and modified its COVID-19 guidance, in accordance with the Center for Disease Control and Prevention guidelines, with respect to immigration detention centers nationwide, as reflected at its webpage, policy memoranda, and the declarations attached here that reflect the latest in policies and practices at facilities run by ICE Health Service Corps ("IHSC"), and those facilities with ICE detainees held at state and local facilities pursuant to Inter-Governmental Services Agreement and privately

contracted facilities.[1][2][3] ICE's COVID-19 guidance demonstrates a unified and thorough response aimed at "reduc[ing detainee and detention center staff] exposure to COVID-19, protect[ing] the detained population, and optimiz[ing] employee health and availability for duty." COVID-19 Action Plan, Revision 1 at 1. In response to COVID-19, and in order to prevent transmission and infection, ICE has implemented policies at its detention facilities related to visitation, screening of detainees and staff, cohorting and isolation depending upon exposure to or symptoms of the virus, and sanitation frequency, supplies and personal protective equipment. *See, e.g.*, Declaration of Dr. Ada Rivera ("Rivera Decl.") ¶¶ 8-17.

Despite the above-described guidance, policies, and procedures implemented by ICE over the past month in response to the COVID-19 pandemic, Plaintiffs seek a nationwide preliminary injunction requiring Defendants to do the following:

1. identify all people in ICE custody with one or more Risk Factors as defined in Plaintiffs' motion;
2. conduct a comprehensive, evidence-based assessment of medically necessary precautions that should be implemented to ensure the health and safety of such persons during the COVID-19 pandemic, including assurance that all such persons have timely access to competent, sufficient, and appropriately qualified staffing, medical care, screening, social distancing measures, sanitation methods, education, equipment, hospitals and all other medically necessary protective measures;
3. promptly (within 48 hours) effectuate the release of individuals with one or more Risk Factors if medically necessary safeguards cannot be immediately (within 24 hours) provided to ensure health and safety, and absent an individualized finding of dangerousness to community;
4. modify its existing COVID-19 protocols to remediate all Protocol Deficiencies;
5. appoint a Special Master to oversee the process.

Plaintiffs' Mot. for a Prelim. Inj. ("PI Mot."), ECF No. 81 at 3. The Court should deny Plaintiffs' PI Motion.

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[1] *ICE Guidance on COVID-19*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/coronavirus, (last visited Apr. 3, 2020).

[2] Ex. 1, *Memorandum on Coronavirus Disease 2019 (COVID-19) Action Plan, Revision 1*, U.S. Immigration and Customs Enforcement (March 27, 2020) (hereinafter "COVID-19 Action Plan, Revision 1").

[3] *See* "Dedicated and Non Dedicated Facility List" and "Over-72-Hour ICE Detention Facilities," *Facility Inspections*, U.S. Immigration and Customs Enforcement, *available at* https://www.ice.gov/facility-inspections; *see also Detention Management*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/detention

As an initial matter Defendants' Motion to Sever and Dismiss, alternatively Transfer Actions, and to Strike portions of Plaintiffs' Complaint remains pending before this Court. *See* ECF No. 54. Because Defendants' Motion seeks to resolve many important issues in this case, including severing and dismissing several of Plaintiffs' claims, Plaintiffs' Emergency Motions for Preliminary Injunction and Class Certification are premature. The Court's action on those previously pending motions is critical, because Plaintiffs now seek a mandatory injunction for a nationwide class without consideration of the specific conditions in individual facilities and the difference in any steps that have been taken in response to COVID-19 at those facilities in furtherance of ICE guidance if those facilities are staffed and run by contractors or state and local authorities, but also depending on guidance from state and local authorities.

To the extent that the Court retains jurisdiction over any of the Named Plaintiffs and their claims, the Court should deny Plaintiffs' motion for an extraordinary preliminary injunction. First, the Named Plaintiffs lack standing because they do not have a cognizable injury, much less an irreparable one. None of them demonstrate that have been exposed to COVID-19, there are not any confirmed COVID-19 cases in any of the Named Plaintiffs' detention facilities, and there are only 8 detainees presently in ICE custody with confirmed cases of COVID-19, at only 6 of the over 100 72-hour ICE detention facilities nationwide. *See* ICE Guidance on COVID-19, "Confirmed Cases," U.S. Immigration and Customs Enforcement, https://www.ice.gov/coronavirus, (last visited Apr. 3, 2020); see also "Dedicated and Non Dedicated Facility List" and "Over-72-Hour ICE Detention Facilities," Facility Inspections, U.S. Immigration and Customs Enforcement, available at https://www.ice.gov/facility-inspections. Even if the Named Plaintiffs could allege sufficient injuries, this Court lacks the authority to redress such injuries by ordering the release of the Named Plaintiffs and a putative class of what could consist of several thousand detainees. Second, Plaintiffs' constitutional claims lack

merit because they do not show that ICE has been deliberately indifferent to the putative class or that ICE's COVID-19 precautionary measures result in punitive conditions of confinement. Nor have Plaintiffs established a violation of the Rehabilitation Act. Third, Plaintiffs have not demonstrated a likelihood of irreparable harm in light of ICE's COVID-19 guidance, policies, and procedures. Finally, the balance of equities and public interest cut strongly against a preliminary injunction—and certainly against the overbroad and mandatory injunction that Plaintiffs seek. Defendants respectfully request that the Court deny Plaintiff's motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. ICE COVID-19 Guidance

Since the initial reports of COVID-19, ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to IHSC staff for the screening and management of potential exposure among detainees. Rivera Decl. ¶ 5. On a nationwide basis, ICE has maintained a pandemic workforce protection plan since February 2014. *Id*. ¶ 6. This plan provides specific guidance for biological threats such as COVID-19, and ICE instituted applicable parts of the plan in January 2020, upon the discovery of the potential threat of COVID-19. *Id*. IHSC has also been in contact with relevant offices within the Department of Homeland Security, and in January 2020, the DHS Workforce Safety and Health Division provided DHS components additional guidance to address assumed risks and interim workplace controls, including the use of N95 masks, available respirators, and additional personal protective equipment. *Id*. ¶ 7. As a precautionary measure, ICE has temporarily suspended social visitation in all detention facilities. *Id*. ¶ 8. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control and Prevention ("CDC") to safeguard those in its custody and care. *Id*. ¶ 9; see also ICE Guidance on COVID-19. IHSC has shared its guidance and resources with medical leadership at all

contract facilities and has issued recommendations to the field units at detention centers, which it updates and shares on a real-time basis. Rivera Decl. ¶¶ 10-11.

During intake medical screenings, routine comprehensive health assessments, or screenings occasioned by detainee complaints, detainees are assessed for fever and respiratory illness, are asked to confirm if they have had close contact with a person with confirmed COVID-19 in the past 14 days, and are asked whether they have traveled from or through areas with sustained community transmission in the past two weeks. *Id*. ¶ 12. The detainee's responses and the results of these assessments dictate whether to monitor or isolate the detainee. *Id*. ¶ 13. Those detainees that present symptoms compatible with COVID-19 are placed in isolation, where they are tested. *Id*. If testing is positive, they will remain isolated and treated. In case of any worsening symptoms, detainees will be referred to a local hospital. *Id*.

In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. *Id*. at ¶ 14. Those that show onset of fever and/or respiratory illness are referred to a medical provider for evaluation. Rivera Decl. ¶ 14. Cohorting is discontinued when the 14-day incubation period completes with no new cases. *Id*. In the case of exposure to a person with fever or symptoms being evaluated or under investigation for COVID-19 but not confirmed, the process is the same except that cohorting is discontinued if the index patient receives an alternate diagnosis excluding COVID-19. *Id*. ¶ 15.

Field units have also been instructed to educate detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and requesting sick call if they feel ill. *Id*.

ICE's evolving response also remains able to adapt and implement such guidance if and when necessary. Notably, the CDC's guidance specific to higher risk detainees is focused on where "the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility," and "the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility," recommending that facilities then "be especially mindful of cases who are at higher risk of severe illness from COVID-19," and suggesting next steps.[4] Here, Defendants are aware of no ICE facility that presents either scenario where the CDC recommends special procedures for higher risk detainees.

B. Named Plaintiffs' Detention Authority and Immigration Proceedings

The Named Plaintiffs are five immigration detainees: Faour Abdullah Fraihat, Jimmy Sudney, and Martin Munoz were detained at the Adelanto ICE Processing Center ("Adelanto") in Adelanto, California[5]; Aristoteles Sanchez Martinez is detained at the Stewart Detention Center in Lumpkin, GA, and Alex Hernandez is detained at the Etowah County Detention Center in Gadsden, Alabama. The Named Plaintiffs are older individuals or have various pre-existing medical conditions that they argue render them at higher risk of serious illness or death if they contract COVID-19. *See* PI Mot., ECF No. 81-11, Declaration of Homer Venters ("Venters Decl.") ¶ 21; see also Pls.' Class Certification Mot., ECF No. 83-7, Declaration of Alex Hernandez ("Hernandez Decl."); ECF No. 83-8, Declaration of Aristoteles

[4] *See Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf at 16, 20 (last updated Mar. 23, 2020).

[5] Mr. Fraihat and Mr. Munoz were each ordered released from detention on March 30, 2020 and April 2, 2020, respectively, after the filing of the instant PI Mot. *See Munoz v. Wolf*, No. 5:20-CV-00625 TJH (SHKx) (C.D. Cal. Apr. 2, 2020); *Fraihat v. Wolf*, EDCV 20-00590 TJH (KSx) (C.D. Cal. Mar. 30, 2020). In each case, the District Court granted Mr. Fraihat's and Mr. Munoz's applications for a temporary restraining order in separate habeas corpus proceedings brought by different counsel also purporting

Sanchez Martinez ("Martinez Decl."); ECF No. 83-9, Declaration of Faour Abdullah Fraihat ("Fraihat Decl."); ECF No. 83-10, Declaration of Jimmy Sudney ("Sudney Decl."); ECF No. 83-11, Declaration of Martin Munoz ("Munoz Decl."). Plaintiffs contend that ICE's COVID-19 precautionary measures fail to identify and provide increased protection for detainees with certain risk factors that render them more susceptible to serious illness or death due to COVID-19, and also fail to address shortages of medical and sanitary supplies, staffing shortages, and education of detained people and staff. PI Mot. 7. Plaintiffs also argue that their evidence demonstrates that ICE's detention facilities are not following ICE's COVID-19 guidance and that ICE's purportedly inadequate healthcare system exacerbates the risk posed by COVID-19. *Id.*

1. Faour Abdullah Fraihat

Mr. Fraihat is a 58-year-old citizen of Jordan who was previously detained since December 19, 2016. Declaration of Edgar Duran ("Duran Decl.") ¶ 4. In 1989, he was charged with lewd and lascivious acts with a child under 14, but convicted of simple battery and sentenced to 20 days in jail. Between 1994 and 1997, Mr. Fraihat served time in jail and prison for other criminal offenses. On or about December 6, 1999, he was granted withholding of removal to Jordan. *Id.* ¶¶ 5-6.

In 2001, Mr. Fraihat was convicted under California Health and Safety Code ("CHSC") § 11379.6(a) for manufacturing methamphetamine, § 11366 for maintaining a place for selling or using controlled substances, and § 11378 for possession for sale of methamphetamine. *Id.* ¶ 7. For these offenses, Mr. Fraihat was sentenced to six years and eight months in prison. *Id.* In February 2012, Mr. Fraihat's removal proceedings were reopened. *Id.* at ¶ 8. On April 16, 2013, Petitioner was convicted in violation of CHSC § 11379 for offering to transport a controlled substance for sale and sentenced to two years in prison. *Id.* at ¶ 9. On or about December 19, 2016, ICE apprehended Mr. Fraihat and detained him at Adelanto. *Id.* at ¶ 10. On October 30, 2017, an Immigration Judge ordered Mr. Fraihat removed to

Jordan, and he appealed this decision to the Board of Immigration Appeals. *Id*. at ¶ 12. On April 18, 2018, the Board dismissed the appeal. *Id*. at ¶ 14. Mr. Fraihat has filed four Petitions for Review with the Ninth Circuit. *Id*. at ¶ 15. Three were dismissed and one remains pending, and a temporary stay remains in effect. *Id*.

During the pendency of the instant litigation, Mr. Fraihat filed an individual habeas corpus petition. On March 30, 2020, after filing a temporary restraining order in the habeas proceedings requesting immediate release due to the risk of serious illness posed by COVID-19, Mr. Fraihat was released from detention. *See Fraihat v. Wolf*, *EDCV* 20-00590 TJH (KSx) (C.D. Cal. Mar. 30, 2020).

2. Alex Hernandez

Mr. Hernandez is a 49-year-old citizen of Honduras. *See* Hernandez Decl. ¶ 2. Between March 16, 1989 and October 28, 1997, Mr. Hernandez was convicted, in separate proceedings, of Burglary, Vehicle Theft, Possession of a Controlled Substance, Robbery in the Second Degree, Receiving Stolen Property, and Felon in the Possession of a Firearm. Declaration of Bryan S. Pitman ("Pitman Decl.") ¶¶ 6-12.

On September 29, 2016, Mr. Hernandez was processed as an Administrative Removal under Section 238(b) of the Immigration and Nationality Act for having committed an aggravated felony under Section 237(a)(2)(A)(iii). *Id*. ¶ 13. He is subject to mandatory detention. *Id*. ¶ 14. On June 19, 2017, an immigration judge granted Mr. Hernandez relief from removal and the Department of Homeland Security ("DHS") appealed. *Id*. ¶¶ 15-16. On November 24, 2017, the BIA sustained the appeal of DHS and ordered Mr. Hernandez removed to Honduras. *Id*. ¶ 17.

On December 14, 2017, Mr. Hernandez filed a PFR with the Ninth Circuit Court of Appeals, resulting in a stay of removal. *Id*. ¶ 18. That case is pending. *Id*. He has filed two Petitions for Writ of Habeas Corpus. *Id*. ¶¶ 20-21. One was dismissed and one is still pending. *Id*.

3. Aristoteles Sanchez Martinez

Mr. Sanchez Martinez is a native and citizen of Venezuela detained at Stewart. Declaration of Sebastian Mason ("Mason Decl.") ¶ 3. He is in post-order of removal status and detained under 8 U.S.C. 1231(a). *Id*. An immigration judge denied Mr. Sanchez-Martinez's applications for relief from removal on June 3, 2019, and Mr. Sanchez-Martinez appealed the immigration judge's decision to the BIA. *Id*. at ¶ 4. On November 21, 2019, the BIA dismissed the appeal and affirmed the decision of the Immigration Judge. *Id*. at ¶ 5.

4. Jimmy Sudney

Mr. Sudney is a 29-year-old citizen of Haiti with claimed hypertension. Declaration of Michael Jimeno ("Jimeno Decl.") ¶ 3; Sudney Decl. ¶ 4. He is currently detained at Adelanto. Between September 18, 2013 and February 18, 2015, Mr. Sudney was convicted of driving under the influence of alcohol and two counts of aggravated assault. Jimeno Decl. ¶¶ 4-5. On December 7, 2016, he was taken into ICE custody under mandatory detention and charged as removable. *Id*. ¶ 6. On June 26, 2017, an immigration judge concluded that he was both a danger to the community based on his crimes and a flight risk. *Id*. ¶ 8.

On November 15, 2017, an immigration judge denied Mr. Sudney's relief applications and ordered him removed to Haiti. *Id*. ¶ 10. He filed a petition for review with the Ninth Circuit Court of Appeals and it was dismissed on January 14, 2020. *Id*. ¶ 16.

5. Martin Munoz

Mr. Munoz is a native and citizen of Mexico who became a lawful permanent resident on September 15, 1989. Declaration of Gil O. Montes ("Montes Decl.") ¶ 4. He has been detained at Adelanto since July 17, 2017. *Id*. ¶ 12. During his time as a lawful permanent resident in the United States, Mr. Munoz was convicted of several criminal offenses, including several convictions for driving under the influence and driving with suspended license in violation of California law. *Id*. ¶¶ 5-

11. Most recently, on September 27, 2016, he was convicted of: (1) driving under the influence of alcohol with a prior DUI; (2) felony assault with a deadly weapon; (3) felony hit and run – death or injury; and (4) driving under the influence causing injury. *Id*. ¶ 11. Mr. Munoz was sentenced to three years in state prison for these offenses. *Id*. On July 17, 2017, he was taken into ICE custody and placed in removal proceedings on the same date. *Id*. ¶ 12. On August 30, 2018, an immigration judge ordered Mr. Munoz removed, and he appealed that decision to the Board, which dismissed his appeal. *Id*. ¶ 15. On May 13, 2019, Mr. Munoz filed a petition for review and motion for stay of removal with the Ninth Circuit. Petitioner's removal is stayed pending further order of the Ninth Circuit. *See Munoz v. Barr*, No. 19-71164 (9th Cir.).

During the present litigation, Mr. Munoz filed an individual habeas corpus petition. On April 2, 2020, after filing a temporary restraining order in the habeas proceedings requesting immediate release due to the risk of serious illness posed by COVID-19, Mr. Munoz was ordered released from detention. *See Munoz v. Wolf*, No. 5:20-CV-00625 TJH (SHKx) (C.D. Cal. Apr. 2, 2020).

III. ARGUMENT

A. Standard for Preliminary Injunction

A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). *See* also *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012).

To obtain a preliminary injunction, Plaintiffs must demonstrate: (1) that they are likely to succeed on the merits of their claims; (2) that they are likely to suffer irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in their favor; and (4) that the proposed injunction is in the public interest. *Karnoski v. Trump*, 926 F.3d 1180, 1198 (9th Cir. 2019) (quoting *Winter*, 555 U.S. at 20). "Where the government is a party to a case in which a preliminary injunction

is sought, the balance of the equities and public interest factors merge." *Padilla v. ICE, et al.*, --- F.3d ---, 2020 WL 1482393, *5 (9th Cir. Mar. 27, 2020).

Finally, because the function of a preliminary injunction is to maintain the status quo before the case is adjudicated on the merits, there is "heightened scrutiny" for mandatory preliminary injunctions. *Dahl v. HEM Pharms. Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993) (Mandatory injunctions are "subject to a heightened scrutiny and should not be issued unless the facts and law clearly favor the moving party."). "A mandatory injunction orders a responsible party to take action," and thus, "goes well beyond simply maintaining the status quo." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (internal citations and quotation marks omitted). Accordingly, "mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases . . . ." *Id*. at 879 (quotation marks omitted).

B. Plaintiffs Have Fallen Short of Proving Any Entitlement to Mandatory Preliminary Injunctive Relief

Plaintiffs ask this Court to rule on the ultimate factual and legal issue in this case—whether Defendants' policies and practices concerning medical care constitute objective deliberate indifference to a substantial risk of suffering serious harm and result in punitive conditions of confinement as well as a violation of the Rehabilitation Act. Plaintiffs then seek a preliminary injunction that would require Defendants to provide the very same relief that Plaintiffs ultimately seek through their Complaint. PI Mot. 3; Proposed Order, ECF No. 84. Because Plaintiffs are seeking this kind of expansive affirmative relief that would require the implementation of "medically necessary safeguards" "within 24 hours," Proposed Order at 7, and the expenditure of significant sunk costs that cannot be recovered if Defendants ultimately prevail, they must show "the facts and law clearly favor" their position in order to satisfy the heightened scrutiny test for mandatory injunctions. Dahl, 7 F.3d at 1403 (emphasis added). As Defendants discuss below, Plaintiffs have failed to meet their high burden to demonstrate likelihood of success on the merits,

irreparable harm, and that the balance of interests tips in their favor, and their PI Motion should be denied.

C. Plaintiffs Cannot Demonstrate a Likelihood of Success on the Merits.

1. A PI Motion Based on New Factual Allegations Not in the Complaint is Improper.

For injunctive relief to be proper, "there must be a relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint." *Pac. Radiation Oncology, LLC v. Queens Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015). If a court never finds that the "conduct asserted in the underlying complaint" is likely to be unlawful, then there is no basis to issue an injunction of conduct not challenged in the complaint. *See De Beers Consol. Mines v. United States*, 325 U.S. 212, 219 (1945) (the issuance of preliminary relief "presupposes or assumes . . . that a decree may be entered after a trial on the merits enjoining and restraining the defendants from certain future conduct") (emphasis added). Indeed, such a ruling would be an abuse of discretion. *See Pac. Radiation Oncology, LLC*, 810 F.3d at 637 (movant "could not prove the likelihood of success requirement of the preliminary injunction analysis because the [] violations alleged in the motion were not contained within the actual complaint"); accord *Colvin v. Caruso*, 605 F.3d 282, 300 (6th Cir. 2010) (plaintiff "had no grounds to seek an injunction pertaining to allegedly impermissible conduct not mentioned in his original complaint").

Plaintiffs' PI request flunks the requirement for "a relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint." *Pac. Radiation Oncology, LLC*, 810 F.3d at 636. While Plaintiffs' complaint includes general and overarching allegations regarding Defendants' medical care practices, punitive conditions of confinement, and allegations concerning violation of the Rehabilitation Act. *See, e.g.*, ECF No. 1, Compl. ¶¶ 21-96. But the complaint makes no allegations based on the COVID-19 pandemic, nor does it seek release as a remedy. Yet Plaintiffs' PI Motion asks this

Court to direct ICE to modify its medical policies, guidance, and practices specifically in response to the COVID-19 pandemic. *See* PI Mot. 3. The PI Motion also requests that this Court order Plaintiffs released from detention if ICE cannot modify its medical policies within 24 hours. *See* id. That requested relief is not sufficiently related to the claims pleaded in the complaint. The Court should deny the PI Motion on this ground alone.

2. Plaintiffs Lack Article III Standing

To have standing, a plaintiff must establish three requirements. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, a plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" *Id*. Second, the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the Court." *Id*. Third, it must be "likely," as opposed to merely "speculative" that the injury will be "redressed by a favorable decision." *Id*. at 560-61 (internal citations omitted). Plaintiffs do not demonstrate a cognizable injury because there are no COVID-19 cases in any of the detention facilities where the Named Plaintiffs are detained, nor is the alleged injury redressable by this Court given ICE's COVID-19 response and the absence of COVID-19 in those detention facilities.

Plaintiffs' argue that people "in immigration detention establish a due process violation warranting injunctive relief by showing that Defendants' policies and practices concerning medical care—in their totality—constitute objective deliberate indifference to a substantial risk of suffering serious harm." PI Mot. 9. Specifically, Plaintiffs contend that Defendants' precautionary measures in response to the COVID-19 pandemic, viewed in light of Defendants' purported inadequate healthcare system, is a systemic deficiency and evidence of Defendants' objective deliberate indifference, particularly toward individuals with certain medical conditions that they contend render them at greater risk of serious illness or death

due to COVID-19. *See id.* (citing *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018)).

Here, Plaintiffs' alleged risk of harm is speculative. Plaintiffs have not established that COVID-19 cases have been confirmed at any of the Named Plaintiffs' detention facilities. *See* generally Hernandez Decl.; Martinez Decl.; Fraihat Decl.; Sudney Decl.; Munoz Decl; see also Declaration of Captain Jennifer Moon – Adelanto ICE Processing Center ("Moon Decl. – Adelanto") ¶ 13; Declaration of Captain Jennifer Moon – Etowah County Detention Center ("Moon Decl. – Etowah") ¶ 13; Declaration of Captain Jennifer Moon – Stewart Detention Center ("Moon Decl. – Stewart") ¶ 13. While Plaintiff Munoz claims he feels like he has the flu, that statement is not evidence of COVID-19 and remains speculative as to the injury for which Plaintiffs seek relief. *See* Munoz Decl. ¶ 8.

ICE has expended extensive resources and efforts to address the very issues that Plaintiffs have identified, and Plaintiffs' claims of future injury are only hypothetical. *See* Rivera Decl. ¶¶ 5-17. Plaintiffs are not entitled to impose excessive and mandatory obligations on Defendants or obtain immediate release from detention based on a conjectural injury that they have not suffered. *Spokeo v. Robins*,136 S. Ct. 1540 (2016) at 1548. ICE has set up screening procedures to identify and isolate potentially infected individuals, in accordance with CDC guidance, and to avoid the mingling of infected with uninfected inmates. Rivera Decl. ¶¶ 12-15. They have provided staff with increased supplies of and guidance on the use of personal protective equipment. *Id*. ¶ 7; Moon Decl. – Adelanto at ¶ 15; Moon Decl. at ¶ 15; Moon Decl. – Stewart at ¶ 15. These policy and procedure modifications render Plaintiffs' claim speculative rather than imminent. Since the beginning of March 2020, when the COVID-19 pandemic worsened throughout the United States, ICE has monitored CDC guidelines and updated its guidance to address the evolving and uniquely fluid situation presented by the crisis. *Id*. ¶¶ 5, 9; see also ICE Guidance on COVID-19; Ex. 1, COVID-19 Action Plan, Revision 1.

Thus, Plaintiffs do not have standing to obtain preliminary injunctive relief because their injury is speculative.

3. Plaintiffs Fail to Demonstrate that ICE is Acting With Deliberate Indifference.

The right to adequate medical care for immigration detainees, comparable to pretrial detainees, stems from an established right to be free from unconstitutional punishment. *See Bell v. Wolfish*, 441 U.S. 520, 534-37 (1979). Unlike the related Eighth Amendment protections afforded to criminal prisoners, for immigration detainees and similar to pretrial detainees, this right stems instead from the Due Process Clause of the Fifth Amendment. *See Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018). Thus, detainees are entitled to receive "adequate" medical care as part of their constitutional right to Due Process. *Gibson v. Cty. of Washoe, Nev.*, 290 F.3d 1175, 1187 (9th Cir. 2002); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

However, recently the Ninth Circuit has adopted a slightly different "objective deliberate indifference standard" from that previously applied in the Eighth Amendment context. *See Gordon*, 888 F.3d at 1124-25 & n.4.The elements of a pretrial detainee's deliberate indifference claim with respect to adequate medical care under due process are the following:

> (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries.

Id. at 1125. With respect to the third element, "the defendant's conduct must be objectively unreasonable, a test that will necessarily 'turn[ ] on the facts and circumstances of each particular case.'" Gordon, 888 F.3d at 1125 (citations omitted). Essentially, a plaintiff must prove more than negligence but less then subjective intent—something akin to reckless disregard." *Id*. (internal citation omitted). Neither general allegations of negligence nor a plaintiff's general

disagreement with treatment received is enough. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Further, a medical need is deemed to be "serious" if the failure to treat the detainee's condition would result in further significant injury or in the unnecessary and wanton infliction of pain contrary to contemporary standards of human decency. *See Helling v. McKinney*, 509 U.S. 25, 32-35 (1993); *see also Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

Even where individuals have been involuntarily, civilly committed, liability may be imposed "only when the decision by the [medical] professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982). In other words, neither a plaintiff's mere allegations of a defendant's negligence nor a plaintiff's general disagreement with the treatment that he or she received would suffice to show eligibility for relief in this context. *See Estelle*, 429 U.S. at 106; *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988); see also *Jackson v. McIntosh*, 90 F.3d 330, 331 (9th Cir.), cert. denied, 519 U.S. 1029 (1996).

Here, Defendants are fully satisfying these standards: they are providing adequate medical care and protection in accordance with the measures that ICE has implemented in response to COIVD-19. Gordon, 888 F.3d at 1124-25. Plaintiffs are receiving the benefits of the precautionary measures ICE has implemented to protect all detainees from illness due to COVID-19. *See* Rivera Decl. ¶¶ 8-17 (detailing measures to prevent the spread of COVID-19, including suspending social visitation, assessing detainees for fever and respiratory illness, isolating detainees with COVID-19-compatible symptoms, and instructing detainees on hand washing and hygiene); Moon Decl. – Adelanto ¶¶ 7-12, 15-20; Moon Declaration – Etowah ¶¶ 7-12, 15-21; see, e.g., Hernandez Decl. ¶ 6 (noting that all detainees in the unit were

provided with surgical masks); Munoz Decl. ¶ 5 (explaining how he was moved from a dorm of 72 people to 22 people). Importantly, ICE has gone to great lengths to promptly implement protocols to protect its staff and the detainees in their care, including at Adelanto, Etowah, and Stewart. They have set up screening procedures to identify and isolate potentially infected individuals, in accordance with CDC guidance, and to avoid the mingling of infected with uninfected inmates. Rivera Decl. ¶¶ 12-15. They have provided staff with increased supplies of and guidance on the use of personal protective equipment. *Id*. ¶ 7; Moon Decl. – Adelanto at ¶ 15; Moon Decl. at ¶ 15. The lack of any confirmed COVID-19 cases at Adelanto, Etowah, and Stewart, where the Named Plaintiffs are detained, underscores the effectiveness and care the government has taken to protect vulnerable detainees. ICE's action and policies described above show extensive and thorough action to protect detainees and prevent infection. Thus, ICE's response defeats any deliberate indifference claim.

Moreover, even if COVID-19 were introduced to the facilities in which the Named Plaintiffs are detained, ICE is has taken precautionary measures to protect detainees and prevent infection, as described above. ICE is responding. Plaintiffs fail to provide evidence that Defendants are not taking precautionary measures and are unprepared to respond to that contingency, particularly in light of the known facts concerning ICE's response to the challenges posed by COVID-19. Rivera Decl. ¶¶ 8-17; *see also Dawson v. Asher*, No. C20-0409 JLR-MAT, 2020 WL 1304557 (W.D. Wash. Mar. 19, 2020) (rejecting a request for release by an immigration detainee where there was no evidence of COVID-19 cases or that defendants' precautionary measures for COVID-19 were inadequate); *Sacal-Micha v. Longoria*, --- F. Supp. 3d ---, 2020 WL 1518861, *5 (S.D. Tex. Mar. 27, 2020) (finding no likelihood of success on substantially the same due process claim based on absence of evidence that the detention facility is incapable of protecting the petitioner from COVID-19). Furthermore, the deliberate indifference analysis turns on the facts and

circumstances of each case at each facility, particularly where those facilities are staffed and run by contractors or state and local authorities. Given the differences in facilities and the evidence presented above, the Court should not reach any broad holding that there is deliberate indifference. *See Gordon*, 888 F.3d at 1125 (quotations and citations omitted).

Plaintiffs fail to show a likelihood of meeting their burden to show that Defendants have responded with reckless disregard or deliberate indifference, or substantially departed from accepted professional judgment, practice or standards. *Gordon*, 888 F.3d at 1125; *McGuckin*, 974 F.2d at 1059; *Youngberg*, 457 U.S. at 323. First, undergirding Plaintiffs' basis for preliminary relief and the putative subclass definitions is an overbroad definition of "risk factors" that render a person more susceptible to serious illness due to COVID-19. CDC guidelines, which form the basis for ICE's COVID-19 guidance, provide that:

> Based upon available information to date, those at high-risk for severe illness from COVID-19 include:
> - People aged 65 years and older
> - People who live in a nursing home or long-term care facility
> - Other high-risk conditions could include:
>   - People with chronic lung disease or moderate to severe asthma
>   - People who have serious heart conditions
>   - People who are immunocompromised including cancer treatment
>   - People of any age with severe obesity (body mass index [BMI] >40) or certain underlying medical conditions, particularly if not well controlled, such as those with diabetes, renal failure, or liver disease might also be at risk
> - People who are pregnant should be monitored since they are known to be at risk with severe viral illness, however, to date data on COVID-19 has not shown increased risk
>
> Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications.[6]

[6] *People who are at higher risk for severe illness*, Centers for Disease Control and Prevention,https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov

However, based on purported expert declarations, Plaintiffs define "risk factors" for severe illness due to COVID-19 more broadly than the CDC guidelines to include people who are age 55 or older and severe psychiatric illness. PI Mot. 6 & n.9 (emphasis added); see also Venters Decl. ¶ 13, ECF No. 81-11; Franco-Paredes Decl., ECF No. 81-12 at 2-3. While Dr. Venters explains (although without any explanation of his methodology or evidence) that the more broadly defined risk factors are part of his medical opinion, Venters Decl. ¶ 13, Dr. Franco-Paredes states incorrectly and without citation that "[a]ccording to the CDC, groups deemed to be at high risk of developing severe disease and dying from COVID-19 include those above 55 years of age and those with underlying medical conditions (regardless of their age) (*See* Table 1)," Franco-Paredes Decl., ECF No. 81-12 at 2-3. In any case, the more broadly defined risk factors are the medical opinions of Drs. Venters and Franco-Paredes, and Plaintiffs do not demonstrate how ICE's use of the risk factors as defined by the CDC substantially depart from professional judgment. *See Youngberg*, 457 U.S. at 323. ICE's thorough response to COVID-19 in detention facilities defeats a deliberate indifference claim, and Plaintiffs' mere difference of opinion surely does not show deliberate indifference.

Plaintiffs also contend that ICE's protocols contradict CDC guidance for correctional facilities because ICE's guidance does not address "staffing shortages," "basic infection control measures," and does not require social distancing. PI Mot. 10-11. But ICE has addressed these issues. ICE issued a memorandum on March 27, 2020, providing that facilities "are expected to be appropriately staffed to ensure the delivery of detainee medical and mental health care as it relates to the continually evolving impact of COVID-19." COVID-19 Action Plan, Revision 1 at 2. The memorandum also addresses screening staff and detainees, to include cohorting and social distancing measures where possible and appropriate. *See id.* at 4-5 ("Wardens and Facility Administrators should implement modified operations to maximize social distancing in facilities, as much as practicable. For example, Wardens and

Facility Administrators should consider staggered mealtimes and recreation times in order to limit congregate gatherings."). Indeed, the CDC guidance for correctional facilities recognizes that social distancing in the correctional setting is not always possible. *See* Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf (last updated Mar. 23, 2020) (recognizing that "social distancing is challenging to practice in correctional and detention environments" and that to socially distance, individuals should "ideally" maintain a distance of 6 feet apart). At all events, ICE's response on these points defeat any claims of deliberate indifference.

Plaintiffs seek sweeping nationwide relief, but they have not established nationwide deliberate indifference; thus, Plaintiffs' purported evidence that ICE's protocols are inadequate and that ICE is not applying the protocols that exist system-wide is unconvincing. Dr. Venters' declaration fails to support Plaintiffs' assertion that ICE's COVID-19 protocols are insufficient because he speaks to conditions he witnessed in immigration detention facilities at an unknown place and time; thus, lacking personal knowledge of current conditions in ICE detention. *See* Venters Decl. ¶¶ 1, 9; see also *Los Angeles Times Communications LLC v. Dept. of the Army*, 442 F. Supp. 2d 880, 886 (C.D. Cal. 2006) ("Generally, [Federal Rule of Evidence] Rule 602 requires that a witness' testimony be based on events perceived by the witness through one of the five senses."). In addition, to the extent Dr. Venters' opinion is considered along with that of Plaintiffs' other purported expert, Dr. Franco-Paredes, these merely represent the opinions of two medical professionals and demonstrate a difference of professional opinion concerning COVID-19 protocols rather than any indication of deliberate indifference on Defendants' part. *See Youngberg*, 457 U.S. at 323.

Moreover, Plaintiffs' additional declarations from Mikhail Solomonov (ECF No. 81-3), Linda Corchado (ECF No. 81-5), Laura G. Rivera (ECF No. 81-6), Keren Zwick (ECF No. 81-7), Elissa Steglich (ECF No. 81-10), Anne Rios (ECF No. 81-13), and Andrea Saenz (ECF No. 81-15) that are intended to "paint an alarming picture of ICE's inadequate responses to COVID-19 across the entire country" defy the evidence of ICE's COVID-19 response that defeats any deliberate-indifference claim. And to the extent the Court gives them any weight, the Court must also consider the declarations of Dr. Ada Rivera and Captain Jennifer Moon that discuss the specific policies and practices as implemented at the facilities at which the Named Plaintiffs are detained. *See generally* Rivera Decl. ¶¶ 8-17; compare Moon – Adelanto Decl. ¶¶ 7-20 (noting that Adelanto changed attorney visits to a non-contact setting), with Moon Decl. – Etowah ¶¶ 7-21 (noting that attorney visits have been limited to approval only on a case-by-case basis in an effort to reduce detainee exposure to COVID-19).

Furthermore, these declarations are largely, if not entirely, inadmissible or entitled to no weight because the declarants lack personal knowledge, fail to lay a proper foundation for an assertion, or provide statements based on hearsay.[7] *See* Fed. R. Civ. P. 56 (c)(4); Fed. R. Evid. 801–802; Fed. R. Evid. 601–602; Fed. R. Evid. 701; *see also Wang v. Chinese Daily News, Inc.*, 231 F.R.D. 602, 615 (C.D. Cal. 2005) (sustaining hearsay objection to declaration statement); *Bank Melli v. Pahlavi*, 58 F. 3d 1406, 1412 (9th Cir. 1995) (a declaration not made on personal knowledge is entitled to no weight); *Self-Insurance Inst. Of America, Inc. v. Software and Information Ind. Ass'n*, 208 F. Supp. 2d 1058, 1063–64 (C.D. Cal. 2000) (affirming defendants' objections over (1) a declarant's statements about third persons being "confused" for lack of personal knowledge and (2) statements about "calls to myself and to my staff" from clients because the statements in these calls

[7] *See* Defendants' Evidentiary Objections to the Declarations of Mikhail Solomonov, Linda Corchado, Laura G. Rivera, Keren Zwick, Elissa Steglich, Anne Rios, and Andrea Saenz filed concurrently with the instant Memorandum for specific statements and bases for objection

are inadmissible hearsay); *Wells v. Jeffery*, No. 03-cv-228, 2006 WL 696057, at *3 n.7 (D.D.C. Mar. 20, 2006) ("The affidavit or declaration cannot contain hearsay evidence, as such evidence would not be admissible at trial."). Thus, the Court should accord little, if any, weight to Plaintiffs' declarations. And to the extent the Court gives them any weight, the Court must also consider the declarations of Dr. Ada Rivera and Captain Jennifer Moon that discuss the specific policies and practices as implemented at the facilities at which the Named Plaintiffs are detained. *See* generally Rivera Decl. ¶¶ 8-17; compare Moon – Adelanto Decl. ¶¶ 7-20 (noting that Adelanto changed attorney visits to a non-contact setting), with Moon Decl. – Etowah ¶¶ 7-21 (noting that attorney visits have been limited to approval only on a case-by-case basis in an effort to reduce detainee exposure to COVID-19)

Additionally, Plaintiffs contend that ICE's "already broken medical care system" will exacerbate ICE's COVID-19 response, creating a substantial risk of harm to Plaintiffs. Plaintiffs have not submitted any evidence to establish deliberate indifference generally, and Defendants' evidence submitted here defeats a deliberate indifference finding. Plaintiffs cite governmental and non-governmental organization reports as well as a news article, which fail to carry their burden to clearly show likelihood of success on the merits of their present inadequate medical care claim related to COVID-19. Plaintiffs included citations to these reports in their Complaint, and the propositions for which Plaintiffs cite these reports is already under consideration before the Court on Defendants' pending motion to dismiss; thus, any consideration of them here would be premature. *See* Defs.' Mot. to Sever and Dismiss Pls.' Claims, Alternatively Transfer Actions, and Mot. to Strike Portions of the Compl., ECF No. 54. Finally, Plaintiffs citation to a news article should not be given any weight because generally news articles are inadmissible hearsay at this stage of the proceedings when presented for the truth of the matter asserted. *See Green v. Baca*, 226 F.R.D. 624, 638 (C.D. Cal. 2005) (concluding that

news articles concerning "over-detentions" at Los Angeles jail were inadmissible hearsay).

4. Release Is Not An Appropriate Remedy For A Conditions of Confinement Claim.

In similar habeas litigation concerning ICE's response to COVID-19 in the Adelanto detention facility, another court in this District ordered the release of numerous immigration detainees. *See Bravo Castillo v. Barr*, --- F. Supp. 3d ---, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020); Hernandez v. Wolf, No. 5:20-CV-00617 TJH (KSx) (C.D. Cal. Apr. 1, 2020). However, release is not appropriate in these cases, nor is it appropriate in this Fifth Amendment conditions-of-confinement case.

"Release from confinement" is not the appropriate remedy to address claims "alleg[ing] that the terms and conditions of [petitioner's] incarceration constitute[d] cruel and unusual punishment" and "violated his due process rights." *Crawford v. Bell*, 599 F.2d 890, 891-92 (9th Cir. 1979). Here, petitioners claim a violation of liberty interests protected by the due process guarantees of the Fifth Amendment. *See* PI Mot. 9. The focus for determining the impact upon a protected liberty interest by a condition of detention is upon the nature of the specific deprivation alleged. *See Sandin v. Conner*, 515 U.S. 472, 481-484 (1995). Furthermore, only those deprivations that impose atypical hardships in relation to the ordinary incidents of detention give rise to relief under the due process clause of the Fifth Amendment. *Id*. at 484. *See also Jackson v. Carey*, 353 F.3d 750, 755 (9th Cir. 2003). To determine whether a condition of detention merits relief under the Fifth Amendment, a court may look to Eighth Amendment standards. *See Keller v. Warden*, No. 1:16-cv-00613-EPG-PC, 2016 U.S. Dist. LEXIS 65109, at *10. (E.D. Cal. May 16, 2016).

Accordingly, a Due Process challenge that implicates the Eighth Amendment must be reviewed consistent with case law applying Eighth Amendment, which requires the Court to look at each challenged condition and the reason or cause behind it. *Wright v. Rushen*, 642 F.2d 1129, 1133 (9th Cir. 1981), *citing Trop v.*

Dulles, 356 U.S. 86, 101,(1958); *quoted in Estelle v. Gamble*, 429 U.S. 97, 102, (1976); *Spain v. Procunier*, 600 F.2d 189, 196 (9th Cir. 1979); *see also Keller* at *6–8. While each condition of detention does not exist in isolation; the court's principal focus should be on each specific condition. *Id*. Even though "'[s]ome conditions of confinement may establish an Eighth Amendment violation in combination when each would not do so alone," they only do so "when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise — for example, a low cell temperature at night combined with a failure to issue blankets.'" *Keller* at *7, *quoting Wilson v. Seiter*, 501 U.S. 294, 304, (1991).

Furthermore, a court "may not use the totality of all conditions to justify federal intervention requiring remedies more extensive than are required to correct Eighth Amendment violations." *Wright*, 642 F.2d at 1133. Importantly, "[t]o find an Eighth Amendment violation, courts must identify specific conditions that fail to meet Eighth Amendment requirements." *Hoptowit v. Ray*, 682 F.2d 1237, 1247 (9th Cir. 1982). "[E]qually importantly, in tailoring a proper remedy, [a court] must analyze each claimed violation in light of these requirements." *Id*. Thus, "only the specific conditions that violate the Constitution may be remedied, and the remedy may be only so much as is required to correct the specific violation." *Id*.

Here, Petitioners make a generalized claim that their detention risks causing them irreparable harm during the COVID-19 pandemic. PI Mot. 9. But Plaintiffs' claims raise nothing more than conditions inherent in all congregate detention settings, and as such they do not give rise to the remedy of release from detention. *See Jackson*, 353 F.3d at 755. Additionally, looking at the short list of specific conditions complained of in Petitioners PI Motion, it is clear that the remedy of release is not required to correct the identified conditions—even if the conditions amounted to a deficiency in Defendants' medical protocols. For example, Plaintiffs complain of not being segregated from other detainees during transport and not

having access to basic infection control. PI Mot. 11. Likewise, they complain of not being provided masks and not being able to social distance. *Id*. Even if this Court were to find that the claims concerning conditions at detention facilities were legitimate, release from detention is not necessary to correct them. *Wright*, 642 F.2d at 1133; Hoptowit, 682 F.2d at 1247. Instead, should this Court see a need to intervene, it should only enter such an order as is required to correct the specific violation demanding remedy at the facilities that demonstrate those violations, and not the overly broad remedy of release from detention. *Id*.

5. Plaintiffs Fail to Demonstrate that Defendants' COVID-19 Response Results in Punitive Conditions of Confinement.

To evaluate the constitutionality of a pretrial detention condition or immigration detention condition under the Fifth Amendment, a district court must determine whether those conditions "amount to punishment of the detainee." *Bell*, 441 U.S. at 535; *see also Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015). Punishment may be shown through express intent or a restriction or condition that is not "reasonably related to a legitimate governmental objective." *Bell*, 441 U.S. at 539.

Plaintiffs frame their request for a preliminary injunction as though they have already established a presumption of punitiveness in this case. They have not. A rebuttable presumption of punitiveness exists where "the individual is detained under conditions identical to, similar to, or more restrictive than those under which pretrial criminal detainees are held," or where those conditions "are employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." *Jones v. Blanas*, 393 F.3d 918, 932, 934 (9th Cir. 2004); *see also Torres v. U.S. Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1064 (C.D. Cal. 2019). What is clear is that the government's legitimate interests stemming from its need to manage its detention facilities may justify imposing some conditions on an individual without rendering the detention unconstitutional. *See Bell*, 441 U.S. at 539-40.

First, Plaintiffs do not show that Defendants have an "express intent" to punish Plaintiffs. Plaintiffs' claims that ICE's response to COVID-19 amounts to an express intent to punish the immigration detainees in the putative class simply defy the facts. ICE has responded carefully, expeditiously, and thoroughly by releasing individuals from detention[8]and taking appropriate precautions by implemented COVID-19 protocols in consideration of CDC guidelines. *See* Rivera Decl. ¶¶ 8-17.

Indeed, ICE's detention scheme is authorized by Congress, affirmed by the Supreme Court, and allows for ICE to exercise discretion on a case-by-case basis in a manner appropriate to the present challenge. The underlying statutory detention authority governing a detainee's custody rebuts the presumption of any punitiveness arising from immigration detention. *See, e.g.*, 8 U.S.C. § 1225(b) (requiring mandatory detention for aliens pending final determination in credible fear proceedings); § 1226(c) (requiring mandatory detention for aliens who have committed certain criminal offenses); § 1231(a)(2) (requiring mandatory detention during the 90-day removal period after a final order of removal is entered). And the Supreme Court has routinely recognized that preventing detained aliens from absconding and ensuring that they appear for removal proceedings is a legitimate governmental objective. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018); *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). These authorities and objectives are balanced by discretionary authority that permits ICE to consider whether release is appropriate for certain detainees; see 8 C.F.R. § 236.1(c)(8); 8 U.S.C. § 1182(d)(5); although, as Plaintiffs themselves argue and note in their lay witness declarations, release is a discretionary act that may depend upon whether the detainee is a danger to the community or a flight risk[9].

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[8] *See, e.g., Coronel, et al. v. Decker, et al.*, No. 20-CV-2472 (AJN), 2020 WL 2020 WL 1487274, *1 n.1 (S.D.N.Y. Mar. 27, 2020) (indicating that ICE released three detainees before the court issued its decision ordering the release of the four additional petitioners).

[9] *See* Defendants' Evidentiary Objections to the Declarations of Mikhail Solomonov, Linda Corchado, Laura G. Rivera, Keren Zwick, Elissa Steglich, Anne Rios, and

Here, the continued detention of the Named Plaintiffs is appropriate and authorized considering their criminal histories. *See* Pitman Decl. ¶¶ 6-12; Duran Decl. ¶¶ 5-9; Montes Decl. ¶¶ 5-11. Moreover, the risks and fears presented by COVID-19 do not transform Plaintiffs' legitimate detention to punitive detention, especially considering the ICE careful, expeditious, and thorough response to COVID-19 and ICE's exercise of its discretionary release authority. Plaintiffs do not cite to authority, and Defendants are aware of none, under which the fact of detention itself becomes an "excessive" condition solely due to the risk of a communicable disease outbreak—even one as serious as COVID-19. *See Dawson*, 2020 WL 1304557, at *2. Thus, Plaintiffs fail to clearly show a likelihood of succeeding on the merits that they are subject to punitive conditions of confinement in violation of due process.

6. Plaintiffs Fail to Demonstrate that Defendants' COVID-19 Protocols Violate the Rehabilitation Act.

The Rehabilitation Act prohibits federal agencies from discriminating against people with disabilities. 29 U.S.C. § 794(b)(2)(B). Section 504 of the Act provides that "no otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Plaintiffs have the burden of showing that Defendants violated Section 504 of the Rehabilitation Act and must show that: "(1) [they] needed the accommodation to enjoy meaningful access to benefits, (2) the government was on notice that [they] needed the accommodation but did not provide it, and (3) there was a specific reasonable accommodation available." *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010) (emphasis added).

Here, none of the Named Plaintiffs in their declarations explain what particular COVID-19-related accommodation he needed, much less requested. See

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Andrea Saenz filed concurrently with the instant Memorandum for specific statements and bases for objection.

generally Hernandez Decl.; Martinez Decl.; Fraihat Decl.; Sudney Decl.; Munoz Decl. Moreover, Plaintiffs fail to show how ICE's COVID-19 precautionary measures are unreasonable in relation to qualifying disabilities under the Rehabilitation Act.

Plaintiffs argument that Defendants' COVID-19 protocols violate a duty under *Olmstead v. L.C. ex rel Zimring*, 527 U.S. 581 (1999), is unavailing. First, and as already noted, the Named Plaintiffs do not show what accommodation they needed in relation to a disability affected by the threat of COVID-19, that such accommodation was requested and not provided, and that the accommodation was reasonable. *See Mark H.*, 620 F.3d at 1097. Without demonstrating any of the elements of a Rehabilitation Act claim, Plaintiffs cannot even get to an Olmstead analysis. Second, Plaintiffs have not shown that Defendants have failed to make a disability assessment, that Plaintiffs have requested reassessment by an ADA coordinator and have been refused, or that any treatment professional of a Named Plaintiff has indicated an appropriate placement and that placement has been refused. *See Olmstead*, 527 U.S. at 607. Thus, the Named Plaintiffs are unlikely to succeed on the merits of their Rehabilitation Act claim, and the insufficient claims of five Named Plaintiffs at three immigration detention facilities certainly cannot support the sweeping nationwide and class-wide injunction that they seek here.

D. Plaintiffs Cannot Show a Likelihood of Irreparable Harm.

To establish irreparable harm, the movant must first "demonstrate that irreparable injury is likely in the absence of an injunction;" it "will not issue if the person or entity seeking injunctive relief shows a mere possibility of some remote future injury." *Park Village Apartment Tenants Association v. Foster*, 636 F.3d 1150 (9th Cir. 2011) (internal citation and quotation marks omitted); *see also Winter v. Natural Res. Def. Council*, 555. U.S. 7, 22 (2008). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with" the Supreme Court's "characterization of injunctive relief as an extraordinary remedy that may

only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Conclusory or speculative allegations are not enough to establish a likelihood of irreparable harm. *Herb Reed Enters., LLC v. Florida Entm't Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013).

Plaintiffs have not established that "irreparable injury is likely in the absence of an injunction." Winter, 555 U.S. at 22. The "possibility" of harm is insufficient to warrant the extraordinary relief of a mandatory preliminary injunction. *See id.* There is no evidence of confirmed COVID-19 cases at the detention centers where the Named Plaintiffs are held or that Defendants' precautionary measures are inadequate to contain or properly provide medical care should an outbreak occur. *See Dawson*, 2020 WL 1304557, at *2–3 (denying temporary restraining order and denying release of immigration detainee because irreparable harm from risk of contracting COVID-19 in ICE detention was not likely absent an injunction); *Sacal-Micha*, 2020 WL 1518861, *5 (finding no likelihood of success on substantially the same due process claim based on absence of evidence that the detention facility is incapable of protecting the petitioner from COVID-19). Accordingly, Plaintiffs fail to meet their burden of clearly showing that irreparable harm is likely in the absence of an injunction.

E. The Government's Interests Would Be Harmed, and the Public Interest Would Not Be Served By The Grant of Injunctive Relief

It is well settled that the public interest in enforcement of United States immigration laws is significant. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant."); *See also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permit[s]

and prolong[s] a continuing violation of United States law." (internal marks omitted)).

First, the broad injunctive relief—ordering ICE to modify its COVID-19 medical care procedures or, in the alternative, release from detention—that Plaintiffs ask the Court to impose for all individuals in ICE detention with certain risk factors for serious illness or death due to COVID-19 would have a significant impact on the orderly operations of all ICE detention facilities, and therefore on its ability to effectively play its role with regard to immigration enforcement. This potential impact is extremely detrimental to the public interest. The disruptive effect of such an order would long survive the COVID-19 pandemic and would serve to release many criminal aliens slated for removal back into the general public. The public interest is best served by allowing for the implementation of medical procedures and protocols by medical professionals and other staff following the guidance of medical professionals. *See Youngberg*, 457 U.S. at 322-23 (urging judicial deference and finding presumption of validity regarding decisions of medical professionals concerning conditions of confinement). This type of burden and its potential impact on ICE operations nationwide is too great to be permissible at this preliminary stage.

Second, ICE has a legitimate interest in the continued detention of immigration detainees that is authorized by Congress and recognized by the Supreme Court. The fact of COVID-19 does not eviscerate that interest and make the continued detention of Plaintiffs presumptively putative. Rather, ICE's careful, expeditious, and thorough response to COVID-19 and ICE's exercise of its discretionary release authority continue to support that the detention of the Named Plaintiffs and similarly situated immigration detainees is appropriate – and that the government has compelling interests in such detention when considering the factors presented by individual detainees – including their dangerousness and flight risk. *See* 8 C.F.R. § 236.1(c)(8) (an ICE officer "may, in the officer's discretion, release an alien . . . provided that the alien must demonstrate to the satisfaction of the officer

that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.").

Finally, the preliminary injunctive relief Plaintiffs request would require substantial changes to ICE detention facility operations and intergovernmental service agreements with state and local governments. Upon balancing the interests of public safety and immigration enforcement, if the Court orders the release of individuals and/or the class, the Court should order such release only temporarily and on the condition of home confinement after those released individuals provide the Court with information about with whom and where they will shelter in place.

Because Plaintiffs cannot show that the balance of hardships and public interest tips in their favor, the Court should deny Plaintiffs' request for preliminary injunctive relief.

F. Plaintiffs' Request that the Court Appoint a Special Master is Premature.

As part of their request for a preliminary injunction, Plaintiffs request that this Court appoint a Special Master. Under Federal Rule of Civil Procedure 53(a)(1)(C), the Court may appoint a special master to "address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district." Fed. R. Civ. P. 53(a)(1)(C). The Court's decision to appoint a master "must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay." Fed. R. Civ. P. 53(a)(3). "Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment." Fed. R. Civ. P. 53(b)(1). A court "should appoint a special master only in exceptional circumstances." *Burlington N. v. Dep't of Revenue*, 934 F.2d 1064, 1071 (9th Cir. 1991). Courts have found exceptional circumstances in cases involving complex litigation or where there have been problems with compliance with court orders. *See United States v. Suquamish Indian Tribe*, 901 F.2d 772, 775 (9th Cir. 1990).

Here, Plaintiffs' request that this Court appoint a Special Master is premature because Plaintiffs have not shown, and this Court has not indicated, that it cannot effectively or timely address the issues in this case. Defendants Motion to Sever and Dismiss, alternatively Transfer Actions, and to Strike portions of Plaintiffs' Complaint is pending before this Court and significant issues remain unresolved. *See* ECF No. 54. Additionally, Plaintiffs have failed to show any exceptional circumstances that would warrant the Court's appointment of a Special Master and neither party has a history of noncompliance. *See Burlington* N., 934 F.2d at 1071; *See* also *Local 28 of Sheet Metal Workers' Int'l Ass'n v. E.E.O.C.*, 478 U.S. 421, 482 (1986) (appointing a Special Master and noting the parties' "established record of resistance to prior state and federal court orders"). Thus, this Court should deny Plaintiffs' request.

IV. CONCLUSION

Because Plaintiffs cannot satisfy any of the requirements for preliminary injunctive relief, Defendants respectfully request the Court deny Plaintiffs' Emergency Motion for a Preliminary Injunction.

Dated: April 3, 2020

Respectfully submitted,

JOSEPH H. HUNT
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx) **DECLARATION OF LINDSAY M. VICK IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** **Before The Honorable Jesus G. Bernal**

DECLARATION OF LINDSAY M. VICK

I, LINDSAY M. VICK, do hereby declare and state as follows:

1. I am a Trial Attorney with the U.S. Department of Justice, and am assigned to handle the instant case. As such, I have personal knowledge of the following facts and, if called as a witness, I could and would testify competently thereto.
2. **Exhibit 1** is a true and correct copy of *Memorandum on Coronavirus Disease 2019 (COVID-19) Action Plan, Revision 1*, U.S. Immigration and Customs Enforcement, dated March 27, 2020;
3. **Exhibit 2** is a true and correct copy of the Declaration of Dr. Ada Rivera;
4. **Exhibit 3** is a true and correct copy of the Opinion and Order in *Fraihat v. Wolf*, EDCV 20-00590 TJH (KSx) (C.D. Cal. Mar. 30, 2020);
5. **Exhibit 4** is a true and correct copy of the Declaration of Edgar Duran;
6. **Exhibit 5** is a true and correct copy of the Declaration of Bryan S. Pitman;
7. **Exhibit 6** is a true and correct copy of the Declaration of Sebastian Mason;
8. **Exhibit 7** is a true and correct copy of the Declaration of Michael Jimeno;
9. **Exhibit 8** is a true and correct copy of the Declaration of Gil. O. Montes;
10. **Exhibit 9** is a true and correct copy of the Opinion and Order in *Munoz v. Wolf*, No. 5:20-CV-00625 TJH (SHKx) (C.D. Cal. Apr. 2, 2020);
11. **Exhibit 10** is a true and correct copy of the Declaration of Captain Jennifer Moon for Adelanto ICE Processing Center;
12. **Exhibit 11** is a true and correct copy of the Declaration of Captain Jennifer Moon for Etowah County Detention Center;
13. **Exhibit 12** is a true and correct copy of the Declaration of Captain Jennifer Moon for Stewart Detention Center
14. **Exhibit 13** is a true and correct copy of the Opinion and Order in *Hernandez v. Wolf*, No. 5:20-CV-00617 TJH (KSx) (C.D. Cal. Apr. 1, 2020).

Dated: April 4, 2020

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

WILLIAM C. PEACHEY
Director

JEFFREY S. ROBINS
Deputy Director

/s/ *Lindsay M. Vick*
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EXHIBIT 1

Enforcement and Removal Operations

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

March 27, 2020

MEMORANDUM FOR: Detention Wardens and Superintendents

THROUGH: Field Office Directors

FROM: Enrique M. Lucero
Executive Associate Director
Enforcement and Removal Operations

SUBJECT: Memorandum on Coronavirus Disease 2019 (COVID-19) Action Plan, Revision 1

Background:

U.S. Immigration and Customs Enforcement (ICE) continues to monitor the spread of Coronavirus Disease 2019 (COVID-19) and to work in conjunction with select U.S. Department of Homeland Security (DHS) Component leadership and the Acting Secretary to implement a mitigation strategy.

To ensure a unified and preventative response, the ICE Enforcement and Removal Operations (ERO), ICE Health Service Corps (IHSC), Custody Management Division, and Field Operations are providing the following guidance. The combination of a dense and highly transient detained population presents unique challenges for ICE efforts to mitigate the risk of infection and transmission. Consequently, these measures were developed to reduce exposure to COVID-19, protect the detained population, and optimize employee health and availability for duty.

This memorandum only applies to IHSC-staffed and non-IHSC-staffed, ICE-dedicated facilities. For intergovernmental partners and non-dedicated facilities, ICE defers to local, state, tribal, territorial, and federal public health policies and authorities, including adherence with state laws on communicable disease reporting, but recommends actions contained in this memorandum be considered as best practices. Questions and concerns related to the following Action Plan can be addressed to: ICE_ERO_CMD@ice.dhs.gov.

Please see the recently-issued Centers for Disease Control and Prevention (CDC) Interim Guidance: Managing COVID-19 in Correctional/Detention Facilities for additional information.

Action Plan:

STAFF HIRING: Wardens and facility staff should continue to meet any personnel staffing plan and staffing criteria outlined in the Performance Work Statement (PWS) and terms and conditions of their negotiated contract or agreement for medical staff and guard services. Facilities are expected to be appropriately staffed to meet established work schedules, rest periods, and to ensure the delivery of detainee medical and mental health care as it relates to the continually evolving impact of COVID-19.

LOGISTICS: Wardens and Facility Administrators should assess their inventories of food, medicine, cleaning supplies, personal protective equipment (PPE), and facility operational practices, and consistently maintain services and supplies to assure the safety, security, health, and well-being of ICE detainees. Facilities should have updated pandemic plans and policies as well as established quarantine and/or isolation areas within their facilities in the event they are needed. Alcohol-based hand sanitizer with at least 60 percent alcohol should be available in visitor entrances, exits, and waiting areas. In addition, alcohol-based hand sanitizer should be made available to staff and detainees in the secure setting to the maximum extent possible.

SOCIAL VISITATION/TELEPHONIC COMMUNICATION: As of March 13, 2020, social visits to/with ICE detainees at all detention facilities are suspended until further notice in order to mitigate the potential introduction of COVID-19 into the facilities. ICE recognizes the considerable impact of suspending personal visitation, and requests maximizing detainee use of teleconferencing, video visitation (e.g., Skype, FaceTime), email, and/or tablets, with extended hours where possible.

Detention facilities should make a timely effort to identify indigence in the detainee population. A detainee is considered "indigent" if he/she has less than $15.00 in his/her account for ten days. These detainees must be afforded the same telephone access and related privileges as other detainees. Each facility must ensure all detainees are able to make calls to the ICE-provided list of free legal service providers and consulates at no charge to the detainee or the receiving party, and that indigent detainees may request a call to immediate family or others in personal or family emergencies or on an as-needed basis to maintain community ties.

LEGAL VISITS: Detainee access to legal representatives remains a paramount requirement and should be accommodated to the maximum extent practicable. Legal visitation must continue unless determined to pose a risk to the safety and security of the facility.

Non-contact legal visitation (e.g., Skype or teleconference) should be offered first to limit exposure to ICE detainees, but in person contact should be permitted if determined essential by the legal representative. Prior to the in-person visit, the legal representative must undergo the same screening required for staff entry into the facility. The ultimate legal visit approving authority lies with the Warden or Facility Administrator; however, the facility should notify its local Field Office Director as soon as possible of any denied legal visits.

LEGAL RIGHTS GROUP PRESENTATIONS: Government-sponsored Legal Orientation Programs (LOPs), carried out by the Department of Justice Executive Office for Immigration Review (EOIR) and authorized by congressional appropriations, currently operate at a limited

number of detention sites, and may continue to conduct detainee presentations. No more than four LOP presenters may be allowed in the facility at any time and must undergo the same screening required for staff entry into the facility. Non-LOP legal rights group presentations offered by volunteers are suspended until further notice.

STAFF-DETAINEE COMMUNICATION VISITS: Field Office Directors should remain aware that detainees may experience increased feelings of fear and confusion during this time. Regular communication with staff is particularly important. Detainees should have frequent opportunities for informal contact with facility managerial and supervisory staff and with ERO field office staff.

Field Office Directors should monitor both facility staff and ERO officers to ensure they continue to interact with detainees. ICE staff-detainee communication may be conducted in-person (with appropriate risk reduction protocols to protect ERO officers, detainees, and facility staff) or through non-contact visitation using videoconferencing, phone calls, e-mail, or other communication services.

CONTRACTORS: Contractors performing essential services or maintenance on essential systems in ICE detention facilities must continue to be provided facility access and must undergo the same screening required for staff entry into the facility. Examples of essential services include medical and mental health services, telephone access, cleaning, laundry, waste disposal, and critical infrastructure repairs.

Facility annual inspections by the ICE inspections contractor, The Nakamoto Group, are suspended for 30 days from the issuance date of this memorandum.

VOLUNTEERS: Volunteer visits to ICE detention facilities are suspended until further notice unless approved by the Assistant Directors for Field Operations and Custody Management. The only exception is the facility Chaplain, who may continue to offer availability for individual and group pastoral care but must undergo the same screening required for staff entry into the facility. Other volunteers, contractors, and community groups that augment and enhance the religious program are suspended until further notice to reduce the risk of possible transmission of COVID-19 to detainees.

TOURS: Facility tours are suspended until further notice, excluding Members of Congress, Congressional Member Delegations (CODELs), and Congressional Staff Delegations (STAFFDELs) who will not be prevented from accessing facilities for the purpose of conducting oversight. To safeguard visitors, detainees, ICE and facility staff, congressional visitors may be subject to special screening procedures congruent with staff facility entry screening. Congressional visitors should be advised of standard hygiene practices to help prevent the spread of disease (i.e., washing hands, avoiding close contact) and should be made aware of available hand washing stations within the facility.

STAFF TRAINING: All ERO in-person staff training related to the ICE detention standards or facility compliance is suspended until further notice, including conferences, Contracting Officer Representative (COR) training, and Field Office Compliance Training. Wardens and Facility Administrators will determine the training schedule for facility staff. All staff licenses and certifications shall be maintained.

SCREENING OF FACILITY STAFF: Enhanced health screening of both ICE and facility staff should be implemented by ICE detention facilities in geographic areas with "sustained community transmission." These geographical areas are determined by the CDC and information is available at: https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html. Health screening includes self-reporting symptoms associated with COVID-19 infection and a temperature check.

Wardens and Facility Administrators in those geographical areas should collaborate with their Health Services Administrator to designate a trained staff member available on all shifts to conduct verbal screening and record temperature checks. It is not required that the trained staff member be medical personnel; however, the staff member must have documented training and protect the privacy of those being screened.

Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions based on Interim Guidance: Managing COVID-19 in Correctional/Detention Facilities:

- Today or in the past 24 hours, have you had any of the following symptoms?
  - Fever, felt feverish, or had chills?
  - Cough?
  - Difficulty breathing?
- In the past 14 days, have you had contact with a person known to be infected with COVID-19 where you were not wearing the recommended proper personal protective equipment (PPE)?

The following is a protocol to safely check an individual's temperature:

- Perform hand hygiene.
- Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gowns/coveralls, and a single pair of disposable gloves.
- Check the individual's temperature.
- If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.
- If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be cleaned routinely as recommended by CDC for infection control.
- Remove and discard PPE.
- Perform hand hygiene.

Staff who do not clear the screening process, or refuse the enhanced health screening must be denied entry and advised to follow CDC-recommended steps for persons who are sick with COVID-19 symptoms.

If PPE supply is limited, consider other PPE strategies based on CDC Guidance | Strategies for Optimizing the Supply of PPE.

If staff register a temperature greater than or equal to 100.4 degrees (Fahrenheit), they should be denied entry to the facility and placed on leave per the employer's administrative policies.

DETAINEE SCREENING: IHSC developed guidance for IHSC-staffed facilities to assist in the risk assessment and management of detained individuals with potential exposure to COVID-19, and guidance was disseminated to non IHSC-staffed ICE detention facilities for potential adoption of this guidance at their respective sites. This guidance addresses intake medical screenings, monitoring, encounters, laboratory testing, and public health actions. The CDC remains the authoritative source for information on how to protect individuals and reduce exposure to COVID-19. ICE continues to encourage facilities to follow CDC guidelines and those of their state and local health departments for non IHSC-staffed ICE detention facilities.

ICE requests that Wardens and Facility Administrators ensure ICE detainees are provided guidance and education in a language that they fully comprehend regarding basic hygiene and measures to maintain health. Links for detainee/patient education resources, in a variety of languages, are maintained in the IHSC guidance and information on the CDC website.

MODIFIED OPERATIONS: Wardens and Facility Administrators should implement modified operations to maximize social distancing in facilities, as much as practicable. For example, Wardens and Facility Administrators should consider staggered mealtimes and recreation times in order to limit congregate gatherings. All community service projects are suspended until further notice.

CONSIDERATIONS FOR DETAINEE RELEASE: Upon notification of a detainee's pending release, a qualified health care provider will conduct a temperature screening:

- Temperature checks will be completed no more than 12 hours prior to facility departure and documented in the detainee medical record and transfer summary.
- Temperature checks must be completed and documented prior to providing ICE with transfer summary documents.

When considering the release of detainees into the United States with confirmed or suspected COVID-19, the following must be addressed for detainees exposed to an individual with confirmed or suspected COVID-19 or detainees under monitoring for having epidemiologic risk of exposure to COVID-19:

- If the detainee will be released prior to completion of the recommended medical isolation, cohorting, or monitoring period, the state or local health department in the facility jurisdiction should be notified of the detainee's release:
    - The health department should be provided with the detainee's name, intended address, email address, and all available telephone numbers.

- Facilitate safe transport, continued shelter, and medical care, as part of release planning:
    - Provide information regarding any potential community resources to promote continuity of care.
    - Attempt to facilitate transportation coordination through a family or friend.

- Advise the detainee to avoid public transportation, commercial ride sharing (e.g., Uber, Lyft), and taxis.

- Provide the detainee the CDC's *What To Do if You Are Sick* fact sheet.

If this guidance creates any contractual issues, please contact your respective Contracting Officer Representative.

EXHIBIT 2

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF DR. ADA RIVERA

I, Dr. Ada Rivera make the following statements under oath and subject to the penalty of perjury:

1. I am currently the Deputy Assistant Director for Clinical Services/Medical Director of the ICE Health Service Corps (IHSC) of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE). I have held this position since July 2017.
2. In my current position, I oversee and monitor all clinical services at IHSC-staffed facilities that house ICE detainees.
3. IHSC provides direct medical, dental, and mental health patient care to approximately 13,500 detainees housed at 20 IHSC-staffed facilities throughout the nation.
4. IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps (USPHS) officers, federal civil servants, and contract health professionals.
5. Since the onset of reports of Coronavirus Disease 2019 (COVID-19), ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to IHSC staff for the screening and management of potential exposure among detainees.
6. Moreover, ICE has maintained a pandemic workforce protection plan since February 2014, which was last updated in May 2017. This plan provides specific guidance for biological

threats such as COVID-19. ICE instituted applicable parts of the plan in January 2020 upon the discovery of the potential threat of COVID-19.

7. Also, IHSC has been in contact with relevant offices within the Department of Homeland Security (DHS), and in January 2020, the DHS Workforce Safety and Health Division provided DHS components additional guidance to address assumed risks and interim workplace controls, including the use of masks, available respirators, and additional personal protective equipment.

8. As a precautionary measure, ICE has temporarily suspended social visitation in all detention facilities.

9. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control to safeguard those in its custody and care.

10. IHSC has issued recommendations to the field units at detention centers, which it updates and shares on a real-time basis.

11. IHSC has also shared its guidance and resources regarding COVID-19 with medical leadership at all contract facilities. Medical leadership at contract facilities report to the Field Medical Coordinators (FMCs) on any detainee who they identify as meeting the CDC requirements for cohorting, monitoring, or isolation. The FMCs then provides updates on a daily basis as needed.

12. In summary, during intake medical screenings, detainees are assessed for fever and respiratory illness, based on comprehensive health assessments or detainee complaints. Detainees are also asked to confirm if they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through area(s) with sustained community transmission in the past two weeks.

13. The detainee's responses and the results of these assessments will dictate whether to monitor, isolate, or cohort the detainee. Those detainees that present symptoms compatible with COVID-19 will be placed in isolation, where they will be tested. If testing is positive, they will remain isolated and treated. In case of any clinical deterioration, they will be referred to a local hospital.

14. In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. Those that show onset of fever and/or respiratory illness are referred to a medical provider for evaluation. Cohorting is discontinued when the 14-day incubation period completes with no new cases.

15. In the case of exposure to a person with fever or symptoms being evaluated or under investigation for COVID-19 but not confirmed, the process is the same except that

cohorting is discontinued if the index patient receives an alternate diagnosis excluding COVID-19.

16. Detainees are reassessed for temperature and/or symptoms during their physical exam, any sick call requests, or requests for emergency care.

17. Field units have also been instructed to educate detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and requesting sick call if they feel ill.

18. A positive medical staff member at the Elizabeth detention facility has tested positive for COVID-19 and there has been a positive detainee at the Bergen County facility. No cohorting or contact investigation was needed at the Elizabeth facility. Exposed detainees from the Bergen County Facility are currently cohorted and are being monitored for the next 14 days.

19. As of today IHSC has received three positive COVID-19 results from IHSC staffed ICE facilities. Contact investigations are being researched and implemented based on potential for exposure.

20. ICE is requiring all IHSC staffed and non-IHSC staffed facilities to implement staff and visitor screening prior to entering the building. A temperature is taken and symptoms are self-reported. Any individual with a temperature of 100.4 or higher is not permitted to enter the facility.

DATED: March 31, 2020

Dr. Ada Rivera
Deputy Assistant Director for Clinical Services/Medical Director
ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

EXHIBIT 3

United States District Court
Central District of California
Western Division

FAOUR ABDALLAH FRAIHAT, Petitioner, v. CHAD T. WOLF, *et al.*, Respondents.	ED CV 20-00590 TJH (KSx) **Temporary Restraining Order and Order to Show Cause**

The Court has considered Petitioner Faour Abdallah Fraihat's application for a temporary restraining order, together with the moving and opposing papers.

Fraihat, now 58-years-old, suffers from multiple medical ailments, including asthma, for which he requires two different prescription inhalers. Fraihat is, currently, being detained at the Adelanto Detention Center ["Adelanto"], in San Bernardino County. San Bernardino County is within the Central District of California.

Fraihat filed this case as a petition for a writ of *habeas corpus*. Fraihat is a civil detainee, having been arrested by officers from the United States Department of Homeland Security's ["DHS"] Bureau of Immigration and Customs Enforcement

["BICE"] on December 19, 2016.

Adelanto is a private, for-profit immigration detention facility operated by Geo Group, Inc. Adelanto has the capacity to hold, under normal situations, well over 1,000 detainees through a contract with BICE. Over the years, and as recently as 2018, DHS's Office of the Inspector General had, repeatedly, found that significant and various health and safety risks existed at Adelanto.

Fraihat, a citizen of Jordan, has a history of various criminal convictions and immigration proceedings. In 1989, he was convicted of simple battery and sentenced to 20 days in jail. From 1994 to 1997, Fraihat served jail time for various unspecified convictions. In 2001, Fraihat was convicted for three crimes related to the manufacture and distribution of methamphetamine and served approximately 6 years in prison for those crimes ["2001 Conviction"]. In 2013, Fraihat was, again, convicted of a drug trafficking crime and sentenced to two years in prison, which he served.

On February 7, 2012, in response to a DHS motion, and based on the 2001 Conviction, an immigration judge reopened proceedings against Fraihat. On December 19, 2016, Fraihat was arrested by BICE officers and remains detained at Adelanto. Around June 27, 2017, Fraihat had a *Rodriguez* bond hearing, where bond was denied after a finding that he was a danger to the community. On October 30, 2017, an immigration judge ordered Fraihat removed to Jordan, based on the 2001 Conviction. Around December 22, 2017, Fraihat had a second *Rodriguez* bond hearing and, again, bond was denied after a finding that he was a danger to the community.

In 2019 – based on a change in California law and a stipulation of the parties – the San Bernardino Superior Court vacated the 2001 Conviction; Fraihat, then, pled guilty to two crimes related to the distribution of a controlled substance without reference to any particular controlled substance; and, then, the Superior Court sentenced Fraihat to time served for those two new charges.

Fraihat, then, moved the Board of Immigration Appeals ["BIA"] to reopen his removal order. That motion remains pending. Fraihat, also, moved the BIA for an

emergency stay of removal, which was denied. He, then, petitioned the Ninth Circuit for review of the BIA's denial of the stay of removal. The Ninth Circuit granted a temporary stay of removal, and set a briefing schedule. *See Fraihat v. Barr*, Ninth Circuit No. 20-70632 (Dkt. 5).

On March 17, 2020, Fraihat moved for a third bond hearing before an immigration judge based on the COVID-19 pandemic's "accelerating threat to his safety." As of the date of this order, Fraihat's motion for a bond hearing has not yet been resolved.

On August 19, 2019, Fraihat, and several other Adelanto detainees, filed a putative civil rights class action alleging, *inter alia*, that the conditions at Adelanto violated their constitutional rights. *See Faour Abdallah Fraihat, et al. v. United States Immigration and Customs Enforcement, et al.*, CV 19-1546 JGB. This order does not resolve or address the pending motion for a preliminary injunction in that class action.

On March 4, 2020, the State of California declared a state of emergency in response to the coronavirus and the resulting COVID-19 disease, which attacks the respiratory system, thereby making Fraihat particularly vulnerable given his history of asthma. On March 10, 2020, San Bernardino County followed suit and declared a state of emergency. On March 11, 2020, the World Health Organization ["WHO"] declared COVID-19 to be a global pandemic. On March 13, 2020, President Donald J. Trump formally acknowledged and declared a national emergency in response to WHO's pandemic declaration.

On March 18, 2020, BICE announced that "[t]o ensure the welfare and safety of the general public as well as officers and agents in light of the ongoing COVID-19 pandemic response, [it] will temporarily adjust its enforcement posture beginning today … [and that its] highest priorities are to promote life-saving and public safety activities." Further, BICE stated that it would focus enforcement "on public safety risks and individuals subject to mandatory detention based on criminal grounds [, and for those people who do not fall into those categories, agents] will exercise discretion to

delay enforcement actions until after the crisis or utilize alternatives to detention, as appropriate."

According to the United States Centers for Disease Control and Prevention, the coronavirus is spread mainly through person-to-person contact. More specifically, the coronavirus is spread between people who are in close contact – within about 6 feet – with one another through respiratory droplets produced when an infected person coughs or sneezes. The droplets can land in the mouths or noses, or can be inhaled into the lungs, of people who are within about 6 feet of the infected person. Moreover, studies have established that the coronavirus can survive up to three days on various surfaces.

COVID-19 is highly contagious and has a mortality rate ten times greater than influenza. Most troublesome is the fact that people infected with the coronavirus can be asymptomatic during the two to fourteen day COVID-19 incubation period. During that asymptomatic incubation period, infected people are, unknowingly, capable of spreading the coronavirus. Despite early reports, no age group is safe from COVID-19. While older people with pre-existing conditions are the most vulnerable to COVID-19-related mortality, young people without preexisting conditions have, also, succumbed to COVID-19. There is no specific treatment, vaccine or cure for COVID-19.

Because of the highly contagious nature of the coronavirus and the, relatively high, mortality rate of COVID-19, the disease can spread uncontrollably with devastating results in a crowded, closed facility, such as an immigration detention center.

The Court will take judicial notice of the following facts, as set forth in the temporary retraining order issued by this Court on March 27, 2020, in *Castillo v. Barr*, CV 20-00605 TJH. At Adelanto, a holding area can contain 60 to 70 detainees, with a large common area and dormitory-type sleeping rooms housing four or six detainees with shared sinks, toilets and showers. Guards regularly rotate through the various holding areas several times a day. At meal times – three times a day – the 60 to 70

detainees in each holding area line up together, sometimes only inches apart, in the cafeteria. The guards, detainees and cafeteria workers do not regularly wear gloves or masks to prevent the spread of the coronavirus. While detainees have access to gloves, there is no requirement that they wear them. Detainees do not have access to masks or hand sanitizer – though thorough hand washing could be more effective than hand sanitizers at preventing the spread of the coronavirus.

Just days ago, the first BICE detainee was confirmed to have been infected with COVID-19 in New Jersey at the Bergin County Jail, a BICE detention facility. Moreover, last week, a correctional officer at the Bergin County Jail was, also, confirmed to have been infected.

On March 26, 2020, Judge Analisa Torres of the United States District Court for the Southern District of New York issued an order releasing certain immigration detainees, stating the following:

> The nature of detention facilities makes exposure and spread of the virus particularly harmful. Jaimie Meyer M.D., M.S., who has worked extensively on infectious diseases treatment and prevention in the context of jails and prisons, recently submitted a declaration in this district noting that the risk of COVID-19 to people held in New York-area detention centers, including the Hudson, Bergen County, and Essex County jails, "is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected." Meyer Decl. ¶ 7, *Velesaca v. Wolf*, 20 Civ. 1803 (S.D.N.Y. Feb. 28, 2020), ECF No. 42.
>
> Moreover, medical doctors, including two medical experts for the Department of Homeland Security, have warned of a "tinderbox scenario" as COVID-19 spreads to immigration detention centers and the resulting "imminent risk to the health and safety of immigrant detainees" and the public. Catherine E. Shoichet, *Doctors Warn of "Tinderbox scenario" if*

> *Coronavirus Spreads in ICE Detention*, CNN (Mar. 20, 2020), https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html. "It will be nearly impossible to prevent widespread infections inside the Hudson, Bergen, and Essex County jails now that the virus is in the facilities because detainees live, sleep, and use the bathroom in close proximity with others, and because '[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible.'" Petition ¶ 47 (internal quotation marks and citation omitted).

Basank, et al., v. Decker, et al., 20 Civ. 2518 (S.D.N.Y., Feb. 28, 2020), ECF No. 11.

On March 23, 2020, the Ninth Circuit ordered, *sua sponte* and without further explanation, the release of an immigration detainee "[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers." *Xochihua-Jaimes v. Barr*, 2020 WL 1429877, No. 18-71460 (9th Cir. Mar. 23, 2020).

On March 23, 2020, Fraihat filed a petition for a writ of *habeas corpus*, pursuant to 28 U.S.C. § 2241. Fraihat based his petition on two claims: (1) In light of the recent COVID-19 pandemic, the conditions of his confinement are, now, unconstitutional; and (2) His continued detention without a bond hearing is unlawful. Fraihat, now, moves for a temporary restraining order for his immediate release from Adelanto.

Fraihat is entitled to a temporary restraining order if he shows: (1) A likelihood of success on the merits; (2) That he is likely to suffer irreparable harm in the absence of relief; (3) The balance of equities tip in his favor; and (4) An injunction is in the public's interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's sliding scale approach, a stronger showing of one element may offset a weaker showing of another. *See Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012). Accordingly, Fraihat is entitled to a temporary restraining order

if "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [his] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

When the Government detains a person for the violation of an immigration law, the person is a civil detainee, even if he has a prior criminal conviction. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As a civil detainee, Fraihat is entitled to more considerate treatment than criminal detainees, whose conditions of confinement are designed to punish. *See Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982). Moreover, under the Fifth Amendment's Due Process Clause, a civil detainee cannot be subjected to conditions that amount to punishment. *See King v. Cty. of L.A.*, 885 F.3d 548, 556-557 (9th Cir. 2018).

When the Government takes a person into custody and detains him against his will, the Constitution imposes upon the Government a duty to assume responsibility for that detainee's safety and general well being. *See Helling v. McKinney*, 509 U.S. 25, 32 (1993). Under the Eighth Amendment, the Government must provide criminal detainees with basic human needs, including reasonable safety. *Helling*, 509 U.S. at 32. The Government violates the Eighth Amendment if it confines a criminal detainee in unsafe conditions. *See Helling*, 509 U.S. at 33. Moreover, the Government may not "ignore a condition of confinement that is sure or very likely to cause serious illness." *See Helling*, 509 U.S. at 32.

A civil detainee's constitutional rights are violated if a condition of his confinement places him at substantial risk of suffering serious harm, such as the harm caused by a pandemic. *See Smith v, Wash.*, 781 F. App'x. 595, 588 (9th Cir. 2019). At a minimum, here, the Government owes a duty to Fraihat, as a civil immigration detainee, to reasonably abate known risks. *See Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016). Inadequate health and safety measures at a detention center cause cognizable harm to every detainee at that center. *See Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014).

Here, Fraihat argued that the conditions at Adelanto expose him to a substantial risk of suffering serious harm – increasing his exposure to or contracting COVID-19. When the Government detains a person, thereby taking custody of that person, it creates a special relationship wherein the Government assumes responsibility for that detainee's safety and well-being. *See, e.g., Henry A. v. Willden*, 678 F.3d 991, 998 (9th Cir. 2012). If the Government fails to provide for a detainee's basic human needs, including medical care and reasonable safety, the Due Process Clause is violated. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989). Indeed, the Due Process Clause mandates that civil immigration detainees are entitled to more than minimal human necessities. *See Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). At a minimum, here, the Government owes a duty to Fraihat, as a civil immigration detainee, to reasonably abate known risks. *See Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016). Inadequate health and safety measures at a detention center cause cognizable harm to every detainee at that center. *See Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014).

Because Fraihat, here, has asserted a claim for violations of his Fifth Amendment substantive due process rights, and those claims exceed the jurisdictional limits of the Immigration Court and the Board of Immigration Appeals, he need not first exhaust his administrative remedies. *Garcia-Ramirez v. Gonzales*, 423 F.3d 935, 938 (9th Cir. 2005).

The Government argued that Fraihat lacks standing because he cannot establish that he would suffer a concrete, non-hypothetical injury absent a temporary restraining order in that his likelihood of contracting COVID-19 is speculative. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

However, it is clear that "[a] remedy for unsafe conditions need not await a tragic event." *Helling*, 509 U.S. at 33. The Government cannot be "deliberately indifferent to the exposure of [prisoners] to a serious, communicable disease on the ground that the complaining [prisoner] shows no serious current symptoms." *Helling*, 509 U.S. at 33.

"That the Eighth Amendment protects against future harm to inmates is not a novel proposition." *Helling*, 509 U.S. at 33. The Supreme Court clearly stated that "… the Eighth Amendment protects [prisoners] against sufficiently imminent dangers as well as current unnecessary and wanton infliction of pain and suffering…" *Helling*, 509 U.S. at 33. Indeed, the Court concluded that where prisoners in punitive isolation were crowded into cells and some of them had infectious maladies, "… the Eighth Amendment required a remedy, even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed." *Helling*, 509 U.S. at 33. Civil detainees are entitled to greater liberty protections than individuals detained under criminal processes. *See Jones*, 393 F.3d at 932.

In its *amicus* brief filed in *Helling*, the Government stated that it "… recognizes that there may be situations in which exposure to toxic or similar substances would present a risk of sufficient likelihood or magnitude – and in which there is a sufficiently broad consensus that exposure of *anyone* to the substance should therefore be prevented – that the [Eighth] [A]mendment's protection would be available even though the effects of exposure might not be manifested for some time." *Helling*, 509 U.S. at 34. The Government, here, cannot say, with any degree of certainty, that no one – staff or detainee – at Adelanto has not been, or will not be, infected with the coronavirus. The science is well established – infected, asymptomatic carriers of the coronavirus are highly contagious. Moreover, Fraihat, presently, is suffering from a condition of confinement that takes away, *inter alia*, his ability to socially distance. The Government cannot be deliberately indifferent to Fraihat's potential exposure to a serious, communicable disease on the ground that he is not, now, infected or showing current symptoms. *See Helling*, 509 U.S. at 32.

It is "cruel and unusual punishment to hold convicted criminals in unsafe conditions." *Helling*, 509 U.S. at 33. The Eighth Amendment is violated when a condition of a criminal detainee's confinement puts him at substantial risk of suffering

serious harm and that the condition causes suffering inconsistent with contemporary standards of human decency. *See Smith v. Wash.*, 781 F. App'x. 595, 597-598 (9th Cir. 2019). However, a civil detainee seeking to establish that the conditions of his confinement are unconstitutional need only show that his conditions of confinement "put [him] at substantial risk of suffering serious harm." *See Smith*, 781 F. App'x. 597-598. Here, BICE cannot be deliberately indifferent to the potential exposure of civil detainees to a serious, communicable disease on the ground that the complaining detainee shows no serious current symptoms, or ignore a condition of confinement that is more than very likely to cause a serious illness. *See Helling*, 509 U.S. at 32.

Under the Due Process Clause, a civil detainee cannot be subject to the current conditions of confinement at Adelanto. The Supreme Court has acknowledged that it has "… great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may 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." *Helling*, 509 U.S. at 33

As the Court writes this order, the number of confirmed COVID-19 cases in the United States has already exceeded the number of confirmed cases in every other country on this planet. Indeed, all of the experts and political leaders agree that the number of confirmed cases in the United States will only increase in the days and weeks ahead. The number of cases in the United States has yet to peak. In San Bernardino County, the number of confirmed cases, there, has more than tripled over the past week.

The risk that Fraihat will flee, given the current global pandemic, is very low given, further, that he has matters pending before the BIA and the Ninth Circuit. The Court is cognizant of the immigration judges' findings that Fraihat is a danger to the community. However, the Court must acknowledge that, while he has committed prior criminal offenses in this country, Fraihat has completed the sentences imposed for those offenses. Notably, Fraihat is not a criminal detainee; he is civil detainee entitled to

more considerate treatment than criminal detainees. *See Youngberg*. Nevertheless, Fraihat should be aware that if he is ordered released and, then, violates any federal, state or local criminal law, it will have a dire impact on his pending appeals and all further proceedings in this case.

Civil detainees must be protected by the Government. Fraihat has not been protected. He is not kept at least 6 feet apart from others at all times. He has been put into a situation where he has been forced to touch surfaces touched by other detainees, such as with common sinks, toilets and showers. Moreover, the Government cannot deny the fact that the risk of infection in immigration detention facilities – and jails – is particularly high if an asymptomatic guard, or other employee, enters a facility. While social visits have been discontinued at Adelanto, the rotation of guards and other staff continues.

Accordingly, Fraihat has established that there is more than a mere likelihood of his success on the merits for his first claim, which is based on his Due Process rights. *See Winter*, 555 U.S. at 20. The Court did not reach, and did not consider, Fraihat's second claim – failure to be released on bond – as a basis for the relief being granted by this temporary restraining order.

Fraihat has established that he is likely to suffer irreparable harm in the absence of relief. *See Winter*, 555 U.S. at 20. It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury. *See Hernanez v. Session*, 872 F.3d 976, 994 (9th Cir. 2017).

The balance of the equities tip sharply in his favor. Fraihat faces irreparable harm to his constitutional rights and health. Indeed, there is no harm to the Government when a court prevents the Government from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Finally, the emergency injunctive relief sought, here, is absolutely in the public's best interest. The public has a critical interest in preventing the further spread of the coronavirus. An outbreak at Adelanto would, further, endanger all of us – Adelanto

detainees, Adelanto employees, residents of San Bernardino County, residents of the State of California, and our nation as a whole.

This is an unprecedented time in our nation's history, filled with uncertainty, fear, and anxiety. But in the time of a crisis, our response to those at particularly high risk must be with compassion and not apathy. The Government cannot act with a callous disregard for the safety of our fellow human beings.

Accordingly,

It is Ordered that the application for a temporary restraining order be, and hereby is, **Granted**.

It is further Ordered that Respondents shall, by 5:00 p.m. on March 31, 2020, release Petitioner Faour Abdallah Fraihat from custody pending further order of this Court, and subject to the following conditions of release:

1. Petitioner shall reside, and shelter in place, at the residence of Radi Saad, 909 South Acacia Road, Rialto, California 92376 ["the Residence"];
2. Petitioner shall be transported from the Adelanto Detention Center directly to the Residence by Radi Saad;
3. Petitioner shall not leave the Residence, pending further order of the Court, except to obtain medical care;
4. Petitioner shall not violate any federal, state or local laws; and
5. At the discretion of DHS and/or BICE, to enforce the above restrictions, Petitioner's whereabouts may be monitored by telephonic and/or electronic and/or GPS monitoring and/or a location verification system and/or an automated identification system. If necessary to comply with the permitted monitoring, Petitioner shall ensure the presence of a residential telephone line without devices and/or services which may interrupt operation of any

monitoring equipment.

It is further Ordered that Respondents shall show cause, if they have any, as to why the Court should not issue a preliminary injunction in this case. Respondents' response, if any, to this order to show cause shall be filed by Noon on April 6, 2020. Fraihat's reply, if any, to Respondents' response shall be filed by Noon on April 9, 2020. The matter will then stand submitted.

Date: March 30, 2020

Terry J. Hatter, Jr.
Senior United States District Judge

EXHIBIT 4

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF EDGAR DURAN

I, Edgar Duran, declare under penalty of perjury the following:

1. I am employed as a Deportation Officer ("DO") with the U.S. Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") and am presently assigned to the Los Angeles Field Office at the Adelanto ICE Processing Center ("AIPC"), operated by the GEO Group Inc, ("GEO") in Adelanto, California.
2. My responsibilities as a DO include the review of detained alien cases at AIPC in Adelanto, California. As part of my duties, I reviewed the case of Faour Abdallah Fraihat ("Fraihat").
3. I make this declaration based upon my personal knowledge, my review of Fraihat's alien file ("A-file"), government databases, and other official government records related to Fraihat's immigration proceedings and housing at the Adelanto ICE Processing Center, and unless otherwise stated, this declaration is based on that review. If called as a witness, I could and would competently testify thereto.

4. Fraihat is a native and citizen of Jordan. Fraihat is fifty-eight (58) years old.
5. In 1989, Fraihat was charged with lewd and lascivious acts with a child under 14 but convicted of simple battery and sentenced to 20 days in jail. In 1994, Fraihat was convicted of forgery and sentenced to 90 days in jail. In 1994, Fraihat was convicted of grand theft of a vehicle and sentenced to 32 months in prison. In 1995, Fraihat was convicted of falsifying a driver's license and sentenced to 60 days in jail. In 1996, Fraihat was convicted of possession of controlled substance and sentenced to five days in jail. In 1997, Fraihat was convicted of possessing bad check/money order and sentenced to eight months in prison.
6. On or about December 6, 1999, Fraihat was granted withholding of removal from Jordan in the San Francisco Immigration Court.
7. Around December 2011, the DHS filed a Motion to Reopen based on his 2001 convictions for California Health and Safety Code (CHSC) § 11379.6(a) for manufacturing methamphetamine, § 11366 for maintaining a place for selling or using controlled substances, and § 11378 for possession for sale of a controlled substance to wit: methamphetamine. For these offenses, Fraihat was sentenced to six years and eight months in prison.
8. On or about February 7, 2012, the Immigration Judge reopened proceedings.
9. On or about April 16, 2013, Fraihat was convicted in violation of CHSC § 11379 for offering to transport a controlled substance for sale and sentenced to two years in prison.
10. On or about December 19, 2016, ICE apprehended Fraihat and he was taken to the Adelanto ICE Processing Center.
11. On or about June 27, 2017, Fraihat had a *Rodriguez* bond hearing. The Immigration Judge found Fraihat to be a danger to the community and denied bond.
12. On or about October 30, 2017, the Immigration Judge ordered Fraihat removed to Jordan. Fraihat appealed this decision to the Board of Immigration Appeals ("BIA").
13. On or about December 22, 2017, Fraihat had a second *Rodriguez* bond hearing. The

Immigration Judge found Fraihat to be a danger to the community and denied bond.

14. On or about April 18, 2018, the BIA dismissed Fraihat's appeal.

15. Fraihat filed four Petitions for Review with the Ninth Circuit. Three were dismissed and one remains pending. A temporary stay remains in effect.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: April 2, 2020

Edgar Duran, DO
DHS/ICE/ERO
Adelanto, California

EXHIBIT 5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF BRYAN S. PITMAN

I, Bryan S. Pitman, declare under penalty of perjury the following:

1. I am employed as a Supervisory Detention and Deportation Officer (SDDO) with the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) in the New Orleans Field Office. I am currently assigned to the Etowah County Detention Center (ECDC) in Gadsden, Alabama.

2. In my capacity as a SDDO, I, supervise the Deportation Officer having docket control over Alex Giovanni Hernandez's case.

3. I have reviewed the file and ICE computer databases for Mr. Hernandez and, unless otherwise stated herein, this declaration is based on that review.

4. Mr. Hernandez is a citizen and native of Honduras by virtue of birth in Honduras.

5. Mr. Hernandez entered the United States on an unknown date at an unknown location.

6. On March 16, 1989, the Superior Court in Orange County, Georgia convicted Mr. Hernandez of Burglary. He was sentenced to 60 days of confinement and 36 months of probation.

7. On October 13, 1989, the Municipal Court in Los Angeles, California convicted Mr. Hernandez of Vehicle Theft. He was sentenced to 45 days of confinement and 24 months of probation.

8. On April 18, 1990, the Superior Court in Los Angeles convicted Mr. Hernandez of Possession of a Controlled Substance. He was sentenced to 180 days of confinement and 36 months of probation.

9. On December 17, 1990, the Superior Court in Los Angeles convicted Mr. Hernandez of Robbery in the Second Degree. He was sentenced to two years of confinement.

10. On September 26, 1991, the Municipal Court in Huntington Park, California convicted Mr. Hernandez of Receiving Stolen Property. He was sentenced to 120 days of confinement and 24 months of probation.

11. On November 19, 1991, the Superior Court in Los Angeles convicted Mr. Hernandez of Felon in Possession of a Firearm. He was sentenced to two years of confinement.

12. On October 28, 1997, the Superior Court in Los Angeles convicted Mr. Hernandez of Robbery in the second Degree and Possession of a Firearm by a Felon. He was sentenced to 25 years of confinement.

13. On September 29, 2016, Mr. Hernandez was encountered by ICE ERO at the Corcoran State Prison in Corcoran, California. ICE ERO processed Mr. Hernandez as an Administrative Removal under Section 238(b) of the Immigration and Nationality Act (the Act) for having committed an aggravated felony under Section 237(a)(2)(A)(iii) of the Act.

14. Mr. Hernandez is subject to mandatory detention under Section 236(c)(1)(A) of the Act for having committed an aggravated felony.

15. Mr. Hernandez's case was referred to an Immigration Judge. On June 19, 2017, an Immigration Judge in San Francisco, California granted Mr. Hernandez relief from removal.

16. On July 6, 2017, Mr. Hernandez and DHS appealed the decision of the Immigration Judge to the Board of Immigration Appeals.

17. On November 24, 2017, the Board of Immigration Appeals dismissed Mr. Hernandez's appeal and sustained the appeal of the Department of Homeland Security, effectively ordering Mr. Hernandez removed to Honduras.

18. On December 14, 2017, Mr. Hernandez filed a Petition for Review in the Ninth Circuit Court of Appeals, resulting in an automatic Stay of Removal (No. 17-73332). This case is currently pending.

19. On December 20, 2018, Mr. Hernandez was transferred to the Etowah County Detention Center in Gadsden, Alabama.

20. On January 9, 2019, Mr. Hernandez filed a Petition for Writ of Habeas Corpus (No. 4:19-cv-00853) with the United States District Court, Northern District of Alabama. On May 22, 2019, the District Court dismissed that Petition.

21. On January 23, 2020, Mr. Hernandez filed a Petition for Writ of Habeas Corpus (No. 4:20-cv-00112) with the United States District Court, Northern District of Alabama. The Petition is still pending.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: April 1, 2020

Bryan S. Pitman, SDDO
DHS/ICE/ERO
Gadsden, Alabama

EXHIBIT 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	)	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF SEBASTIAN MASON

I, SEBASTIAN MASON, declare as follows:

1. I have been employed with the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("DHS/ICE") since 2002. I am currently Supervisory Detention and Deportation Officer at Stewart County Detention Center in Lumpkin, Georgia.

2. In my capacity as Supervisory Detention and Deportation Officer, I oversee the case involving Mr. Aristoteles Sanchez-Martinez. I have reviewed the relevant documents from Mr. Sanchez-Martinez's alien file ("A-file") and other official government records related to petitioner's removal proceedings and, unless otherwise stated, this declaration is based on that review.

3. Mr. Sanchez-Martinez, a native and citizen of Venezuela, is currently detained at Stewart Detention Center under 8 U.S.C. § 1231(a). He has been detained post-order for the past one-hundred thirty-four (134) days.

4. An Immigration Judge denied Mr. Sanchez-Martinez's applications for relief on June 3, 2019 and Mr. Sanchez-Martinez appealed.

5. On November 21, 2019, the Board of Immigration Appeals dismissed the appeal and affirmed the decision of the Immigration Judge.

Pursuant to Title 28, U.S. Code Section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, this the 2nd day of April, 2020.

Sebastian S. Mason

Sebastian S. Mason, Supervisory Detention Deportation Officer
Department of Homeland Security
Immigration & Customs Enforcement
Stewart County Detention Center
Lumpkin, Georgia

EXHIBIT 7

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF MICHAEL JIMENO

I, Michael Jimeno, declare under penalty of perjury the following:

1. I am employed as a Deportation Officer ("DO") with the U.S. Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") and am presently assigned to the Los Angeles Field Office at the Adelanto ICE Processing Center ("AIPC"), operated by the GEO Group Inc, ("GEO") in Adelanto, California.
2. My responsibilities as a DO include the review of detained alien cases at AIPC in Adelanto, California. As part of my duties, I reviewed the case of Jimmy Sudney ("Sudney"). I make this declaration based upon my personal knowledge, my review of Sudney's alien file ("A-file"), government databases, and other official government records related to Petitioner's immigration proceedings and housing at the Adelanto ICE Processing Center, and unless otherwise stated, this declaration is based on that review. If called as a witness, I could and would competently testify thereto.

3. Sudney is a native and citizen of Haiti. Sudney was admitted to the United States as a Lawful Permanent Resident on or about March 13, 2012. Sudney is currently twenty-nine (29) years old.
4. On or about September 18, 2013, Sudney was convicted in the Superior Court of Arizona, of driving under the influence of alcohol in violation of sections 28-1381(a)(1) of the Arizona Revised Statutes (ARS). For this offense, he was sentenced to 10 days in jail.
5. On or about February 18, 2015, Sudney was convicted in the Superior Court of Arizona, Maricopa County, of two counts of aggravated assault in violation of ARS sections 13-1203, 1204, 3105, 610, 701, 702, 801. For these offenses, he was sentenced to two years and nine months in prison.
6. On or about December 7, 2016, Sudney was taken into ICE custody and issued a Notice to Appear (NTA). Based on his aggravated assault conviction, Sudney was charged as being removable for a crime involving moral turpitude committed within five years of admission in violation of section 237(a)(2)(A)(i) of the Immigration and Nationality Act.
7. On or about December 27, 2016, an Immigration Judge held a custody re-determination for Sudney and on or about January 9, 2017, the Immigration Judge concluded he lacked jurisdiction to grant a bond because Sudney was subject to mandatory detention.
8. On or about June 26, 2017, an Immigration Judge conducted a hearing and issued a summary order denying Sudney a bond under *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015). The Immigration Judge concluded Sudney was both a danger to the community based on his crimes and a flight risk.
9. Sudney appealed the Immigration Judge's denial of a Rodriguez bond to the Board of Immigration Appeals and on or about November 24, 2017, the Board of Immigration Appeals (Board) dismissed Sudney's appeal.
10. On or about November 15, 2017, an Immigration Judge denied Sudney's relief applications and ordered him removed to Haiti.

11. Sudney appealed the Immigration Judge's removal order to the Board and on or about March 29, 2018, the Board dismissed Sudney's appeal.
12. On or about April 9, 2018, Sudney filed a petition for review of the Board's March 29, 2018 order with the Ninth Circuit Court of Appeals (No. 18-71015).
13. On or about November 28, 2018, an Immigration Judge denied Sudney's renewed request for a bond. On or about December 11, 2018, Sudney appealed the bond denial to the Board.
14. On or about April 29, 2019, the Board summarily dismissed Sudney's bond appeal.
15. On or about May 17, 2019, an Immigration Judge denied Sudney's request for a *Rodriguez* bond because Sudney was ineligible for a subsequent Rodriguez bond based on *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).
16. On or about January 14, 2020, the Ninth Circuit dismissed Sudney's petition for review.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: April 1, 2020

Michael Jimeno, DO
DHS/ICE/ERO
Adelanto, California

EXHIBIT 8

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF GIL O. MONTES

I, Gil O. Montes, declare under penalty of perjury the following:

1. I am employed as a Deportation Officer ("DO") with the U.S. Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") and am presently assigned to the Los Angeles Field Office at the Adelanto ICE Processing Center ("AIPC"), operated by the GEO Group Inc, ("GEO") in Adelanto, California.
2. My responsibilities as a DO include the review of detained alien cases at AIPC in Adelanto, California. As part of my duties, I reviewed the case of Martin Munoz ("Munoz").
3. I make this declaration based upon my personal knowledge, my review of Munoz's alien file ("A-file"), government databases, and other official government records related to Munoz's immigration proceedings and housing at the Adelanto ICE Processing Center, and unless otherwise stated, this declaration is based on that review. If called as a witness,

I could and would competently testify thereto.

4. Munoz is a native and citizen of Mexico. On or about September 15, 1989, Munoz was granted permanent resident status. Munoz is currently sixty (60) years old.
5. On or about January 19, 2000, Munoz was convicted of driving with a suspended licensed (prior DUI) in violation of section 14601.2(a) of the California Vehicle Code (CVC) and was sentenced to 10 days in jail and 36 months of probation.
6. On or about January 23, 2007, Munoz was convicted of driving under the influence of alcohol in violation of CVC section 23152(a), driving under the influence of alcohol in violation of CVC section 23152(b), and failure to appear in violation of CVC section 40508. He was sentenced to 12 days in jail and 48 months of probation.
7. Also, on or about January 23, 2007, Munoz was convicted of driving under the influence of alcohol in violation of CVC section 23152(a). For this offense, he was sentenced to 140 days in jail and 60 months of probation.
8. Also, on or about January 23, 2007, Munoz was convicted of driving with a suspended license (prior DUI) in violation of CVC section 41601.2(a) and failure to appear in violation of CVC section 40508. For these offenses, he was sentenced to 10 days in jail and 36 months of probation.
9. On or about October 1, 2010, Munoz was convicted of driving with a suspended license (prior DUI) in violation of CVC section 14601.2(a), driving under the influence of alcohol in violation of CVC section 23152(a), and felony driving under the influence with prior DUI convictions in violation of CVC sections 23550 and 23152(b). For these offenses, he was sentenced to 16 months in state prison; 365 days in jail to be served concurrently and 36 months of probation.
10. Also, on or about October 1, 2010, Munoz was convicted of driving with a suspended license (prior DUIs) in violation of CVC section 14601.2(a) and sentenced to 40 days in jail and 36 months of probation.

11. On or about September 27, 2016, Munoz was convicted of driving under the influence of alcohol with a prior DUI, in violation of CVC section 23550, felony assault with a deadly weapon, in violation of section 245(a)(1) of the California Penal Code (CPC), felony hit and run – death or injury in violation of CVC section 20001(a), driving under the influence causing injury in violation of CVC section 23153(a), and driving under the influence in violation of CVC section 23152(b). For these offenses, Munoz was sentenced to three years in state prison.
12. On or about July 17, 2017, Munoz was taken into ICE custody after being released from state prison. On that date, Munoz was placed in removal proceedings after being issued a Notice to Appear (NTA), charging Munoz with being removable for an aggravated felony under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act based on his 2016 conviction for assault with a deadly weapon in violation of CPC section 245(a), for which he was sentenced to three years' imprisonment.
13. On or about January 23, 2018, Munoz had a bond hearing before an Immigration Judge pursuant *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015). The Immigration Judge denied Munoz's request for release on bond.
14. Based on a review of our databases, there is no evidence that Munoz appealed the Immigration Judge's January 23, 2018 order denying him bond.
15. On or about August 30, 2018, an Immigration Judge denied Munoz's requests for relief from removal and ordered Munoz removed from the United States.
16. On or about September 21, 2018, Munoz appealed the Immigration Judge's removal order to the Board of Immigration Appeals ("BIA").
17. On or about April 30, 2019, the BIA dismissed Munoz's appeal. Attached hereto as Exhibit E is a true and correct copy of the BIA's April 30, 2019 decision.
18. On or about May 13, 2019, Munoz filed a petition for review and a motion for stay in the Ninth Circuit Court of Appeals. This appeal remains pending.
19. On or about July 30, 2019, Munoz requested a bond redetermination hearing.

20. On or about August 9, 2019, an Immigration Judge denied Munoz's request.

21. Munoz appealed the Immigration Judge's August 9, 2019 order.

22. On or about December 26, 2019, the BIA dismissed Munoz's appeal.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: April 1, 2020

Gil O. Montes, DO
DHS/ICE/ERO
Adelanto, California

EXHIBIT 9

United States District Court
Central District of California
Western Division

MARTIN MUNOZ,

Petitioner,

v.

CHAD T. WOLF, *et al.*,

Respondents.

EDCV 20-00625 TJH (SHKx)

Temporary Restraining Order

and

Order to Show Cause

[3]

The Court has considered the application for a temporary restraining order seeking immediate release, filed in connection with a petition for a writ of *habeas corpus,* pursuant to 28 U.S.C. § 2241, challenging the conditions of confinement, by Petitioner Martin Munoz, together with the moving and opposing papers.

Petitioner is, currently, detained at the Adelanto Detention Center ["Adelanto"], in San Bernardino County, which is within the Central District of California. Petitioner asserts that, in light of the COVID-19 pandemic, the conditions of his confinement are, now, unconstitutional. Petitioner has a history of various criminal convictions, but he has completed his criminal sentences and is, now, a civil detainee.

The Court incorporates by reference into this order the factual and legal grounds supporting emergency injunctive relief, namely, immediate release, set forth in the Court's orders issued in *Castillo v. Barr*, CV 20-00605-TJH (AFMx)(C.D. Cal. Mar. 27, 2020), ECF No. 32; and *Hernandez v. Wolf*, CV 20-60017-TJH (KSx)(C.D. Cal. Apr. 1, 2020), ECF No. 17.

Based on the incorporated factual and legal grounds, and the facts and arguments presented, here,

It is Ordered that the application for a temporary restraining order be, and hereby is, **Granted**.

It is further Ordered that Respondents shall, by 5:00 p.m. on April 2, 2020, release Petitioner Martin Munoz from custody pending further order of this Court, and subject to the following conditions of release:

1. Petitioner shall reside, and shelter in place, at the residence of Soledad Munoz, at 1210 Pertano Lane, Hemet, California 92545 ["the Residence"];
2. Petitioner shall be transported from the Adelanto Detention Center directly to the Residence by Soledad Munoz;
3. Petitioner shall not leave the Residence, pending further order of the Court, except to obtain medical care;
4. Petitioner shall not violate any federal, state or local laws;
5. Petitioner shall not use or possess alcohol or illegal drugs; and
6. At the discretion of DHS and/or BICE, to enforce the above restrictions, Petitioner's whereabouts may be monitored by telephonic and/or electronic and/or GPS monitoring and/or a location verification system and/or an automated identification system. If necessary to comply with the permitted monitoring, Petitioner shall ensure the presence of a residential

telephone line without devices and/or services which may interrupt operation of any monitoring equipment.

It is further Ordered that Respondents shall show cause, if they have any, as to why the Court should not issue a preliminary injunction in this case. Respondents' response, if any, to this order to show cause shall be filed by Noon on April 8, 2020. Petitioner's reply, if any, to Respondents' response shall be filed by Noon on April 13, 2020. The matter will then stand submitted.

Date: April 2, 2020

Terry J. Hatter, Jr.
Senior United States District Judge

EXHIBIT 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF CAPTAIN JENNIFER MOON, MPH, MSN, FNP-BC, DEPUTY ASSISTANT DIRECTOR FOR HEALTHCARE COMPLIANCE ICE HEALTH SERVICE CORPS

I, Captain Jennifer Moon, make the following statements under oath and subject to the penalty of perjury:

1. I am currently the Deputy Assistant Director for Healthcare Compliance of the ICE Health Service Corps (IHSC) of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE). I have held this position since November 1, 2018.

2. In my current position, I provide oversight of the Medical Case Management Unit to which the Field Medical Coordinators (FMCs) report. The FMCs serve as medical consultants to the ICE field offices and oversee clinical services at Inter-Governmental Service Agreement (IGSA) facilities that house ICE detainees, including the Adelanto ICE Processing Center (AIPC).

3. IHSC's FMCs ensure that the provision of medical care by contractors to the ICE detainees within the IGSA facilities meets detention standards, as required by the IGSA contract. The FMCs do not provide hands-on care or direct the care within the IGSAs but monitor the medical care and services provided by the contract facilities. Medical staff at the contract facilities are directly responsible for medical care at the facility.

4. IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps (USPHS) officers, federal civil servants, and contract health professionals.

5. Since the onset of reports of Coronavirus Disease 2019 (COVID-19), ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential exposure among detainees.

6. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control to safeguard those in its custody and care.

7. Each detainee is screened for disabilities upon admission. Identified disabilities are further evaluated and addressed as medically appropriate.

8. At the AIPC, during intake medical screenings, detainees are assessed for fever and respiratory illness, are asked to confirm if they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through area(s) with sustained community transmission in the past two weeks.

9. The detainee's responses and the results of these assessments will dictate whether to monitor or isolate the detainee. Those detainees that present symptoms compatible with COVID-19 will be placed in isolation, where they will be tested. If testing is positive, they will remain isolated and treated. In case of any clinical deterioration, they will be referred to a local hospital.

10. In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. Cohorting is an infection-prevention strategy which involves housing detainees together who were exposed to a person with an infectious organism but are asymptomatic. This practice lasts for the duration of the incubation period of 14 days, because individuals with these and other communicable diseases can be contagious before they develop symptoms and can serve as undetected source patients. Those that show onset of fever and/or respiratory illness are referred to a medical provider for evaluation. Cohorting is discontinued when the 14-day incubation period completes with no new cases. Per ICE policy, detainees diagnosed with any communicable disease who require isolation are placed in an appropriate setting in accordance with CDC or state and local health department guidelines.

11. AIPC has identified detainees who would be at greater risk for contracting COVID-19.

12. AIPC manages both males and females, has daily access to sick call in a clinical setting, onsite mental health and dental services, and an infirmary onsite. The facility has the ability to admit patients to the local hospital for a higher level of care when needed.

13. As of April 2, 2020, IHSC has the following information:

    a. There are zero confirmed cases of COVID-19 at AIPC

    b. There are currently no housing units on monitoring for COVID-19.

c. There was one detainee who traveled from a country designated for widespread ongoing transmission of COVID-19. There was another detainee who was transported with a detainee who was considered at risk for COVID-19 due to travel history. Both detainees were afebrile and asymptomatic upon arrival to the facility. The detainees were placed in quarantine and are being monitored daily for symptoms and temperature checks. The quarantine is scheduled to end on April 9, 2020.

14. AIPC has a population within their approved capacities and is not overcrowded.

15. AIPC has increased sanitation frequency and provide sanitation supplies as follows:

a. All common areas in the facility are being disinfected multiple times per day. These areas include detainee housing areas, law libraries, dining halls, medical areas, Intake areas, door handles throughout the facility, desk and counter surfaces in high traffic areas, lobby seating areas, restrooms, court rooms and any other areas the facility identifies as needing such cleaning.

b. Additional cleaning products have been added to housing areas.

c. Alcohol based disinfectant dispensers have been placed in lobby areas for public and staff use.

d. Internal facility areas have been equipped with disinfectant dispensers.

e. Detainees have been educated through town halls on best practices to keep from spreading any contagions.

16. AIPC provided education on COVID-19 to staff and detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and requesting to seek medical care if they feel ill. The facilities provide detainees daily access to sick call.

17. AIPC has suspended in person social visitation and facility tours.

18. Attorney visits have been changed to a non-contact setting to reduce the risk of contracting COVID-19.

19. Temperature checks and a COVID-19 focused questionnaire must be completed by any visitor entering the facility beyond the lobby. Access will only be granted if the individual clears the temperature screening and the questions on the questionnaire.

20. AIPC is screening all detainee intakes when they enter the facilities including travel histories, medical histories and checking body temperatures and have procedures to continue monitoring the populations' health.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: April 2, 2020

Captain Jennifer Moon, MPH, MSN, FNP-BC
ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

EXHIBIT 11

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF CAPTAIN JENNIFER MOON, MPH, MSN, FNP-BC, DEPUTY ASSISTANT DIRECTOR FOR HEALTHCARE COMPLIANCE ICE HEALTH SERVICE CORPS

I, Captain Jennifer Moon, make the following statements under oath and subject to the penalty of perjury:

1. I am currently the Deputy Assistant Director for Healthcare Compliance of the ICE Health Service Corps (IHSC) of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE). I have held this position since November 1, 2018.

2. In my current position, I provide oversight of the Medical Case Management Unit to which the Field Medical Coordinators (FMCs) report. The FMCs serve as medical consultants to the ICE field offices and oversee clinical services at Inter-Governmental Service Agreement (IGSA) facilities that house ICE detainees, including the Etowah County Detention Center (ECDC) in Gadsden, AL.

3. IHSC's FMCs ensure that the provision of medical care by contractors to the ICE detainees within the IGSA facilities meets detention standards, as required by the IGSA contract. The FMCs do not provide hands-on care or direct the care within the IGSAs but monitor the medical care and services provided by the contract facilities. Medical staff at the contract facilities are directly responsible for medical care at the facility.

4. IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps (USPHS) officers, federal civil servants, and contract health professionals.

5. Since the onset of reports of Coronavirus Disease 2019 (COVID-19), ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential exposure among detainees.

6. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control to safeguard those in its custody and care.

7. Each detainee is screened for disabilities upon admission. Identified disabilities are further evaluated and addressed as medically appropriate.

8. During intake medical screenings at ECDC, detainees are assessed for fever and respiratory illness, are asked to confirm if they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through area(s) with sustained community transmission in the past two weeks.

9. The detainee's responses and the results of these assessments will dictate whether to monitor or isolate the detainee. Those detainees that present symptoms compatible with COVID-19 will be placed in isolation, where they will be tested. If testing is positive, they will remain isolated and treated. In case of any clinical deterioration, they will be referred to a local hospital.

10. In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. Cohorting is an infection-prevention strategy which involves housing detainees together who were exposed to a person with an infectious organism but are asymptomatic. This practice lasts for the duration of the incubation period of 14 days, because individuals with these and other communicable diseases can be contagious before they develop symptoms and can serve as undetected source patients. Those that show onset of fever and/or respiratory illness are referred to a medical provider for evaluation. Cohorting is discontinued when the 14-day incubation period completes with no new cases. Per ICE policy, detainees diagnosed with any communicable disease who require isolation are placed in an appropriate setting in accordance with CDC or state and local health department guidelines.

11. ECDC provided a list of chronic care detainees and two detainees over the age of 60 to IHSC that could be at greater risk if they contracted COVID-19. Anyone complaining of a possible temperature increase is screened and has a temperature check conducted.

12. ECDC manages male detainees, has daily access to sick call in a clinical setting, onsite mental health and dental services, and an infirmary onsite. The facility has the ability to admit patients to the local hospital for a higher level of care when needed.

13. As of April 2, 2020, IHSC has the following information:

    a. There are 0 confirmed cases of COVID-19 at ECDC.

    b. There have been 0 cases of ICE detainees suspected of COVID-19 at ECDC.

    c. Should a detainee exhibit symptoms of COVID-19, housing units for quarantine have been identified and a plan is in place to effectively quarantine those detainees.

14. ECDC has a detainee population within their approved capacities and is not overcrowded. Detainees are housed separately from inmates.

15. ECDC has increased sanitation frequency and provide sanitation supplies, as well as guidelines, as follows:

    a. All common areas in the facility are being disinfected multiple times per day. These areas include detainee housing areas, law libraries, dining halls, medical areas, Intake areas, door handles throughout the facility, desk and counter surfaces in high traffic areas, lobby seating areas, restrooms, court rooms and any other areas the facility identifies as needing such cleaning.

    b. Disinfectants, hand sanitizer, soap, masks, and gloves are made readily available for staff and detainee use.

    c. Detainees have been educated through town halls on best practices to keep from spreading any contagions.

    d. Posters related to the prevention of COVID-19 are placed in each housing unit and other areas of the facility as a constant reminder of preventative measures.

    e. Currently, there are flyers related to hand washing and the symptoms of COVID-19 in detainee units in English and Spanish.

16. ECDC provided education on COVID-19 to staff and detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and requesting to seek medical care if they feel ill. The facilities provide detainees daily access to sick call.

17. Medical staff at ECDC are wearing masks, and gloves if necessary, during interactions with detainees.

18. ECDC has suspended in person social visitation and facility tours but has provided video visitation. No visitors are allowed to enter the facility.

19. Attorney visits are approved on a case-by-case basis.

20. Temperature checks and a COVID-19 screening is conducted on staff prior to entry into the facility.

21. ECDC is screening all detainee intakes when they enter the facilities including travel histories, medical histories and checking body temperatures and have procedures to continue monitoring the populations' health.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: April 2, 2020

_____

Captain Jennifer Moon, MPH, MSN, FNP-BC
ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

EXHIBIT 12

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx)

DECLARATION OF CAPTAIN JENNIFER MOON, MPH, MSN, FNP-BC, DEPUTY ASSISTANT DIRECTOR FOR HEALTHCARE COMPLIANCE ICE HEALTH SERVICE CORPS

I, Captain Jennifer Moon, make the following statements under oath and subject to the penalty of perjury:

1. I am currently the Deputy Assistant Director for Healthcare Compliance of the ICE Health Service Corps (IHSC) of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE). I have held this position since November 1, 2018.

2. In my current position, I provide oversight of the Medical Case Management Unit to which the Field Medical Coordinators (FMCs) report. The FMCs serve as medical consultants to the ICE field offices and oversee clinical services at Inter-Governmental Service Agreement (IGSA) facilities that house ICE detainees, including the Stewart Detention Center (SDC) in Lumpkin, GA.

3. IHSC's FMCs ensure that the provision of medical care by contractors to the ICE detainees within the IGSA facilities meets detention standards, as required by the IGSA contract. The FMCs do not provide hands-on care or direct the care within the IGSAs but monitor the medical care and services provided by the contract facilities. Medical staff at the contract facilities are directly responsible for medical care at the facility.

4. IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps (USPHS) officers, federal civil servants, and contract health professionals.

5. Since the onset of reports of Coronavirus Disease 2019 (COVID-19), ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential exposure among detainees.

6. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control to safeguard those in its custody and care.

7. Each detainee is screened for disabilities upon admission. Identified disabilities are further evaluated and addressed as medically appropriate.

8. During intake medical screenings at SDC, detainees are assessed for fever and respiratory illness, are asked to confirm if they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through area(s) with sustained community transmission in the past two weeks.

9. The detainee's responses and the results of these assessments will dictate whether to monitor or isolate the detainee. Those detainees that present symptoms compatible with COVID-19 will be placed in isolation, where they will be tested. If testing is positive, they will remain isolated and treated. In case of any clinical deterioration, they will be referred to a local hospital.

10. In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. Cohorting is an infection-prevention strategy which involves housing detainees together who were exposed to a person with an infectious organism but are asymptomatic. This practice lasts for the duration of the incubation period of 14 days, because individuals with these and other communicable diseases can be contagious before they develop symptoms and can serve as undetected source patients. Those that show onset of fever and/or respiratory illness are referred to a medical provider for evaluation. Cohorting is discontinued when the 14-day incubation period completes with no new cases. Per ICE policy, detainees diagnosed with any communicable disease who require isolation are placed in an appropriate setting in accordance with CDC or state and local health department guidelines.

11. SDC has identified no detainees who would be at greater risk for contracting COVID-19. The facility has continuing procedures for monitoring detainees' body temperatures and monitoring detainees' health.

12. SDC manages male detainees, has daily access to sick call in a clinical setting, an infirmary onsite, and access to specialty and hospital care in the local community. The facility has the ability to admit patients to the local hospital for a higher level of care when needed.

13. As of April 2, 2020, IHSC has the following information:

    a. There are 0 confirmed cases of COVID-19 at SDC.

b. There have been 1 cases of ICE detainees suspected of COVID-19 at SDC.

c. Should a detainee exhibit symptoms of COVID-19, housing units for quarantine have been identified and a plan is in place to effectively quarantine those detainees.

14. SDC has a detainee population within their approved capacities and is not overcrowded.

15. SDC has increased sanitation frequency and provide sanitation supplies as follows:

a. All common areas in the facility are being disinfected multiple times per day. These areas include detainee housing areas, law libraries, dining halls, medical areas, Intake areas, door handles throughout the facility, desk and counter surfaces in high traffic areas, lobby seating areas, restrooms, court rooms and any other areas the facility identifies as needing such cleaning.

b. Disinfectants, hand sanitizer, soap, and masks are made readily available for staff and detainee use.

c. Detainees have been educated through town halls on best practices to keep from spreading any contagions.

d. Flyers related to the prevention of COVID-19 have been distributed throughout the facility as a reminder of preventative measures.

16. SDC provided education on COVID-19 to staff and detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and requesting to seek medical care if they feel ill. The facilities provide detainees daily access to sick call.

17. SDC has suspended in person social visitation and facility tours but has provided video visitation.

18. Attorney visits are permitted and attorneys are screened for COVID-19 prior to entering the facility.

19. Temperature checks and a COVID-19 screening is conducted on staff prior to entry into the facility.

20. SDC is screening all detainee intakes when they enter the facilities including travel histories, medical histories and checking body temperatures and have procedures to continue monitoring the populations' health.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: April 2, 2020

Captain Jennifer Moon, MPH, MSN, FNP-BC
ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

EXHIBIT 13

United States District Court
Central District of California
Western Division

ENRIQUE FRANCISCO HERNANDEZ, Petitioner, v. CHAD T. WOLF, *et al.*, Respondents.	ED CV 20-00617 TJH (KSx) **Temporary Restraining Order and Order to Show Cause** [2]

The Court has considered Petitioner Enrique Francisco Hernandez's application for a temporary restraining order, together with the moving and opposing papers.

Hernandez, now 43-years-old, suffers from multiple medical ailments, including hypertension and other cardiovascular issues. Hernandez is, currently, being detained at the Adelanto Detention Center ["Adelanto"], in San Bernardino County. San Bernardino County is within the Central District of California.

Hernandez filed this case as a petition for a writ of *habeas corpus*. Hernandez is a civil detainee, having been arrested by officers from the United States Department of Homeland Security's ["DHS"] Bureau of Immigration and Customs Enforcement

["BICE"] on May 23, 2019, and, then placed into removal proceedings, with the service of a Notice to Appear at the time of his arrest. Hernandez's removal proceedings are pursuant to the Immigration and Nationality Act ["INA"] § 212(a)(6)(A)(i)(I), for being an alien present in the United States without being admitted or paroled.

Adelanto is a private, for-profit immigration detention facility operated by Geo Group, Inc. Adelanto has the capacity to hold, under normal situations, well over 1,000 detainees through a contract with BICE. Over the years, and as recently as 2018, DHS's Office of the Inspector General had, repeatedly, found that significant and various health and safety risks existed at Adelanto.

Hernandez, a citizen of Mexico, has, apparently, resided in the United States for almost thirty years. His life partner is Maria Victoria de Ortiz, a lawful permanent resident of the United States who resides in Altadena, California. Together, they have a 12-year-old daughter, who is a United States citizen.

Hernandez has a history of various criminal charges and convictions. Of significant note is that all of Hernandez's convictions were for infractions or misdemeanors. He has never been convicted of a felony. Hernandez has been convicted of the following:

Date	Offense	Sentence
1997	Hit and Run with Property Damage, Cal. Veh. Code § 20002(a)	40 days in jail and 36 months probation
2014	Theft, Cal. Penal Code § 484(a)	1 day in jail and 36 months probation
2016	Driving Without a Valid License, Cal. Veh. Code § 12500(a)	Fine
2017	Possession of a Controlled Substance, Cal. Health and Safety Code § 11377	Probation extension

2017	Petty Theft, Cal. Penal Code § 490.2	60 days in jail and 36 months probation
2017	Trespassing, Cal. Penal Code § 602(m)	4 days in jail and 36 months probation
2018	Possession of a Controlled Substance, Cal. Health and Safety Code § 11377	30 days in jail and 36 months probation
2019	Possession of Burglary Tools, Cal. Penal Code § 466; Shoplifting, Cal. Penal Code § 602(m)459.5; and Driving Without a License, Cal. Veh. Code § 12500(a)	36 months probation

In response to Hernandez's May 15, 2019, convictions in Glendale, California, BICE officers arrested him on May 23, 2019. Around June 12, 2019, Hernandez had his first bond hearing, where bond was denied after an immigration judge found that he was a flight risk due to his "multiple failures to appear in the Superior Court of California and his lack of ties to the community. The immigration judge, also, found that Hernandez was a mandatory detainee under INA § 236(c), which is codified as 8 U.S.C. § 1226(c).

In reviewing Hernandez's rap sheet, provided by the Government, this Court noted that Hernandez was, indeed, charged on four separate occasions – in 1997, 2003, 2006 and 2017 – with failing to appear in violation of Cal. Veh. Code § 40508(A). But, the Court, also, noted that each of those four charges were, indeed, dismissed, with one dismissed, specifically, in the furtherance of justice. So, it is noteworthy that immigration judges considered dismissed charges as a basis for the conclusion that Hernandez was a flight risk. It is, also, noteworthy that an immigration judge concluded that Hernandez had a lack of ties to the community even though his life partner and daughter reside in Altadena, California. But, those issues are not directly before this Court.

Regardless, on November 27, 2019, an immigration judge denied Hernandez's

applications for asylum, withholding of removal and protection under the Convention against Torture. On December 2, 2019, Hernandez had a *Rodriguez* bond hearing, at which bond was denied because the immigration judge lacked jurisdiction. On December 20, 2019, Hernandez filed an appeal with the Board of Immigration Appeals ["BIA"]. On January 14, 2020, an immigration judge denied Hernandez's request for a change in custody, finding that he was a flight risk who had a removal order, and, also, finding that Hernandez had multiple failures to appear. Hernandez's appeal with the BIA remains pending.

On March 4, 2020, the State of California declared a state of emergency in response to the coronavirus and the resulting COVID-19 disease, which attacks the respiratory system, thereby making Hernandez particularly vulnerable given his history of asthma. On March 10, 2020, San Bernardino County followed suit and declared a state of emergency. On March 11, 2020, the World Health Organization ["WHO"] declared COVID-19 to be a global pandemic. On March 13, 2020, President Donald J. Trump formally acknowledged and declared a national emergency in response to WHO's pandemic declaration.

On March 18, 2020, BICE announced that "[t]o ensure the welfare and safety of the general public as well as officers and agents in light of the ongoing COVID-19 pandemic response, [it] will temporarily adjust its enforcement posture beginning today … [and that its] highest priorities are to promote life-saving and public safety activities." Further, BICE stated that it would focus enforcement "on public safety risks and individuals subject to mandatory detention based on criminal grounds [, and for those people who do not fall into those categories, agents] will exercise discretion to delay enforcement actions until after the crisis or utilize alternatives to detention, as appropriate."

According to the United States Centers for Disease Control and Prevention, the coronavirus is spread mainly through person-to-person contact. More specifically, the coronavirus is spread between people who are in close contact – within about 6 feet –

with one another through respiratory droplets produced when an infected person coughs or sneezes. The droplets can land in the mouths or noses, or can be inhaled into the lungs, of people who are within about 6 feet of the infected person. Moreover, studies have established that the coronavirus can survive up to three days on various surfaces.

COVID-19 is highly contagious and has a mortality rate ten times greater than influenza. Most troublesome is the fact that people infected with the coronavirus can be asymptomatic during the two to fourteen day COVID-19 incubation period. During that asymptomatic incubation period, infected people are, unknowingly, capable of spreading the coronavirus. Despite early reports, no age group is safe from COVID-19. While older people with pre-existing conditions are the most vulnerable to COVID-19-related mortality, young people without preexisting conditions have, also, succumbed to COVID-19. There is no specific treatment, vaccine or cure for COVID-19.

Because of the highly contagious nature of the coronavirus and the, relatively high, mortality rate of COVID-19, the disease can spread uncontrollably with devastating results in a crowded, closed facility, such as an immigration detention center.

The Court will take judicial notice of the following facts, as set forth in the temporary retraining order issued by this Court on March 27, 2020, in *Castillo v. Barr*, CV 20-00605 TJH. At Adelanto, a holding area can contain 60 to 70 detainees, with a large common area and dormitory-type sleeping rooms housing four or six detainees with shared sinks, toilets and showers. Guards regularly rotate through the various holding areas several times a day. At meal times – three times a day – the 60 to 70 detainees in each holding area line up together, sometimes only inches apart, in the cafeteria. The guards, detainees and cafeteria workers do not regularly wear gloves or masks to prevent the spread of the coronavirus. While detainees have access to gloves, there is no requirement that they wear them. Detainees do not have access to masks or hand sanitizer – though thorough hand washing could be more effective than hand

sanitizers at preventing the spread of the coronavirus.

Last week, the first BICE detainee was confirmed to have been infected with COVID-19 in New Jersey at the Bergin County Jail, a BICE detention facility. The week before last, a correctional officer at the Bergin County Jail was, also, confirmed to have been infected. As of the date of this order, two additional ICE detainees at the Bergin County Jail were confirmed to have been infected.

On March 26, 2020, Judge Analisa Torres of the United States District Court for the Southern District of New York issued an order releasing certain immigration detainees, stating the following:

> The nature of detention facilities makes exposure and spread of the virus particularly harmful. Jaimie Meyer M.D., M.S., who has worked extensively on infectious diseases treatment and prevention in the context of jails and prisons, recently submitted a declaration in this district noting that the risk of COVID-19 to people held in New York-area detention centers, including the Hudson, Bergen County, and Essex County jails, "is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected." Meyer Decl. ¶ 7, *Velesaca v. Wolf*, 20 Civ. 1803 (S.D.N.Y. Feb. 28, 2020), ECF No. 42.
>
> Moreover, medical doctors, including two medical experts for the Department of Homeland Security, have warned of a "tinderbox scenario" as COVID-19 spreads to immigration detention centers and the resulting "imminent risk to the health and safety of immigrant detainees" and the public. Catherine E. Shoichet, *Doctors Warn of "Tinderbox scenario" if Coronavirus Spreads in ICE Detention*, CNN (Mar. 20, 2020), https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html. "It will be nearly impossible to prevent widespread infections inside the Hudson, Bergen, and Essex County jails

> now that the virus is in the facilities because detainees live, sleep, and use the bathroom in close proximity with others, and because '[b]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible.'" Petition ¶ 47 (internal quotation marks and citation omitted).

Basank, et al., v. Decker, et al., 20 Civ. 2518 (S.D.N.Y., Feb. 28, 2020), ECF No. 11.

On March 23, 2020, the Ninth Circuit ordered, *sua sponte* and without further explanation, the release of an immigration detainee "[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers." *Xochihua-Jaimes v. Barr*, 2020 WL 1429877, No. 18-71460 (9th Cir. Mar. 23, 2020).

On March 23, 2020, Hernandez filed a petition for a writ of *habeas corpus*, pursuant to 28 U.S.C. § 2241. Hernandez's petition sets forth one claim – in light of the recent COVID-19 pandemic, the conditions of his confinement are, now, unconstitutional.

Hernandez's *habeas* petition and the relief it seeks from this Court are not barred by the fact that he might be subject to mandatory detention pursuant to INA § 236(c). *See Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011). While the INA does restrict jurisdiction in federal courts for certain claims, it does not restrict *habeas* jurisdiction for petitions that raise constitutional claims. *See Singh*, 638 F.3d at 1202.

Hernandez, now, moves for a temporary restraining order for his immediate release from Adelanto.

Hernandez is entitled to a temporary restraining order if he shows: (1) A likelihood of success on the merits; (2) That he is likely to suffer irreparable harm in the absence of relief; (3) The balance of equities tip in his favor; and (4) An injunction is in the public's interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's sliding scale approach, a stronger showing of one

element may offset a weaker showing of another. *See Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012). Accordingly, Hernandez is entitled to a temporary restraining order if "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [his] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

When the Government detains a person for the violation of an immigration law, the person is a civil detainee, even if he has a prior criminal conviction. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As a civil detainee, Hernandez is entitled to more considerate treatment than criminal detainees, whose conditions of confinement are designed to punish. *See Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982). Moreover, under the Fifth Amendment's Due Process Clause, a civil detainee cannot be subjected to conditions that amount to punishment. *See King v. Cty. of L.A.*, 885 F.3d 548, 556-557 (9th Cir. 2018).

When the Government takes a person into custody and detains him against his will, the Constitution imposes upon the Government a duty to assume responsibility for that detainee's safety and general well being. *See Helling v. McKinney*, 509 U.S. 25, 32 (1993). Under the Eighth Amendment, the Government must provide criminal detainees with basic human needs, including reasonable safety. *Helling*, 509 U.S. at 32. The Government violates the Eighth Amendment if it confines a criminal detainee in unsafe conditions. *See Helling*, 509 U.S. at 33. Moreover, the Government may not "ignore a condition of confinement that is sure or very likely to cause serious illness." *See Helling*, 509 U.S. at 32.

A civil detainee's constitutional rights are violated if a condition of his confinement places him at substantial risk of suffering serious harm, such as the harm caused by a pandemic. *See Smith v, Wash.*, 781 F. App'x. 595, 588 (9th Cir. 2019). At a minimum, here, the Government owes a duty to Hernandez, as a civil immigration detainee, to reasonably abate known risks. *See Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016). Inadequate health and safety measures at a detention center

cause cognizable harm to every detainee at that center. *See Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014).

Here, Hernandez argued that the conditions at Adelanto expose him to a substantial risk of suffering serious harm – increasing his exposure to or contracting COVID-19. When the Government detains a person, thereby taking custody of that person, it creates a special relationship wherein the Government assumes responsibility for that detainee's safety and well-being. *See, e.g., Henry A. v. Willden*, 678 F.3d 991, 998 (9th Cir. 2012). If the Government fails to provide for a detainee's basic human needs, including medical care and reasonable safety, the Due Process Clause is violated. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989). Indeed, the Due Process Clause mandates that civil immigration detainees are entitled to more than minimal human necessities. *See Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). At a minimum, here, the Government owes a duty to Hernandez, as a civil immigration detainee, to reasonably abate known risks. *See Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016). Inadequate health and safety measures at a detention center cause cognizable harm to every detainee at that center. *See Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014).

In its opposition brief, the Government set forth the United States Attorney General's discretionary right to detain an alien in removal proceedings prior to a final order of removal. *See* 8 U.S.C. § 1226. Indeed, the Attorney General has the discretion to either: (1) Detain the person without bond or (2) Release the person on a bond of at least $1,500.00 or on conditional parole. 8 U.S.C. § 1226(a). In making the initial bond determination, a BICE officer must assesses whether the person has "demonstrate[d]" that "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If the BICE officer determines that release, with or without bond, is not appropriate, then the person may appeal to an Immigration Judge. 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d)(1). The Immigration Judge's decision, then, would be appealable to the

Board of Immigration Appeals. 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38.

However, because Hernandez, here, has asserted a claim for violations of his Fifth Amendment substantive due process rights, and those claims exceed the jurisdictional limits of the Immigration Court and the Board of Immigration Appeals, he need not first exhaust his administrative remedies. *Garcia-Ramirez v. Gonzales*, 423 F.3d 935, 938 (9th Cir. 2005).

The Government argued that Hernandez lacks standing because he cannot establish that he would suffer a concrete, non-hypothetical injury absent a temporary restraining order in that his likelihood of contracting COVID-19 is speculative. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

However, it is clear that "[a] remedy for unsafe conditions need not await a tragic event." *Helling*, 509 U.S. at 33. The Government cannot be "deliberately indifferent to the exposure of [prisoners] to a serious, communicable disease on the ground that the complaining [prisoner] shows no serious current symptoms." *Helling*, 509 U.S. at 33. "That the Eighth Amendment protects against future harm to inmates is not a novel proposition." *Helling*, 509 U.S. at 33. The Supreme Court clearly stated that "… the Eighth Amendment protects [prisoners] against sufficiently imminent dangers as well as current unnecessary and wanton infliction of pain and suffering…" *Helling*, 509 U.S. at 33. Indeed, the Court concluded that where prisoners in punitive isolation were crowded into cells and some of them had infectious maladies, "… the Eighth Amendment required a remedy, even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed." *Helling*, 509 U.S. at 33. Civil detainees are entitled to greater liberty protections than individuals detained under criminal processes. *See Jones*, 393 F.3d at 932.

In its *amicus* brief filed in *Helling*, the Government stated that it "… recognizes that there may be situations in which exposure to toxic or similar substances would present a risk of sufficient likelihood or magnitude – and in which there is a sufficiently

broad consensus that exposure of *anyone* to the substance should therefore be prevented – that the [Eighth] [A]mendment's protection would be available even though the effects of exposure might not be manifested for some time." *Helling*, 509 U.S. at 34. The Government, here, cannot say, with any degree of certainty, that no one – staff or detainee – at Adelanto has not been, or will not be, infected with the coronavirus. The science is well established – infected, asymptomatic carriers of the coronavirus are highly contagious. Moreover, Hernandez, presently, is suffering from a condition of confinement that takes away, *inter alia*, his ability to socially distance. The Government cannot be deliberately indifferent to Hernandez's potential exposure to a serious, communicable disease on the ground that he is not, now, infected or showing current symptoms. *See Helling*, 509 U.S. at 32.

It is "cruel and unusual punishment to hold convicted criminals in unsafe conditions." *Helling*, 509 U.S. at 33. The Eighth Amendment is violated when a condition of a criminal detainee's confinement puts him at substantial risk of suffering serious harm and that the condition causes suffering inconsistent with contemporary standards of human decency. *See Smith v. Wash.*, 781 F. App'x. 595, 597-598 (9th Cir. 2019). However, a civil detainee seeking to establish that the conditions of his confinement are unconstitutional need only show that his conditions of confinement "put [him] at substantial risk of suffering serious harm." *See Smith*, 781 F. App'x. 597-598. Here, BICE cannot be deliberately indifferent to the potential exposure of civil detainees to a serious, communicable disease on the ground that the complaining detainee shows no serious current symptoms, or ignore a condition of confinement that is more than very likely to cause a serious illness. *See Helling*, 509 U.S. at 32.

Under the Due Process Clause, a civil detainee cannot be subject to the current conditions of confinement at Adelanto. The Supreme Court has acknowledged that it has "… great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may 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." *Helling*, 509 U.S. at 33

The Government, here, argued that Hernandez may not challenge the conditions of his confinement through a *habeas* petition. Rather, according to the Government, he may proceed only by way of a civil claim under 42 U.S.C. § 1983, and that the only appropriate remedies under § 1983 are a judicially mandated change to the conditions of confinement and money damages. The Government's argument is misplaced.

In discussing the relationship between a *habeas* petition and a § 1983 claim, the Supreme Court explained that a *habeas* petition is the appropriate avenue for a detainee to attack the validity of the fact, or length, of confinement, with a potential remedy of immediate release; whereas, a § 1983 claim is the appropriate avenue for a detainee to attack something other than the fact, or length, of confinement, with a potential remedy of a policy change and/or money damages. *See Prieser v. Rodriguez*, 441 U.S. 475, 494 (1973). Typically, conditions of confinement claims are raised by criminal detainees while serving their criminal sentences. Consequently, immediate release based on the conditions of confinement would not be appropriate, as that would circumvent their criminal sentences. But, Hernandez is a civil detainee. Thus, it is appropriate for him to proceed by way of a *habeas* petition because he challenges the validity of his confinement and seeks his immediate release.

As the Court writes this order, the number of confirmed COVID-19 cases in the United States has already exceeded the number of confirmed cases in every other country on this planet. Indeed, all of the experts and political leaders agree that the number of confirmed cases in the United States will only increase in the days and weeks ahead. The number of cases in the United States has yet to peak. In San Bernardino County, the number of confirmed cases, there, has more than tripled over the past week.

The risk that Hernandez will flee is minimal given the current global pandemic, his ties to the community, and his pending appeal before the BIA. Further, Hernandez should be aware that if he is ordered released and, then, flees or violates any federal,

state or local criminal law, it will have a dire impact on his pending BIA appeal and all further proceedings in this case.

Civil detainees must be protected by the Government. Hernandez has not been protected. He is not kept at least 6 feet apart from others at all times. He has been put into a situation where he has been forced to touch surfaces touched by other detainees, such as with common sinks, toilets and showers. Moreover, the Government cannot deny the fact that the risk of infection in immigration detention facilities – and jails – is particularly high if an asymptomatic guard, or other employee, enters a facility. While social visits have been discontinued at Adelanto, the rotation of guards and other staff continues.

Accordingly, Hernandez has established that there is more than a mere likelihood of his success on the merits for his first claim, which is based on his Due Process rights. *See Winter*, 555 U.S. at 20.

Hernandez has established that he is likely to suffer irreparable harm in the absence of relief. *See Winter*, 555 U.S. at 20. It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury. *See Hernanez v. Session*, 872 F.3d 976, 994 (9th Cir. 2017).

The balance of the equities tip sharply in his favor. Hernandez faces irreparable harm to his constitutional rights and health. Indeed, there is no harm to the Government when a court prevents the Government from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Finally, the emergency injunctive relief sought, here, is absolutely in the public's est interest. The public has a critical interest in preventing the further spread of the coronavirus. An outbreak at Adelanto would, further, endanger all of us – Adelanto detainees, Adelanto employees, residents of San Bernardino County, residents of the State of California, and our nation as a whole.

This is an unprecedented time in our nation's history, filled with uncertainty, fear, and anxiety. But in the time of a crisis, our response to those at particularly high

risk must be with compassion and not apathy. The Government cannot act with a callous disregard for the safety of our fellow human beings.

Accordingly,

It is Ordered that the application for a temporary restraining order be, and hereby is, **Granted**.

It is further Ordered that Respondents shall, by 5:00 p.m. on April 2, 2020, release Petitioner Enrique Francisco Hernandez from custody pending further order of this Court, and subject to the following conditions of release:

1. Petitioner shall reside, and shelter in place, at the residence of Maria Victoria de Ortiz, 2765 Bula Court, Altadena, California 91001 ["the Residence"];
2. Petitioner shall be transported from the Adelanto Detention Center directly to the Residence by Maria Victoria de Ortiz;
3. Petitioner shall not leave the Residence, pending further order of the Court, except to obtain medical care;
4. Petitioner shall not violate any federal, state or local laws;
5. Petitioner shall not use or posses illegal drugs; and
6. At the discretion of DHS and/or BICE, to enforce the above restrictions, Petitioner's whereabouts may be monitored by telephonic and/or electronic and/or GPS monitoring and/or a location verification system and/or an automated identification system. If necessary to comply with the permitted monitoring, Petitioner shall ensure the presence of a residential telephone line without devices and/or services which may interrupt operation of any monitoring equipment.

It is further Ordered that Respondents shall show cause, if they have any, as to why the Court should not issue a preliminary injunction in this case. Respondents' response, if any, to this order to show cause shall be filed by Noon on April 6, 2020. Hernandez's reply, if any, to Respondents' response shall be filed by Noon on April 9, 2020. The matter will then stand submitted.

Date: April 1, 2020

Terry J. Hatter, Jr.
Senior United States District Judge

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF THOMAS RAGLAND

Before The Honorable Jesus G. Bernal
Hearing Date: April 13, 2020
Hearing Time: 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Thomas Ragland, ECF No. 81-2, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. I represent a 63-year-old asylum seeker who is currently detained at the Adelanto Detention Facility ("Adelanto") in Adelanto, California. My client was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") in June 2019. He is not subject to mandatory detention. In July 2019, an Immigration Judge ("IJ") at the Adelanto Immigration Court denied my client's motion for release on bond under INA §236(a), despite finding that he poses no danger to the community, on the ground that he poses a flight risk. On behalf of my client, I filed a timely appeal with the Board of Immigration Appeals ("BIA"). In February 2020, the BIA sustained our appeal and remanded my client's case to the Adelanto Immigration Court for a new bond hearing. Declaration of Thomas Ragland ("Ragland Decl.") ¶ 2.	FRE 401, 402: The immigration proceedings of a non-party are irrelevant. Plaintiffs do not cite this declaration anywhere in their Motion for Preliminary Injunction, and therefore, they have not established its relevance.
3. On March 12, 2020, the Adelanto Immigration Court issued a notice informing me that my client had been scheduled for a bond hearing on March 19, 2020. Ragland Decl. ¶ 3.	FRE 401, 402: The immigration proceedings of a non-party are irrelevant.
4. On March 13, 2020, following discussions with the ICE counsel assigned to my client's case, we agreed upon stipulated terms for my client's release from custody: posting of a $30,000 bond and GPS electronic monitoring via an ankle bracelet. Ragland Decl. ¶ 4.	FRE 401, 402: The immigration proceedings of a non-party are irrelevant.

5. On March 19, 2020, I appeared for a telephonic bond hearing before the IJ. ICE counsel was also present. The IJ informed me that he could not proceed with my client's bond hearing because he did not have the case file. He stated further that my client had been quarantined, for a reason unknown to him, and therefore was not present in the court. He stated that the bond hearing would thus have to be rescheduled. According to the IJ, to his knowledge the reason for the quarantine was not suspected coronavirus exposure, but he did not know why my client had been quarantined. Ragland Decl. ¶ 5.	FRE 802: Hearsay; FRE 401, 402: The immigration proceedings of a non-party are irrelevant.
6. I informed the IJ that we had reached an agreement with opposing counsel on stipulated terms for my client's release. The IJ said he understood, but would not render a bond decision – notwithstanding the parties' stipulated agreement – without first reviewing the bond file, which he did not have before him. He stated further that my client could not be released for at least 2 weeks or 30 days in any event, due to quarantine policy at the Adelanto Detention Center. Ragland Decl. ¶ 6.	FRE 802: Hearsay; FRE 401, 402: The immigration proceedings of a non-party are irrelevant.
7. The IJ stated that the earliest date on which he could conduct a bond hearing, when my client would be eligible for release from quarantine, is April 14, 2020 at 1:00 p.m. Ragland Decl. ¶ 7.	FRE 802: Hearsay; FRE 401, 402: The immigration proceedings of a non-party are irrelevant.
9. The IJ was adamant that my client could not be released, as a matter of Adelanto Detention Facility policy, so long as he is in quarantine. The IJ remarked that my client "is probably safer in here than he would be on the outside."	FRE 802: Hearsay

Ragland Decl. ¶ 9.	
10. On March 20, 2020, I spoke with my client by telephone and asked him about the quarantine. He stated that he himself is not ill. Rather, the quarantine was instituted because, to his knowledge, someone at the facility complained of stomach pains. He said that he is confined with a group of approximately 80 inmates—none of whom appear to my client to be ill—and they are not permitted to interact with other detainees. They are not permitted to use spaces that were previously considered common spaces, like the cafeteria. He stated that he is residing in close quarters with four other individuals. He also said that no nurses or doctors have visited the facility to perform check-ups on the individuals with whom he is quarantined. Ragland Decl. ¶ 10.	FRE 802: Hearsay

Dated: April 3, 2020

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

WILLIAM C. PEACHEY
Director

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF MIKHAIL SOLOMONOV

Before The Honorable Jesus G. Bernal
Hearing Date: April 13, 2020
Hearing Time: 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Mikhail Solomonov, ECF No. 81-3, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. In my opinion, based on my medical training, the screening process they described is insufficient because it does not account for asymptomatic people. Declaration of Mikhail Solomonov ("Solomonov Decl.") ¶ 5.	FRE 701: Improper lay opinion; FRE 702: Testimony is improper as declarant has not demonstrated he is qualified as an expert by knowledge, skill, experience, training, or education to render this opinion.
2. Some told me that they had come to a jail where someone had symptoms, but had not been tested. They had their temperature taken and filled out a questionnaire. Solomonov Decl. ¶ 6.	FRE 602: Lack of personal knowledge, foundation, speculation; FRE 802: Hearsay.
3. I have filed multiple complaints with GEO about the inadequate procedures and protections for COVID-19 based on my medical training and experiences. Solomonov Decl. ¶ 9.	FRE 701: Improper lay opinion; FRE 702: Testimony is improper as declarant has not demonstrated he is qualified as an expert by knowledge, skill, experience, training, or education to render this opinion.
4. On March 20, 2020, a lieutenant and male nurse came to see us again. They told us we have no coronavirus cases in the facility, told us to wash our hands, and told us about the booklet. I brought up that they brought in new people from a jail and that they should stop bringing in new people to the dorm. They told me that they were screening people by taking temperature and doing a screening questionnaire. I reiterated my earlier complaint that this is not enough to protect us. Solomonov Decl. ¶ 11.	FRE 701: Improper lay opinion; FRE 702: Testimony is improper as declarant has not demonstrated he is qualified as an expert by knowledge, skill, experience, training, or education to render this opinion.

Dated: April 3, 2020

Respectfully submitted,

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CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF MAUREEN A. SWEENEY, ESQ.

Before The Honorable Jesus G. Bernal
Hearing Date: April 13, 2020
Hearing Time: 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Maureen A. Sweeney, Esq., ECF No. 81-4, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. ICE agents detained our client when he appeared at his master calendar hearing, informing him and us that the client was subject to mandatory detention. Our client did, in fact, fall within the terms of §1226(c), but after they detained him, ICE agents chose to exercise their discretion to release him for medical reasons. When the agents realized the seriousness of our client's medical conditions and the risk created by his detention, they decided to release him that same day on his own recognizance. Declaration of Maureen A. Sweeney ("Sweeney Decl.") ¶ 4.	FRE 602: Speculation.

Dated: April 3, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF LINDA CORCHADO

Before The Honorable Jesus G. Bernal
Hearing Date: April 13, 2020
Hearing Time: 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Linda Corchado, ECF No. 81-5, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. Another client detained in South Louisiana told me they have no access to soap, hand sanitizer, that the guards had run out of gloves and toilet paper is extremely limited and that multiple people in her barrack were coughing. Declaration of Linda Corchado ("Corchado Decl.") ¶ 10.	FRE 802: Hearsay.
2. One HIV positive woman was still working in the kitchen up until March 20, 2020. Corchado Decl. ¶ 11.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
3. HIV positive, and otherwise immunocompromised, clients are being transferred through various detention centers (that means getting on and off multiple buses and flights). For example, 4 clients (2 HIV positive) are scheduled to be transferred into a detention facility where an HIV positive woman has already been exposed to COVID19 in court. Corchado Decl. ¶ 12.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
4. We have multiple cases of individuals who are parole-eligible and have family in the U.S. and ICE is refusing to even adjudicate paroles (several have been pending for 3 weeks.) Corchado Decl. ¶ 13.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation.
5. Other legal calls are held from "processing" where guards are supposedly "out of earshot" but can be heard in the background – we had one client tell us she didn't feel comfortable	FRE 802: Hearsay.

talking on the phone at all during the legal call. Corchado Decl. ¶ 14.	
6. A member of my team asked a guard at EPPC on 3/17/2020 about COVID protocols and he told them that they had not received any special training on how to keep themselves or detained individuals safe during the pandemic, and then said "if it happens, it happens." Corchado Decl. ¶ 16.	FRE 802: Hearsay.
7. We have received a number of disturbing complaints coming from clients in the Joe Corley Detention Facility in Conroe, Texas, which seems to be stemming from concerns (or lack thereof) regarding coronavirus. In addition to ICE's failure to provide medical treatment for each of these medically vulnerable clients generally, to my knowledge, they also have not conducted any evaluation of their underlying health conditions to determine whether any additional precautionary measures should be taken to protect them from COVID-19. Corchado Decl. ¶ 17.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation; FRE 802: Hearsay.
8. Client 1: There was a three-day long strike among cafeteria workers regarding lack of precautions taken for COVID-19. During those three days, access to food was disrupted. His third night at the facility, he suffered an epileptic seizure. The facility is only giving him epilepsy medication every other day. Corchado Decl. ¶ 18.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.
9. Client 2 reports that there are three people in his barracks that are sick with what seems like the flu but might be COVID-19. All three have requested to be sent into medical, and all three have been denied.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay

Corchado Decl. ¶ 19.	
10. Client 3 has asthma and has not received an inhaler. He had an asthma attack 5 days go, which he credits to the crowded confinement, musty air, and poor conditions. Corchado Decl. ¶ 20.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay
11. All clients inform us that Conroe places 36 people in each barrack. At such close proximity, they are at extreme risk of contracting COVID-19. As previously stated, people displaying symptoms of coronavirus, and people who have conditions that put them at higher risk for contracting and suffering deadly consequences from COVID-19, are not being taken to medical. This seems like an intentional abandonment of responsibility and is impermissibly reckless. Corchado Decl. ¶ 22.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation; FRE 802: Hearsay
12. Deportation Officers have explicitly told all but one of our clients in Conroe that they will not consider their paroles because they were formerly in MPP and not parole eligible. Corchado Decl. ¶ 23.	FRE 802: Hearsay.

Dated: April 3, 2020

Respectfully submitted,

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Assistant Attorney General

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Director

JEFFREY S. ROBINS
Deputy Director

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF LAURA G. RIVERA, ESQ.

Before The Honorable Jesus G. Bernal
Hearing Date: April 13, 2020
Hearing Time: 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Laura G. Rivera, Esq., ECF No. 81-6, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. What SIFI staff have personally witnessed and learned in conversation with detained individuals reveals a grossly deficient response by government officials and private contractors to stem the spread of the virus inside these detention centers. Declaration of Laura G. Rivera ("Rivera Decl.") ¶ 4.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation; FRE 802: Hearsay.
2. On March 16, 2020—well after public health authorities had declared the novel coronavirus a global pandemic—a SIFI staff member conducted in-person visitation with five individuals inside Pine Prairie. As a condition to visitation, she was required to submit to a temperature check and to sign paperwork stating that she had not traveled out of the country and that she did not have physical symptoms. She was permitted to wear her own mask and gloves into the visitation area. None of the GEO Group staff or detained people wore masks or gloves. Rivera Decl. ¶ 6.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
3. Visitation at Pine Prairie is contact visitation only. The SIFI staff member was seated at a table about six feet from those she visited. The five individuals she visited independently gave her a consistent message: none had received any information about the coronavirus. They also mentioned lacking access to hand soap. When she asked them whether the GEO Group staff had changed any protocols in response to the pandemic, they said their conditions have not changed in	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.

any noticeable way. The five individuals had engaged in a hunger strike and had been subjected to solitary confinement. Three of them independently told her that while segregated inside one- or two-person cells, they were not given water to drink for almost a week, and they were forced to drink water from the toilet. Rivera Decl. ¶ 7.	
4. On March 18, 2020, the same staff member conducted legal visitation by video teleconference with a man inside Pine Prairie. The man was wearing a mask and gloves. He told her that he and roughly sixty others inside his housing unit, Charlie Alpha, were under quarantine. Guards had told those in Charlie Alpha that someone inside that unit was suspected of having COVID-19. The suspected COVID-19 carrier had been removed from the Charlie Alpha unit. Everyone else remained inside Charlie Alpha. He told her that detained people inside Charlie Alpha were responsible for cleaning their own unit. They had access to some chemicals to clean with. However, they had no access to hand soap or hand sanitizer, only the soap given to them for showers. The GEO Group guards had not taken any measures to space people out inside the unit. Rivera Decl. ¶ 8.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.
5. The next day, on March 19, 2020, a different person inside Pine Prairie contacted SIFI to seek legal assistance. The caller said he had received some information about the coronavirus through the use of a tablet device. He said those in his unit were receiving hygiene supplies every two days. He reported that two people with symptoms of coughing, fever, or shortness of breath had been removed from his unit. Rivera Decl. ¶ 9.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.

6. The following day, March 20, 2020, a SIFI staff member conducted in-person visitation at Pine Prairie with five individuals from the quarantined Charlie Alpha unit. Upon entering the detention center, she signed a form stating that she was not symptomatic and had not been exposed to COVID-19 or traveled to high risk areas. Her temperature was not checked. Some staff wore masks; others did not. As before, she sat at a six-foot table in the visitation area. Because the table is located in a common area, the visits were not private or confidential. The five men from the quarantine unit wore masks but no gloves. As they waited in the common area, they sat alongside other detained people awaiting visitation who did not have masks or gloves. They told her that they were only given masks when they left the dorm, not while they were inside of it. They also told her that detained individuals are still cleaning the dorms, and they are given neither masks nor gloves. Guards and ICE agents sometimes wear masks and gloves when they enter Charlie Alpha and sometimes do not. Several of them also reported to her that ICE continues to bring new people into confinement at Pine Prairie. It is putting those new people into the Charlie Alpha unit, a known high-risk unit. Rivera Decl. ¶ 10.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.
7. On March 19, 2020, SIFI staff also received a call from a person confined inside LaSalle, another detention center operated by private prison contractor GEO Group. The caller complained of having a fever, chest pain, difficulty breathing while trying to sleep, and of coughing blood. He reported having been tested for the flu and having returned a negative result; however, to his knowledge, he had not been tested for coronavirus. The only treatment he reported receiving inside LaSalle was	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.

ibuprofen, syrup, and salt, which had not helped. He reported sharing a unit, HD, with others who had symptoms of coughing, fever, or shortness of breath. None had been removed from the unit. New people were being brought into the unit. GEO Group staff were not routinely using gloves. He reported that a different housing unit, OD, had been quarantined earlier for two to three weeks. His understanding was that some individuals inside that unit had been infected with the common flu. Rivera Decl. ¶ 11.	
8. Two other callers confined inside LaSalle, both women, reported suffering from health problems. Both said that neither ICE nor GEO Group guards had told them anything about the coronavirus. One caller reported having asthma, thyroid problems, and liver problems; the other reported having high blood pressure. Rivera Decl. ¶ 12.	FRE 802: Hearsay.
9. On March 20, 2020, the New Orleans ICE Field Office denied release on parole to two SIFI clients with medical complications who are confined inside LaSalle. The clients, asylum seekers, have both engaged in a hunger strike for more than 120 days. Their frustration with the delay and process of their asylum cases led them to engage in a hunger strike. Despite evidence from a leading medical expert in detainee health, Dr. Allen Keller, that they are medically vulnerable, and strong evidence that the individuals pose no risk to public safety and no flight risk, ICE denied their parole requests a second time. The clients told a SIFI attorney that they would likely be force fed with nasogastric tubes yesterday or today. Given the available data on the high rates of transmission of the novel coronavirus and the most likely method of transmission through	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.

the mucosa, force feeding medically fragile individuals inside likely contaminated detention center medical wings may compound their risk of infection. Rivera Decl. ¶ 13.	
10. That month, an ICE official told his SIFI attorney that the parole request remained under review, reassuring her that the facility had appropriate medical resources to manage his medical condition. In early 2020, he was transferred to Stewart and placed in solitary confinement in the medical unit, where he spent ten days with the lights on 24 hours a day and with air-conditioning on full blast. In February 2020, SIFI staff contacted ICE about his case, and was told the August 2019 parole request was still pending; ICE agents then resubmitted the parole request to the region's ICE field office headquarters in Atlanta. Concerned about the potential impact that contracting COVID-19 could have on this client, the SIFI attorney pressed ICE on this man's case on March 17 and 18, 2020, only to be told that the parole request was still pending. Rivera Decl. ¶ 15.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.
11. Another disturbing trend in ICE parole adjudication relates to a rash of denials of parole to asylum seekers who have passed their initial fear interview, based on differing interpretations of current law among individual ICE adjudicators. The denials have concerned individuals who—due to the third-country transit ban—have received positive *reasonable fear* but not *credible fear* findings. Despite no binding law articulating such restrictions, some ICE adjudicators have interpreted the law to forbid grants of parole to such individuals. With thousands of asylum seekers subject to the third-country transit ban, such an arbitrary restriction could foreclose parole to	FRE 602: Lack of personal knowledge, speculation.

untold people in ICE custody with special medical vulnerabilities. Rivera Decl. ¶ 16.	
12. In Georgia, reports from people confined inside Irwin reveal a lack of access to information about the coronavirus and a growing threat of contagion. A kitchen worker who contacted SIFI staff yesterday reported that there were confirmed cases of COVID-19 inside the facility and that it was under quarantine. In terms of precautions, the only one he reported was that he and other kitchen workers have been instructed to replace plastic ware with paper plates. The man, who suffers from diabetes and high blood pressure, expressed concern that he would be at higher risk of contracting the virus and experiencing respiratory complications. He requested SIFI's assistance in obtaining release from custody to avert becoming infected. Rivera Decl. ¶ 17.	FRE 802: Hearsay.
13. A caller from Irwin on March 19, 2020 reported that he suffered from high blood pressure and that he had stopped receiving medication for it. Neither ICE nor guards had given him any information about coronavirus. At least one person inside his housing unit was coughing, and the cough was worsening, but that person had not as yet been removed from his housing unit. Rivera Decl. ¶ 18.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.
14. Requirements for in-person legal visitation inside Folkston, another detention center operated by GEO Group, seem to mirror those at Pine Prairie. A SIFI attorney who visited individuals inside both wings of the detention center on March 16, 2020 was required to undergo a temperature check and to sign a form affirming several things: that she had not been experiencing symptoms, traveled	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.

outside the United States, traveled to China or any other affected area, or had contact with anyone who has traveled outside of the United States within fourteen days. She was told that persons who answered yes to any of these questions, or had a fever greater than 100.4 degrees Fahrenheit, would not be allowed to conduct legal visitation unless the warden approved it. She was permitted to bring her own gloves and disinfectant wipes into the visitation area. Rivera Decl. ¶ 19.	
15. That day, the SIFI attorney observed an ICE officer walk into the facility from the parking lot and deliver a box with a thermometer to the front entry staff. The ICE officer said he had driven to different drugstores to find thermometers because they were sold out. The SIFI attorney took this to mean that ICE headquarters had not supplied the facility with sufficient thermometers to meet the facility's needs. Rivera Decl. ¶ 20.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.
16. Two individuals confined inside Folkston contacted SIFI to seek legal services on March 19, 2020. One of the callers reported that neither ICE nor guards had given him any information about the coronavirus, and that he lacked access to soap and hand sanitizer. He reported that there was at least one person inside of his housing unit who had symptoms like coughing, fever, or shortness of breath; this person had not been removed from the caller's housing unit as of the time of his call. He reported delays in receiving medical attention, including waits of five to six days to see medical staff after initiating a request. The other caller reported feeling sick due to the lack of ventilation inside the detention center. He reported being aware of the coronavirus outbreak, and expressed fear of contracting the virus	FRE 802: Hearsay.

because he thought the detention center most likely would not provide proper medical treatment. Rivera Decl. ¶ 21.	
17. A SIFI attorney who has visited the facility in the past week reported that people entering Stewart were not required to submit to temperature checks or pass any screening. Some but not all CoreCivic staff wore gloves; no staff wore masks. The SIFI attorney saw no change in the volume of staff traffic in and out of the facility. When she asked a CoreCivic staff member whether staff considered vulnerable could stay home, the CoreCivic staff member responded that she knew nothing about that. For legal visitation, which is non-contact, CoreCivic staff wiped down both sides of the visitation room before the visits began, but not between visits; the SIFI attorney once saw CoreCivic staff give wipes to a client to take into his side of the visitation room. The SIFI attorney was allowed to bring her own gloves, disinfectant wipes, and hand sanitizer. Rivera Decl. ¶ 22.	FRE 602: Lack of personal knowledge, failure to lay proper foundation; FRE 802: Hearsay.
18. Seven people confined inside Stewart called SIFI to seek services on March 19, 2020. Only one reported feeling ill. That caller reported feeling numbness in his left arm and pressure on his chest. None reported instances of cellmates exhibiting symptoms like coughing, fever, or shortness of breath. Most reported having received at least some information about the coronavirus from ICE or guards. A couple reported seeking signs about coronavirus posted inside the facility; two also reported having been told to wash their hands often. All reported having access to soap. Rivera Decl. ¶ 23.	FRE 802: Hearsay.

Dated: April 3, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF KEREN ZWICK

Before The Honorable Jesus G. Bernal
Hearing Date: April 13, 2020
Hearing Time: 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Keren Zwick, ECF No. 81-7, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. Across the board, NIJC clients express a palpable fear at the vulnerability they face while remaining in detention during the COVID-19 pandemic. They are worried not only for themselves but for their families with whom they have difficulty communicating outside the detention centers. This fear is exacerbated by a universal perception that little to nothing has changed in the operation of the detention centers where they are housed since the onset of the pandemic. Our clients also universally report that neither ICE nor facility staff have provided them with meaningful information or education about the pandemic, leaving them to manage their anxieties—and medical issues—with little or no reliable information about what precautionary measures they could be taking. Declaration of Keren Zwick ("Zwick Decl.") ¶ 8.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation. FRE 802: Hearsay.
2. Not one NIJC client in detention reports receiving reliable information or training about what COVID-19 is and precautionary measures that might be taken to halt its spread. Most clients reported that they received no information whatsoever from ICE or facility staff, much less medical staff, about the virus, and were learning what they knew almost exclusively from watching television. Zwick Decl. ¶ 9.	FRE 802: Hearsay.
3. Two clients detained at the Jerome Combs and another client detained at the Aurora Contract Facility reported	FRE 802: Hearsay.

that no one at the facility had communicated directly with them about the virus, but that they learned about the virus from the news. Zwick Decl. ¶ 10.	
4. Another client detained at McHenry reported that he knew about the virus because visitation was cancelled, and an official told him that if one person in detention got in contact with coronavirus, then everyone might be "down for a minute," but if the detainees got sick, they wouldn't let them go to the doctor. Other clients at McHenry confirmed that they learned of the virus only through the television, one noting he was concerned by news reports that people who are incarcerated are at greater risk. Zwick Decl. ¶ 11.	FRE 802: Hearsay.
5. One NIJC client at Pulaski did report that an ICE officer told them about the virus, but this notification appeared to go no further than explaining that detainees are at risk of getting the virus, and that there was a risk that they had already gotten it. The officer, our client reported, told them not to panic. Zwick Decl. ¶ 12.	FRE 802: Hearsay.
6. Two clients in Dodge similarly reported receiving no information about the virus other than through posted signs or what they see on the news. Zwick Decl. ¶ 13.	FRE 802: Hearsay.
7. Learning of the pandemic through the television and correspondence with family and friends on the outside, but without reliable information or training on precautionary measures from staff, leaves our clients in detention with more questions than answers as to how to protect	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation. FRE 802: Hearsay.

themselves and others. One of the men detained at the Jerome Combs who learned of the virus through the news explained that "everyone is anxious" because they have been watching the news and seeing recommendations that people not cluster in groups of 10 or more people, which is impossible at that facility because it houses 48 people per block. Zwick Decl. ¶ 14.	
8. NIJC clients all report that little to nothing has changed since the onset of the COVID-19 pandemic with regard to their access to supplies that would allow them to take precautionary measures to protect their health and the health of others detained with them, such as soap, hand sanitizer, or other cleaning supplies. Zwick Decl. ¶ 15.	FRE 802: Hearsay.
9. One NIJC client at Jerome Combs meets the CDC definition of a person of higher risk for COVID-19 because he suffers from diabetes and high blood pressure. Yet he reports that the facility has not "done much of anything" in response to COVID-19. As far as he has observed, there is no additional presence of medical personnel at the facility, and the staff has not asked him about symptoms at all. He additionally noted that he and other immigrants in detention do not have access to any extra cleaning supplies to keep their living areas sanitized. Zwick Decl. ¶ 16.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation. FRE 802: Hearsay.
10. Across all facilities where NIJC clients are detained, our clients report that they lack ready access to soap and hand sanitizer. Two NIJC clients at McHenry report that they and others in detention do not have access to hand sanitizer or cleaning supplies and can only access soap through the	FRE 802: Hearsay.

commissary, which is unavailable for those lacking funds. Zwick Decl. ¶ 17.	
11. Another NIJC client at Otay Mesa, noted that while he and other immigrants in detention have access to soap they do not always have access to clean water, and have no access to disinfectant or other cleaning supplies, even though their living spaces are very dirty. Zwick Decl. ¶ 18.	FRE 802: Hearsay.

Dated: April 3, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx) **DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF FRANCIS L. CONLIN** **Before The Honorable Jesus G. Bernal** **Hearing Date:** April 13, 2020 **Hearing Time:** 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Francis L. Conlin, ECF No. 81-9, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. Based on FOMDD's knowledge and understanding, ICE and its contractors have not effectively disseminated vital information about COVID-19 to individuals in the following detention centers: Krome, BTC, and Glades. The lack of information has heightened fear and anxiety amongst the detained populations and led to a rampant spread of unverified information throughout all three facilities. FOMDD has heard from several detained individuals about their increased anxiety and fear that COVID-19 will spread throughout the facilities. The only education that detained individuals have received on COVID-19 has been informative flyers posted at Krome. Declaration of Francis L. Conlin ("Conlin Decl.") ¶ 5.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
2. Based on FOMDD's knowledge and understanding, there has been no material change in protocols or procedures in place in light of COVID-19 at Krome, BTC, or Glades. Conlin Decl. ¶ 6.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
3. At all three facilities, we have heard that staff are wearing surgical masks,	FRE 802: Hearsay.

but surgical masks have not been provided to the detained population. Detained individuals at all three facilities report not being provided extra soap, extra cleaning supplies, or hand sanitizer. Conlin. Decl. ¶ 7.	
4. FOMDD has heard reports from people detained at Krome that guards are reluctant to report to work for fear they will not be allowed to leave, and for their own well-being and safety. We heard there had been a decrease in contracted staff to a "skeleton crew" that would potentially stay on-site 24/7. Conlin. Decl. ¶ 8.	FRE 802: Hearsay.
5. Detained individuals from all three detention centers report being sick or witnessing other people with coughs, chills, fevers, and other symptoms and report that they were receiving minimal to no medical treatment Conlin. Decl. ¶ 10.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
6. One individual with a work assignment that requires being in contact with the food trays reported feeling ill. He went to the medical unit to report his illness and was not provided with adequate medical care. He ultimately decided not to continue his work assignment because he was afraid to expose other detained individuals to his illness, and he was not being provided with extra sanitizing materials. Conlin. Decl. ¶ 11.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.

7. The quarantines in place result in a large number of individuals being placed together in a crowded and cramped area without space necessary for social distancing. The quarantines combined with the lack of information that ICE and its contractors at both Glades and Krome have failed to provide resulted in detained individuals contacting FOMDD to tell us that there are several cases of COVID-19 at the two facilities. Conlin. Decl. ¶ 12.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
8. Individuals are not being screened or getting their temperature checked before being transferred. Conlin. Decl. ¶ 13.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
9. FOMDD has heard from detained individuals that Krome, BTC, and Glades continue to accept dozens of new transfers into the facilities' custody with only cursory screening. Conlin. Decl. ¶ 14.	FRE 802: Hearsay.
10. FOMDD is aware of dozens of people detained at Krome, Glades, and BTC who are elderly or immunocompromised due to diabetes, high blood pressure, and other underlying medical conditions that put them at high risk of contracting and suffering deadly consequences from COVID-19. Conlin. Decl. ¶ 15.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.

Dated: April 3, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF CARLOS FRANCO-PAREDES

Before The Honorable Jesus G. Bernal
Hearing Date: April 13, 2020
Hearing Time: 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Carlos Franco Paredes, ECF No. 81-12 filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. I have experience providing care to individuals in a civil detention center and have performed approximately two medical forensic examinations and fifteen medical second opinion evaluations for patients in the custody of the Department of Homeland Security (DHS). Based on my conversations with patients, my own observations, and information that exists regarding the resources available within immigration detention facilities as detailed by the ICE Health Services Corps, it is my professional opinion that the medical care available in DHS custody cannot properly accommodate the needs of patients should there be an outbreak of COVID-19 in an immigration detention facility. The physical and emotional trauma that detainees and asylum seekers experience can weaken their immune systems, resulting in increased risk of severe manifestations of infections. For example cases of influenza virus infections causing pneumonia and respiratory failure, -albeit influenza infection is not as communicable and not transmitted during asymptomatic infection as it is the case with SARS-CoV-2 -, has caused human deaths inside immigration detention centers. Declaration of Carlos Franco-Paredes ("Franco Paredes Decl."), 1-2.	FRE 401, 402, 403: ICE's treatment of individuals other than those identified in the petition is irrelevant.

2. A large outbreak of COVID-19 in an immigration detention facility would put a tremendous strain on the medical system to the detriment of patients in the communities surrounding these centers. It is reasonable to anticipate that there will be the loss of additional lives that could have otherwise been saved. Franco-Paredes Decl., 8.	FRE 602: Declarant's testimony regarding current immigration detention facility procedures are speculative and lack personal knowledge and foundation.

Dated: April 3, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx) **DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF ANNE RIOS** **Before The Honorable Jesus G. Bernal** **Hearing Date:** April 13, 2020 **Hearing Time:** 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Anne Rios, ECF No. 81-13, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. From March 13, 2020 until March 17, 2020, AOL was unable to schedule bond hearings for our clients detained at Otay Mesa Detention Center ("OMDC") who are eligible for release. Repeatedly, AOL was told that there were no dates available for bond because of the COVID 19 outbreak and that the court staff was determining how to proceed. AOL called the Otay Mesa Immigration Court no less than seven times to try and schedule bond hearings for clients in custody. Each time AOL was told that there were no hearings dates available to be scheduled. Declaration of Anne Rios ("Rios Decl.") ¶ 5.	FRE 401, 402: The immigration proceedings of a non-party are irrelevant.
2. The delay in scheduling bond hearings caused one of AOL's client to be transferred, without notice, to Houston Detention Facility. Rios Decl. ¶ 6.	FRE 602: Lack of personal knowledge, failure to lay proper foundation.
3. The lack of information and communication given to detainees seemed to be heightening anxiety levels. Rios Decl. ¶ 14.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation.

4. Due to quarantine, on March 18, 2020, a bond hearing for an AOL client was canceled. AOL was not informed of the cancellation prior to the hearing and the clerks did not have any additional information. The bond hearing was not rescheduled. The cancellation of the hearing leaves the client without a feasible way to be released from detention. Rios Decl. ¶ 18.	FRE 401, 402: The immigration proceedings of a non-party are irrelevant.

Dated: April 3, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF ANDREW LORENZEN-STRAIT

Before The Honorable Jesus G. Bernal
Hearing Date: April 13, 2020
Hearing Time: 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Lorenzen-Strait, ECF No. 81-14 filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. I submit this declaration to explain how ICE has exercised and still exercises discretion for purposes of releasing both individuals with serious medical conditions and individuals who are vulnerable to medical harm. Exercising prosecutorial discretion over detention was not only common, it was and continues to be an integral aspect of ICE's enforcement. Declaration of Andrew Lorenzen-Strait ("Lorenzen- Strait Decl."), ¶ 3.	FRE 401, 402, 403: ICE's treatment of individuals with "serious medical conditions" other than those identified in the petition is irrelevant; FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.
2. During my time at ICE, the agency's policy and practice was to limit the detention of noncitizens with special vulnerabilities.1 This group includes individuals who are known to be suffering from serious physical or mental illness, who have disabilities, who are elderly, pregnant, or nursing, who demonstrate that they are primary caretakers, who are LGBTI, or whose detention was not in the public interest. Lorenzen- Strait Decl., ¶ 4.	FRE 401, 402, 403: ICE's treatment of individuals with "special vulnerabilities" other than those identified in the petition is irrelevant; FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.
3. ICE exercises its release authority frequently for detainees with serious medical conditions. For instance, pregnant women never give birth in	FRE 401, 402, 403: ICE's treatment of individuals with "serious medical conditions" other than those identified in the petition is irrelevant; FRE 602:

ICE custody because it is common for ICE to release them beforehand. Lorenzen- Strait Decl., ¶ 5.	Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.
4. When I was at ICE, some of the medical conditions that constitute serious physical illness included any terminal illness, any condition that required imminent care to prevent deterioration, and any condition that precluded the individual from being housed, such as cancer requiring chemotherapy or leukemia. Lorenzen- Strait Decl., ¶ 6.	FRE 401, 402, 403: ICE's treatment of individuals with "serious physical illness" other than those illnesses identified in the petition is irrelevant; FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.
5. In addition, under ICE policies, individuals who did not yet have a serious physical illness, but were vulnerable to medical harm were considered for release. When deciding whether to release medically-vulnerable detainees from custody, ICE's determinations considered whether they have any physical or mental condition would make them more susceptible to medical harm while in ICE custody. This could include individuals who were very old, toward the end of their life. Lorenzen- Strait Decl., ¶ 7.	FRE 401, 402, 403: ICE's treatment of individuals with medical vulnerabilities other than those identified in the petition is irrelevant; FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.
6. Under this rubric, ICE would have considered individuals at high risk of suffering complications and/or death if they were to contract a highly infectious and incurable disease such	FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures

as COVID-19 to be detainees with special vulnerabilities, eligible for release from detention. When confronted with an infection disease, ICE would have consulted guidelines from the Center for Disease Control and other medical experts to identify individuals who are at high risk and should be considered for release. Lorenzen- Strait Decl., ¶ 8.	are speculative and lack of personal knowledge and foundation.
7. Upon learning that a detainee had a special vulnerability, ICE was required to monitor the detainee's case and consider options as soon as practicable, including transfer to another detention facility with appropriate medical capabilities, or to an off-site treatment facility, or release where appropriate medical care was not available in custody. Lorenzen- Strait Decl., ¶ 9.	FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.
8. Even individuals held under mandatory detention, pursuant to the Immigration and Nationality Act ("INA") § 236(c), were released pursuant to ICE's guidelines and policies, particularly where the nature of their illness could impose substantial health care costs or the humanitarian equities mitigating against detention were particularly compelling. Lorenzen- Strait Decl., ¶ 11.	FRE 602: Declarant has not been employed with ICE since May 2019, as as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.

9. ICE's policy and practice regarding individuals with special vulnerabilities was reflected in a memorandum from Jeh C. Johnson, Secretary of the Department of Homeland Security, in 2014 ("Johnson memo"). ICE has also issued other guidance for exercising prosecutorial discretion in detention decisions, including a memorandum issued by John P. Torres, Director of ICE, in 2006 regarding ICE's exercise of discretion in cases of extreme or severe medical concern ("Torres memo"), and a memorandum from John Morton, Director of ICE, in 2011 ("Morton memo") regarding the exercise of prosecutorial discretion in ICE's enforcement priorities, including detention. Lorenzen- Strait Decl., ¶ 12.	FRE 401, 402, 403: ICE's treatment of individuals with medical vulnerabilities other than those identified in the petition is irrelevant; FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.
10. Although the Johnson, Torres and Morton memoranda have been rescinded by the current administration, the statutory and regulatory bases for the use of prosecutorial discretion in ICE's custodial determinations remains unchanged. Lorenzen- Strait Decl., ¶ 13.	FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.
11. In fact, as stated above, ICE's enforcement priorities have always been shaped by the necessary use of prosecutorial discretion with respect to immigration detention. Lorenzen- Strait Decl., ¶ 14.	FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.

12. Moreover, ICE has a range of highly effective tools at its disposal to ensure that individuals report for court hearings and other appointments, including conditions of supervision. For example, ICE's conditional supervision program, called ISAP (Intensive Supervision Appearance Program), relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. A government-contracted evaluation of this program reported a 99% attendance rate at all immigration court hearings and a 95% attendance rate at final hearings. Lorenzen- Strait Decl., ¶ 15.	FRE 401,402, 403: The statistics cited by the Declarant lack probative value, as they rely solely on data collected between 2011 and 2013. FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation; FRE 701: Improper lay opinion.
The COVID-19 virus represents an unprecedented risk to detainee health and safety that should prompt officials to examine the custodial status of all those most at risk. Such an examination would result in their immediate release. Lorenzen- Strait Decl., ¶ 15.	FRE 602: Declarant has not been employed with ICE since May 2019, as such his testimony regarding current ICE practices and internal procedures are speculative and lack of personal knowledge and foundation.

Dated: April 3, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, *Plaintiffs*, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, *Defendants*.	Case No. 5:19-CV-01546 JGB (SHKx) **DEFENDANTS' EVIDENTIARY OBJECTIONS TO THE DECLARATION OF ANDREA SAENZ** **Before The Honorable Jesus G. Bernal** **Hearing Date:** April 13, 2020 **Hearing Time:** 9:00 a.m.

Defendants hereby object to the following portions of the Declaration of Andrea Saenz, ECF No. 81-15, filed on March 24, 2020 by Plaintiffs in support of their Motion for Preliminary Injunction on the grounds set forth below:

MATERIAL OBJECTED TO:	**OBJECTIONS:**
1. The people we represent are in grave danger in these jails because of COVID-19, and the situation is only getting worse. Declaration of Andrea Saenz ("Saenz Decl.") ¶ 6.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculative.
2. Neither ICE nor the local staffs have provided adequate protection. Saenz Decl. ¶ 7.	FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculative.
3. A few people we represent have reported that sick detainees were removed from their units. Many others have reported that medical call slips are going ignored in general. We have also heard reports that correctional staff are visibly trying to keep their distance from detained people. Saenz Decl. ¶ 8.	FRE 802: Hearsay.
4. At the Bergen County Jail, clients are being subject to lockdown conditions for all but a few hours a day, locked into cells with one other person who they cannot maintain distance from. One person at a time is allowed out of the cell for a few hours; otherwise they are confined with no recreation, phone access or programming and must use the toilets	FRE 602: Lack of personal knowledge, failure to lay proper foundation.

in the cells, which sometimes overflow or cannot be flushed regularly. Saenz Decl. ¶ 12.	

Dated: April 3, 2020

Respectfully submitted,

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