

1 Timothy P. Fox (CA Bar 157750)
2 *tfox@creeclaw.org*
3 Elizabeth Jordan*
4 *ejordan@creeclaw.org*
5 CIVIL RIGHTS EDUCATION AND
6 ENFORCEMENT CENTER
1245 E. Colfax Avenue, Suite 400
Denver, CO 80218
Tel: (303) 757-7901
Fax: (303) 872-9072

7 Lisa Graybill*
8 *lisa.graybill@splcenter.org*
9 Jared Davidson*
10 *jared.davidson@splcenter.org*
11 SOUTHERN POVERTY LAW
12 CENTER
201 St. Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
Tel: (504) 486-8982
Fax: (504) 486-8947

Stuart Seaborn (CA Bar 198590)
sseaborn@dralegal.org
Melissa Riess (CA Bar 295959)
mriess@dralegal.org
DISABILITY RIGHTS ADVOCATES
2001 Center Street, 4th Floor
Berkeley, California 94704
Tel: (510) 665-8644
Fax: (510) 665-8511

13
14 Attorneys for Plaintiffs (continued on next page)

15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **EASTERN DIVISION – RIVERSIDE**

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.

22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

Case No.: 19-cv-01546-JGB(SHKx)

25
26 **PLAINTIFFS' RESPONSE TO**
27 **DEFENDANTS' EVIDENTIARY**
28 **OBJECTIONS TO THE**
DECLARATION OF THOMAS
RAGLAND

Date: April 8, 2020

William F. Alderman (CA Bar 47381)
walderman@orrick.com
 Jake Routhier (CA Bar 324452)
jrouthier@orrick.com
 ORRICK, HERRINGTON &
 SUTCLIFFE LLP
 405 Howard Street
 San Francisco, CA 94105
 Tel: (415) 773-5700
 Fax: (415) 773-5759

Michael W. Johnson**
mjohnson1@willkie.com
 Dania Bardavid**
dbardavid@willkie.com
 Jessica Blanton**
jblanton@willkie.com
 Joseph Bretschneider**
jbretschneider@willkie.com
 WILLKIE FARR &
 GALLAGHER LLP
 787 Seventh Avenue
 New York, NY 10019
 Tel: (212) 728-8000
 Fax: (212) 728-8111

Maia Fleischman*
maia.fleischman@splcenter.org
 SOUTHERN POVERTY LAW
 CENTER
 2 South Biscayne Boulevard
 Suite 3750
 Miami, FL 33131
 Tel: (786) 347-2056
 Fax: (786) 237-2949

Christina Brandt-Young*
cbrandt-young@dralegal.org
 DISABILITY RIGHTS
 ADVOCATES
 655 Third Avenue, 14th Floor
 New York, NY 10017
 Tel: (212) 644-8644
 Fax: (212) 644-8636

Mark Mermelstein (CA Bar 208005)
mmermelstein@orrick.com
 ORRICK, HERRINGTON &
 SUTCLIFFE LLP
 777 South Figueroa Street
 Suite 3200
 Los Angeles, CA 90017
 Tel: (213) 629-2020
 Fax: (213) 612-2499

Leigh Coutoumanos**
lcoutoumanos@willkie.com
 WILLKIE FARR &
 GALLAGHER LLP
 1875 K Street NW, Suite 100
 Washington, DC 20006
 Tel: (202) 303-1000
 Fax: (202) 303-2000

Shalini Goel Agarwal
 (CA Bar 254540)
shalini.agarwal@splcenter.org
 SOUTHERN POVERTY LAW
 CENTER
 106 East College Avenue
 Suite 1010
 Tallahassee, FL 32301
 Tel: (850) 521-3024
 Fax: (850) 521-3001

Maria del Pilar Gonzalez Morales
 (CA Bar 308550)
pgonzalez@creeclaw.org
 CIVIL RIGHTS EDUCATION
 AND ENFORCEMENT CENTER
 1825 N. Vermont Avenue, #27916
 Los Angeles, CA 90027
 Tel: (805) 813-8896
 Fax: (303) 872-9072

Attorneys for Plaintiffs (continued from previous page)

*Admitted Pro Hac Vice

**Pro Hac Vice Application Forthcoming

1 Plaintiffs hereby respond to Defendants' Evidentiary Objections to the
 2 Declaration of Thomas Ragland, ECF No. 95-15, filed April 3, 2020. As a general
 3 response, Plaintiffs note that, in ruling on a motion for preliminary injunction, the
 4 Court may consider inadmissible evidence "when to do so serves the purpose of
 5 preventing irreparable harm before trial." *Flynt Distrib. Co. v. Harvey*, 734 F.2d
 6 1389, 1394 (9th Cir. 1984). In addition, Plaintiffs respond to Defendants' specific
 7 evidentiary objections as follows:

8 **1. MATERIAL OBJECTED TO:**

9 I represent a 63-year-old asylum seeker who is currently detained at the
 10 Adelanto Detention Facility ("Adelanto") in Adelanto, California. My client was
 11 taken into custody by U.S. Immigration and Customs Enforcement ("ICE") in June
 12 2019. He is not subject to mandatory detention. In July 2019, an Immigration
 13 Judge ("IJ") at the Adelanto Immigration Court denied my client's motion for
 14 release on bond under INA §236(a), despite finding that he poses no danger to the
 15 community, on the ground that he poses a flight risk. On behalf of my client, I
 16 filed a timely appeal with the Board of Immigration Appeals ("BIA"). In February
 17 2020, the BIA sustained our appeal and remanded my client's case to the Adelanto
 18 Immigration Court for a new bond hearing. Declaration of Thomas Ragland
 19 ("Ragland Decl.") ¶ 2.

20 **OBJECTION(S):**

21 FRE 401, 402: The immigration proceedings of a non-party are irrelevant.
 22 Plaintiffs do not cite this declaration anywhere in their Motion for Preliminary
 23 Injunction, and therefore, they have not established its relevance.

24 **RESPONSE:**

25 This information is directly relevant to Plaintiffs' motions. The Plaintiffs
 26 bring a class action lawsuit based on conditions in ICE detention centers across the
 27 country. To establish that conditions in ICE detention merit class certification and
 28 the requested preliminary injunction, Plaintiffs are offering evidence of the current

conditions to which detainees are subjected while detained in Defendants' custody. Mr. Ragland's declaration constitutes such evidence, as he describes detainees' inabilities to obtain release through the standard procedures. Additionally, the court may consider evidence of current conditions as relevant to the issue of a systemic constitutional violation. *Brown v. Plata*, 563 U.S. 493 (2011).

2. MATERIAL OBJECTED TO:

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.

OBJECTION(S):

FRE 401, 402: The immigration proceedings of a non-party are irrelevant.

RESPONSE:

This information is directly relevant to Plaintiffs' motions. The Plaintiffs bring a class action lawsuit based on conditions in ICE detention centers across the country. To establish that conditions in ICE detention merit class certification and the requested preliminary injunction, Plaintiffs are offering evidence of the current conditions to which detainees are subjected while detained in Defendants' custody. Mr. Ragland's declaration constitutes such evidence, as he describes detainees' inabilities to obtain release through the standard procedures. Additionally, the court may consider evidence of current conditions as relevant to the issue of a systemic constitutional violation. *Brown*, 563 U.S. 493.

3. MATERIAL OBJECTED TO:

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.

OBJECTION(S):

FRE 401, 402: The immigration proceedings of a non-party are irrelevant.

RESPONSE:

This information is directly relevant to Plaintiffs' motions. The Plaintiffs bring a class action lawsuit based on conditions in ICE detention centers across the country. To establish that conditions in ICE detention merit class certification and the requested preliminary injunction, Plaintiffs are offering evidence of the current conditions to which detainees are subjected while detained in Defendants' custody. Mr. Ragland's declaration constitutes such evidence, as he describes detainees' inabilities to obtain release through the standard procedures. Additionally, the court may consider evidence of current conditions as relevant to the issue of a systemic constitutional violation. *Brown*, 563 U.S. 493.

4. MATERIAL OBJECTED TO:

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.

OBJECTION(S):

FRE 802: Hearsay.

FRE 401, 402: The immigration proceedings of a non-party are irrelevant.

RESPONSE:

A district court may consider hearsay in deciding whether to issue a preliminary injunction. *See, e.g., Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir. 1988) (en banc). Even assuming *arguendo* the Court was not permitted to consider hearsay in deciding Plaintiffs' motions, Mr. Ragland's statements are subject to a

1 hearsay exception. In light of the unique circumstances presented by this case, the
2 residual exception to the hearsay rule would apply. See FRE 807. Plaintiffs are
3 detained with extremely limited access to counsel, and this matter is progressing
4 rapidly in light of the COVID-19 pandemic. The ability of Plaintiffs' counsel to
5 obtain declarations from the individuals with whom Mr. Ragland spoke is hindered
6 by the fact that the declarants are detained in the custody of Defendants. Requiring
7 Plaintiffs' counsel to obtain declarations from all of the individuals with whom Mr.
8 Ragland spoke would be impractical and unreasonable. Mr. Ragland has sworn
9 under oath that the details in his declaration are "true and correct." Ragland Decl.
10 p. 2. His statements are therefore sufficiently reliable and trustworthy under
11 FRE 807.

12 This information is directly relevant to Plaintiffs' motions. The Plaintiffs
13 bring a class action lawsuit based on conditions in ICE detention centers across the
14 country. To establish that conditions in ICE detention merit class certification and
15 the requested preliminary injunction, Plaintiffs are offering evidence of the current
16 conditions to which detainees are subjected while detained in Defendants' custody.
17 Mr. Ragland's declaration constitutes such evidence, as he describes detainees'
18 inabilities to obtain release through the standard procedures. Additionally, the
19 court may consider evidence of current conditions as relevant to the issue of a
20 systemic constitutional violation. *Brown*, 563 U.S. 493.

21 **5. MATERIAL OBJECTED TO:**

22 I informed the IJ that we had reached an agreement with opposing counsel
23 on stipulated terms for my client's release. The IJ said he understood, but would
24 not render a bond decision – notwithstanding the parties' stipulated agreement –
25 without first reviewing the bond file, which he did not have before him. He stated
26 further that my client could not be released for at least 2 weeks or 30 days in any
27 event, due to quarantine policy at the Adelanto Detention Center. Ragland Decl.

28 ¶ 6.

1 **OBJECTION(S):**

2 FRE 802: Hearsay.

3 FRE 401, 402: The immigration proceedings of a non-party are irrelevant.

4 **RESPONSE:**

5 A district court may consider hearsay in deciding whether to issue a
6 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
7 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
8 permitted to consider hearsay in deciding Plaintiffs' motions, Mr. Ragland's
9 statements are subject to a hearsay exception. In light of the unique circumstances
10 presented by this case, the residual exception to the hearsay rule would apply. *See*
11 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
12 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of
13 Plaintiffs' counsel to obtain declarations from the individuals with whom Mr.
14 Ragland spoke is hindered by the fact that the declarants are detained in the
15 custody of Defendants. Requiring Plaintiffs' counsel to obtain declarations from
16 all of the individuals with whom Mr. Ragland spoke would be impractical and
17 unreasonable. Mr. Ragland has sworn under oath that the details in his declaration
18 are "true and correct." Ragland Decl. p. 2. His statements are therefore
19 sufficiently reliable and trustworthy under FRE 807.

20 This information is directly relevant to Plaintiffs' motions. The Plaintiffs
21 bring a class action lawsuit based on conditions in ICE detention centers across the
22 country. To establish that conditions in ICE detention merit class certification and
23 the requested preliminary injunction, Plaintiffs are offering evidence of the current
24 conditions to which detainees are subjected while detained in Defendants' custody.
25 Mr. Ragland's declaration constitutes such evidence, as he describes detainees'
26 inabilities to obtain release through the standard procedures. Additionally, the
27 court may consider evidence of current conditions as relevant to the issue of a
28 systemic constitutional violation. *Brown*, 563 U.S. 493.

1 **6. MATERIAL OBJECTED TO:**

2 The IJ stated that the earliest date on which he could conduct a bond hearing,
3 when my client would be eligible for release from quarantine, is April 14, 2020 at
4 1:00 p.m. Ragland Decl. ¶ 7.

5 **OBJECTION(S):**

6 FRE 802: Hearsay.

7 FRE 401, 402: The immigration proceedings of a non-party are irrelevant.

8 **RESPONSE:**

9 A district court may consider hearsay in deciding whether to issue a
10 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
11 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
12 permitted to consider hearsay in deciding Plaintiffs' motions, Mr. Ragland's
13 statements are subject to a hearsay exception. In light of the unique circumstances
14 presented by this case, the residual exception to the hearsay rule would apply.
15 *See* FRE 807. Plaintiffs are detained with extremely limited access to counsel, and
16 this matter is progressing rapidly in light of the COVID-19 pandemic. The ability
17 of Plaintiffs' counsel to obtain declarations from the individuals with whom Mr.
18 Ragland spoke is hindered by the fact that the declarants are detained in the
19 custody of Defendants. Requiring Plaintiffs' counsel to obtain declarations from
20 all of the individuals with whom Mr. Ragland spoke would be impractical and
21 unreasonable. Mr. Ragland has sworn under oath that the details in his declaration
22 are "true and correct." Ragland Decl. p. 2. His statements are therefore
23 sufficiently reliable and trustworthy under FRE 807.

24 This information is directly relevant to Plaintiffs' motions. The Plaintiffs
25 bring a class action lawsuit based on conditions in ICE detention centers across the
26 country. To establish that conditions in ICE detention merit class certification and
27 the requested preliminary injunction, Plaintiffs are offering evidence of the current
28 conditions to which detainees are subjected while detained in Defendants' custody.
Mr. Ragland's declaration constitutes such evidence, as he describes detainees'

inabilities to obtain release through the standard procedures. Additionally, the court may consider evidence of current conditions as relevant to the issue of a systemic constitutional violation. *Brown*, 563 U.S. 493.

7. MATERIAL OBJECTED TO:

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.” Ragland Decl. ¶ 9.

OBJECTION(S):

FRE 802: Hearsay.

RESPONSE:

A district court may consider hearsay in deciding whether to issue a preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not permitted to consider hearsay in deciding Plaintiffs’ motions, Mr. Ragland’s statements are subject to a hearsay exception. In light of the unique circumstances presented by this case, the residual exception to the hearsay rule would apply. *See* FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this matter is progressing rapidly in light of the COVID-19 pandemic. The ability of Plaintiffs’ counsel to obtain declarations from the individuals with whom Mr. Ragland spoke is hindered by the fact that the declarants are detained in the custody of Defendants. Requiring Plaintiffs’ counsel to obtain declarations from all of the individuals with whom Mr. Ragland spoke would be impractical and unreasonable. Mr. Ragland has sworn under oath that the details in his declaration are “true and correct.” Ragland Decl. p. 2. His statements are therefore sufficiently reliable and trustworthy under FRE 807.

8. MATERIAL OBJECTED TO:

On March 20, 2020, I spoke with my client by telephone and asked him

1 about the quarantine. He stated that he himself is not ill. Rather, the quarantine
2 was instituted because, to his knowledge, someone at the facility complained of
3 stomach pains. He said that he is confined with a group of approximately 80
4 inmates—none of whom appear to my client to be ill—and they are not permitted
5 to interact with other detainees. They are not permitted to use spaces that were
6 previously considered common spaces, like the cafeteria. He stated that he is
7 residing in close quarters with four other individuals. He also said that no nurses
8 or doctors have visited the facility to perform check-ups on the individuals with
9 whom he is quarantined. Ragland Decl. ¶ 10.

10 **OBJECTION(S):**

11 FRE 802: Hearsay.

12 **RESPONSE:**

13 A district court may consider hearsay in deciding whether to issue a
14 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
15 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
16 permitted to consider hearsay in deciding Plaintiffs’ motions, Mr. Ragland’s
17 statements are subject to a hearsay exception. In light of the unique circumstances
18 presented by this case, the residual exception to the hearsay rule would apply. *See*
19 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
20 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of
21 Plaintiffs’ counsel to obtain declarations from the individuals with whom Mr.
22 Ragland spoke is hindered by the fact that the declarants are detained in the
23 custody of Defendants. Requiring Plaintiffs’ counsel to obtain declarations from
24 all of the individuals with whom Mr. Ragland spoke would be impractical and
25 unreasonable. Mr. Ragland has sworn under oath that the details in his declaration
26 are “true and correct.” Ragland Decl. p. 2. His statements are therefore
27 sufficiently reliable and trustworthy under FRE 807.
28

1 Dated: April 8, 2020

2
3 Respectfully Submitted,

4
5 /s/ Timothy P. Fox

6 Timothy P. Fox
7 Elizabeth Jordan
8 Maria del Pilar Gonzalez Morales
9 CIVIL RIGHTS EDUCATION AND
10 ENFORCEMENT CENTER

11 /s/ Stuart Seaborn

12 Stuart Seaborn
13 Christina Brandt-Young
14 Melissa Riess
15 DISABILITY RIGHTS
16 ADVOCATES

17 /s/ William F. Alderman

18 William F. Alderman
19 Mark Mermelstein
20 Jake Routhier
21 ORRICK, HERRINGTON &
22 SUTCLIFFE LLP

23
24 Attorneys for Plaintiffs
25
26
27
28

/s/ Michael W. Johnson

Michael W. Johnson
Dania Bardavid
Leigh Coutoumanos
Jessica Blanton
Joseph Bretschneider
WILLKIE FARR &
GALLAGHER LLP

/s/ Lisa Graybill

Lisa Graybill
Shalini Goel Agarwal
Jared Davidson
Maia Fleischman
SOUTHERN POVERTY
LAW CENTER