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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 **PLAINTIFFS' RESPONSE TO**
26 **DEFENDANTS' EVIDENTIARY**
27 **OBJECTIONS TO THE**
28 **DECLARATION OF FRANCIS L.**
CONLIN

Date: April 8, 2020

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1 Plaintiffs hereby respond to Defendants' Evidentiary Objections to the
 2 Declaration of Francis L. Conlin, ECF No. 95-21, 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 Based on FOMDD's knowledge and understanding, ICE and its contractors
 10 have not effectively disseminated vital information about COVID-19 to individuals
 11 in the following detention centers: Krome, BTC, and Glades. The lack of
 12 information has heightened fear and anxiety amongst the detained populations and
 13 led to a rampant spread of unverified information throughout all three facilities.
 14 FOMDD has heard from several detained individuals about their increased anxiety
 15 and fear that COVID-19 will spread throughout the facilities. The only education
 16 that detained individuals have received on COVID-19 has been informative flyers
 17 posted at Krome. Declaration of Francis L. Conlin ("Conlin Decl.") ¶ 5.

18 **OBJECTION(S):**

19 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
 20 speculation.

21 **RESPONSE:**

22 Mr. Conlin has gained personal knowledge through his role as Chairperson
 23 for Friends of Miami-Dade Detainees ("FOMDD"). Conlin Decl. ¶ 1. He has
 24 personal knowledge of the conditions facing those in immigration detention centers
 25 based on his work with FOMDD, which operates visitation programs for those in
 26 detention. Additionally, FOMDD volunteers have been in continuous contact with
 27 detained individuals at the facilities they serve and have reported their findings to
 28 him. *Id.* at ¶¶ 2-3. Mr. Conlin's statement is not based on speculation but rather

1 personal knowledge of the conditions FOMDD's clients are subjected to while
2 detained in Defendant's custody.

3
4 **2. MATERIAL OBJECTED TO:**

5 Based on FOMDD's knowledge and understanding, there has been no
6 material change in protocols or procedures in place in light of COVID-19 at
7 Krome, BTC, or Glades. Conlin Decl. ¶ 6.

8 **OBJECTION(S):**

9 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
10 speculation.

11 **RESPONSE:**

12 Mr. Conlin has gained personal knowledge through his role as Chairperson
13 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions
14 facing those in immigration detention centers based on his work with FOMDD,
15 which operates visitation programs for those in detention. Additionally, FOMDD
16 volunteers have been in continuous contact with detained individuals at the
17 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.
18 Conlin's statement is not based on speculation but rather personal knowledge of
19 the conditions FOMDD's clients are subjected to while detained in Defendant's
20 custody.

21 **3. MATERIAL OBJECTED TO:**

22 At all three facilities, we have heard that staff are wearing surgical masks,
23 but surgical masks have not been provided to the detained population. Detained
24 individuals at all three facilities report not being provided extra soap, extra
25 cleaning supplies, or hand sanitizer. Conlin Decl. ¶ 7.

26 **OBJECTION(S):**

27 FRE 802: Hearsay.
28

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. Conlin'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. Conlin 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. Conlin spoke would be impractical and unreasonable. Mr. Conlin has sworn under oath that the details in his declaration are "true and correct." Conlin Decl. p.

1. His statements are therefore sufficiently reliable and trustworthy under FRE 807.

4. MATERIAL OBJECTED TO:

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.

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. Conlin'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. Conlin 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. Conlin spoke would be impractical and unreasonable. Mr. Conlin has sworn under oath that the details in his declaration are "true and correct." Conlin Decl. p. 1. His statements are therefore sufficiently reliable and trustworthy under FRE 807.

5. MATERIAL OBJECTED TO:

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.

OBJECTION(S):

FRE 602: Lack of personal knowledge, failure to lay proper foundation, speculation.

RESPONSE:

Mr. Conlin has gained personal knowledge through his role as Chairperson for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions facing those in immigration detention centers based on his work with FOMDD, which operates visitation programs for those in detention. Additionally, FOMDD volunteers have been in continuous contact with detained individuals at the facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr. Conlin's statement is not based on speculation but rather personal knowledge of

1 the conditions FOMDD's clients are subjected to while detained in Defendant's
2 custody.

3
4 **6. MATERIAL OBJECTED TO:**

5 One individual with a work assignment that requires being in contact with
6 the food trays reported feeling ill. He went to the medical unit to report his illness
7 and was not provided with adequate medical care. He ultimately decided not to
8 continue his work assignment because he was afraid to expose other detained
9 individuals to his illness, and he was not being provided with extra sanitizing
10 materials. Conlin. Decl. ¶ 11.

11 **OBJECTION(S):**

12 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
13 speculation.

14 **RESPONSE:**

15 Mr. Conlin has gained personal knowledge through his role as Chairperson
16 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions
17 facing those in immigration detention centers based on his work with FOMDD,
18 which operates visitation programs for those in detention. Additionally, FOMDD
19 volunteers have been in continuous contact with detained individuals at the
20 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.
21 Conlin's statement is not based on speculation but rather personal knowledge of
22 the conditions FOMDD's clients are subjected to while detained in Defendant's
23 custody.

24 **7. MATERIAL OBJECTED TO:**

25 The quarantines in place result in a large number of individuals being placed
26 together in a crowded and cramped area without space necessary for social
27 distancing. The quarantines combined with the lack of information that ICE and its
28 contractors at both Glades and Krome have failed to provide resulted in detained

1 individuals contacting FOMDD to tell us that there are several cases of COVID-19
2 at the two facilities. Conlin. Decl. ¶ 12.

3 **OBJECTION(S):**

4 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
5 speculation.

6 **RESPONSE:**

7 Mr. Conlin has gained personal knowledge through his role as Chairperson
8 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions
9 facing those in immigration detention centers based on his work with FOMDD,
10 which operates visitation programs for those in detention. Additionally, FOMDD
11 volunteers have been in continuous contact with detained individuals at the
12 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.
13 Conlin's statement is not based on speculation but rather personal knowledge of
14 the conditions FOMDD's clients are subjected to while detained in Defendant's
15 custody.

16 **8. MATERIAL OBJECTED TO:**

17 Individuals are not being screened or getting their temperature checked
18 before being transferred. Conlin Decl. ¶ 13.

19 **OBJECTION(S):**

20 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
21 speculation.

22 **RESPONSE:**

23 Mr. Conlin has gained personal knowledge through his role as Chairperson
24 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions
25 facing those in immigration detention centers based on his work with FOMDD,
26 which operates visitation programs for those in detention. Additionally, FOMDD
27 volunteers have been in continuous contact with detained individuals at the
28 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.

Conlin's statement is not based on speculation but rather personal knowledge of the conditions FOMDD's clients are subjected to while detained in Defendant's custody.

9. MATERIAL OBJECTED TO:

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.

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. Conlin'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. Conlin 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. Conlin spoke would be impractical and unreasonable. Mr. Conlin has sworn under oath that the details in his declaration are "true and correct." Conlin Decl. p. 1. His statements are therefore sufficiently reliable and trustworthy under FRE 807.

10. MATERIAL OBJECTED TO:

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

1 other underlying medical conditions that put them at high risk of contracting and
2 suffering deadly consequences from COVID-19. Conlin. Decl. ¶ 15.

3 **OBJECTION(S):**

4 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
5 speculation.

6 **RESPONSE:**

7 Mr. Conlin has gained personal knowledge through his role as Chairperson
8 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions
9 facing those in immigration detention centers based on his work with FOMDD,
10 which operates visitation programs for those in detention. Additionally, FOMDD
11 volunteers have been in continuous contact with detained individuals at the
12 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.
13 Conlin's statement is not based on speculation but rather personal knowledge of
14 the conditions FOMDD's clients are subjected to while detained in Defendant's
15 custody.
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1 DATED: April 8, 2020

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3 Respectfully Submitted,

4
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6 Elizabeth Jordan
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